FEDERAL REGISTER

Vol. 84 Thursday,
No. 133 July 11, 2019

Pages 32975–33162

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0427; Special Conditions No. 25–752–SC]

Special Conditions: TTF Aerospace, LLC, Airbus Model A330–300 and Model A330–900 Series Airplanes; Bulk Cargo Lower Deck Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A330–300 and Model A330–900 series airplanes. These airplanes, as modified by TTF Aerospace, LLC (TTF Aerospace), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is a lower deck mobile crew rest (LD–MCR) compartment installed in the aft cargo compartment of Model A330–300 and Model A330–900 series airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective July 11, 2019.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Airframe & Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3215; email *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 20, 2019, TTF Aerospace applied for a supplemental type certificate for a LD–MCR installed in the aft cargo compartment of Airbus Model A330–300 and Model A330–900 series airplanes. The Airbus Model A330–300 and Model A330–900 series airplanes are twin engine, transport category airplanes with maximum takeoff weights of 405,650 and 533,518 pounds, respectively, and seating for 440 passengers.

The LD–MCR compartment will be located under the passenger cabin floor in the aft cargo compartment of Airbus Model A330–300 and Model A330–900 airplanes. It will be removable from the cargo compartment. The LD–MCR compartment will be occupied in flight but not during taxi, takeoff, or landing. No more than ten crewmembers at a time will be permitted to occupy it. The LD–MCR compartment will have a smoke detection system, a fire suppression system, and an oxygen system.

The LD–MCR compartment will be accessed from the main deck via a ''stairhouse.'' The floor within the stairhouse has a hatch that leads to stairs that occupants use to descend into the LD–MCR compartment. An interface will keep this hatch open when the stairhouse door is open. In addition, there will be an emergency hatch that opens directly into the main passenger cabin. The LD–MCR compartment has a maintenance door. This door is intended to be used to allow maintenance personnel and cargo handlers to enter the LD–MCR from the cargo compartment when the airplane is not in flight.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, TTF Aerospace must show that the Airbus Model A330–300 and Model A330–900 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A46NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A330–300 and Model A330–900 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A330–300 and Model A330–900 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Airbus Model A330–300 and Model A330–900 series airplanes will incorporate the following novel or unusual design features:

This design feature is a LD–MCR compartment installed in the aft cargo compartment of Airbus Model A330 300 and Model A330–900 series airplanes.

Discussion

While the installation of the crew rest compartment is not a new concept for large transport category airplanes, each crew rest compartment has unique features based on design, location, and use on the airplane. The LD–MCR compartment is novel in terms of part 25 of title 14 of the CFR in that it will be located under the passenger cabin floor in the aft cargo compartment of Airbus Model A330–300 and Model A330–900 series airplanes, which is not contemplated by § 25.819 regarding lower deck service compartments (including galleys). Due to the novel or unusual features associated with the installation of a LD–MCR compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificates of these airplanes, as applicable

airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

Most of these special conditions come from § 25.819, but they require more stringent standards for fire protection and emergency egress because of design features and location of the LD–MCR. The applicant should note that the FAA considers smoke or fire detection and fire suppression systems (including airflow management features that prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) for crew rest compartments complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, ''System Design and Analysis,'' dated June 21, 1988. In addition, the FAA considers failure of the crew rest compartment fire protection system (*i.e.,* smoke or fire detection and fire suppression systems) in conjunction with a crew rest fire to be a catastrophic event. Based on the ''Depth of Analysis Flowchart'' shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments. Refer to paragraphs 8d, 9, and 10 of AC 25.1309–1A. Note that flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the crew rest areas.

The requirements to enable crewmembers' quick entry to the crew rest compartment, and to locate a fire source, inherently places limits on the amount of baggage that may be carried and the size of the crew rest area. The FAA considers that the crew rest area must be limited to the stowage of crew personal luggage and both must not be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

Furthermore, the addition of galley equipment, or a kitchenette incorporating a heat source (*e.g.,* cook tops, microwaves, coffee pots, etc.), other than a conventional lavatory or kitchenette hot water heater, within the LD–MCR compartment defined in the ''Novel or Unusual Design Features'' section, may require additional special conditions to be considered. A hot water heater is acceptable without further special conditions consideration.

Finally, amendment 25–38 modified the requirements of § 25.1439(a) by adding, ''In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.'' The LD–MCR compartment is an isolated separate compartment, so § 25.1439(a) is applicable. However, the § 25.1439(a) protective breathing equipment (PBE) requirements for isolated separate compartments are not appropriate because the LD–MCR compartment is novel or unusual in terms of the number of occupants.

In 1976, when amendment 25–38 was adopted, small galleys were the only isolated compartments that had been certificated. Two crewmembers were the maximum expected to occupy those galleys.

This crew rest compartment can accommodate up to ten crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time amendment 25–38 was adopted. It is not appropriate for all occupants to don PBEs in the event of a fire because the first action should be to leave the confined space unless the occupant is fighting the fire. Taking the time to don the PBE would prolong the time for the emergency evacuation of the occupants and possibly interfere with efforts to extinguish the fire. These special conditions therefore provide procedures that establish a level of safety equivalent to the PBE requirements.

Operational Evaluations and Approval

These special conditions outline requirements for flightcrew and cabin crew rest compartment design approvals (*e.g.,* type design change or supplemental type certificate) administered by the FAA's Aircraft Certification Service. Prior to operational use of a flight (cabin) crew rest compartment, the FAA's Flight Standards Service must evaluate, for operational suitability the flight (cabin) crew sleeping quarters and rest facilities. Refer to §§ 91.1061(b)(1), 121.485(a), 121.523(b), and 135.269(b)(5).

Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of 14 CFR part 91, 121, or 135.

To obtain an operational evaluation, the type design holder must contact the appropriate Aircraft Evaluation Group (AEG) in the Flight Standards Service and request an evaluation for operational suitability of the flightcrew sleeping quarters in their crew rest facility. Results of these evaluations should be documented and appended to the applicable Flight Standardization Board Report. Individual operators may reference these standardized evaluations in discussions with their FAA Principal Operating Inspector as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved flight (cabin) crew rest compartment configuration that affect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. In the event of any design change that affects egress, safety procedures, or training, the applicant is responsible for notifying the FAA's AEG that a new crew rest facility evaluation is required.

All instructions for continued airworthiness (ICAs) will be submitted to the Seattle AEG for approval acceptance, including service bulletins, before issuance of the FAA modification approval.

These special conditions are the same as Special Conditions 25–281–SC, except the maximum occupancy is ten rather than seven occupants, and a change to the table in Special Condition 20. The conditions provide an appropriate level of safety for the occupancy limit as only the size of the compartment will increase to accommodate the additional occupants, but all other requirements for safety, fire suppression, and emergency evacuation will remain the same. In addition, the change to the table in Special Condition 20 is related to the location of the crew rest and specifics of the crew rest design. Stowage compartments located in the vicinity of critical equipment or located in an overhead area would typically be listed as conditional. However, this LD–MCR compartment is located in the Class C cargo compartment with all of its features that provide fire protection (*e.g.,* the use of liner material that meets appendix F to part 25, part III; control of ventilation; active fire suppression; active fire detection; etc.). These features remain when the crew rest is installed.

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

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–19–07–SC for the Airbus Model A330–300 and Model A330–900 series airplane, which was published in the **Federal Register** on June 7, 2019 (84 FR 26593). No comments were received, and the

special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A330–300 and Model A330–900 airplanes. Should TTF Aerospace apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A46NM to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the LD–MCR compartment is currently scheduled for July 2019 for the Airbus Model A330–300 and Model A330–900 airplanes is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

Conclusion

This action affects only a certain novel or unusual design feature on Airbus Model A330–300 and Model A330–900 of airplanes as modified by TTF Aerospace. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330–300 and Model A330–900 airplanes, as modified by TTF Aerospace.

1. Occupancy of the LD–MCR compartment is limited to the total number of installed bunks and seats in each compartment. For each occupant permitted in the LD–MCR compartment, there must be an approved seat or berth able to withstand the maximum flight loads when occupied. The maximum occupancy in the LD–MCR compartment is ten.

a. There must be appropriate placards displayed in a conspicuous place at each entrance to the LD–MCR compartment indicating the following information:

(1) The maximum number of occupants allowed;

(2) That occupancy is restricted to crewmembers trained in the evacuation procedures for the LD–MCR compartment;

(3) That occupancy is prohibited during taxi, takeoff and landing;

(4) That smoking is prohibited in the LD–MCR compartment; and

(5) That the LD–MCR compartment is limited to the stowage of personal luggage of crewmembers and must not be used for the stowage of cargo or passenger baggage.

b. There must be at least one ashtray located conspicuously on or near the entry side of any entrance to the LD–MCR compartment.

c. There must be a means to prevent passengers from entering the LD–MCR compartment in an emergency or when no flight attendant is present.

d. There must be a means for any door installed between the LD–MCR compartment and the passenger cabin to be capable of being quickly opened from inside the LD–MCR compartment, even when crowding occurs at each side of the door.

e. For all doors installed in the evacuation routes, there must be a means to preclude anyone from being trapped inside a compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of a compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the LD–MCR compartment to rapidly evacuate to the main cabin and could be closed from the main passenger cabin after evacuation.

a. The routes must be located with one at each end of the LD–MCR compartment or with two having sufficient separation within the LD–MCR compartment and between the routes to minimize the possibility of an event (either inside or outside of the LD–MCR compartment) rendering both routes inoperative.

b. The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or from persons standing on top of or against the escape route. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If a hatch is installed in an evacuation route, the point at which the evacuation route terminates in the passenger cabin should not be located where normal movement by passengers or crew occur, such as in a main aisle, cross aisle, passageway, or galley complex.

If such a location cannot be avoided, special consideration must be taken to ensure that the hatch or door can be opened when a person who is the weight of a ninety-fifth percentile male is standing on the hatch or door.

The use of evacuation routes must not be dependent on any powered device. If there is low headroom at or near an evacuation route, provision must be made to prevent or to protect occupants of the LD–MCR compartment from head injury.

c. Emergency evacuation procedures, including the emergency evacuation of an incapacitated crewmember from the LD–MCR compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

d. There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated crewmember who is representative of a 95th percentile male from the LD–MCR compartment to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant within the LD–MCR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. For evacuation routes having stairways, the additional assistants may descend down to one half the elevation change from the main deck to the LD–MCR compartment or to the first landing, whichever is higher.

4. The following signs and placards must be provided in the LD–MCR compartment:

a. At least one exit sign that meets the requirements of § 25.812(b)(1)(i) at amendment 25–58 must be located near each exit. However, a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.,* white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable;

b. An appropriate placard that defines the location and the operating

instructions for each evacuation route must be located near each exit;

c. Placards must be readable from a distance of 30 inches under emergency lighting conditions; and

d. The exit handles and the placards with the evacuation path operating instructions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means for emergency illumination to be automatically provided for the LD–MCR compartment in the event of failure of the main power system of the airplane or of the normal lighting system of the LD–MCR compartment.

a. This emergency illumination must be independent of the main lighting system.

b. The sources of general cabin illumination may be common to both the emergency and the main lighting systems, if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

c. The illumination level must be sufficient for the occupants of the LD–MCR compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

d. The illumination level must be sufficient to locate a deployed oxygen mask with the privacy curtains in the closed position for each occupant of the LD–MCR compartment.

6. There must be means for two-way voice communications between crewmembers on the flightdeck and crewmembers in the LD–MCR compartment. Section 25.785(h) at amendment 25–51 requires flight attendant seats near required floor level emergency exits. Each such exit seat on the aircraft must have a public address system microphone that allows two-way voice communications between flight attendants and crewmembers in the LD–MCR compartment. One microphone may serve more than one such exit seat, provided the proximity of the exits allows unassisted verbal communications between seated flight attendants.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flightdeck and at each pair of required floor-level emergency exits to alert crewmembers in the LD–MCR compartment of an emergency. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight for at least ten minutes after the shutdown or failure of all engines and auxiliary power units (APU) or the disconnection or failure of all power sources that are dependent on the continued operation of the engines and APUs.

8. There must be a means, readily detectable by seated or standing occupants of the LD–MCR compartment, which indicates when seat belts should be fastened. If there are no seats, at least one means, such as sufficient handholds, must be provided to cover anticipated turbulence. Seat belt-type restraints must be provided for berths and must be compatible with the sleeping attitude during cruise conditions. There must be a placard on each berth indicating that seat belts must be fastened when the berth is occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard specifying the head position.

9. To provide a level of safety equivalent to that provided to occupants of a small isolated galley, in lieu of the requirements of § 25.1439(a) at amendment 25–38 that pertain to isolated compartments, the following equipment must be provided in the LD–MCR compartment:

a. At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

b. Two portable Protective Breathing Equipment (PBE) units, approved to Technical Standard Order TSO–C116 or equivalent, which are suitable for fire-fighting, or one PBE for each hand-held fire extinguisher, whichever is greater; and

c. One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition 9, may be required as a result of any egress analysis accomplished to satisfy Special Condition 2(a).

10. A smoke or fire detection system or systems must be provided to monitor each occupiable area within the LD–MCR compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each smoke or fire detection system must provide the following:

a. A visual indication to the flightdeck within one minute after the start of a fire;

b. An aural warning in the LD–MCR compartment; and

c. A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main-passenger compartment during various phases of flight.

11. The LD–MCR compartment must be designed such that fires within it can be controlled without a crewmember having to enter the compartment or be designed such that crewmembers equipped for fire-fighting have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, don the fire-fighting equipment, and gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the source of the fire.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the LD–MCR compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the LD–MCR compartment and, if applicable, when accessing the LD–MCR compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the LD–MCR compartment is opened during an emergency evacuation must dissipate within five minutes after the LD–MCR compartment is closed.

Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the LD–MCR compartment. (The amount of smoke entrained by a firefighter exiting the LD–MCR compartment through the access is not considered hazardous.)

During the one-minute smoke detection time, penetration of a small quantity of smoke from the LD–MCR compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire suppression system is used in lieu of manual firefighting, the fire suppression system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crewmembers. The system must have adequate capacity to suppress any likely fire occurring in the LD–MCR compartment, considering the fire threat, the volume of the compartment and the ventilation rate.

13. For each seat and berth in the LD–MCR compartment, there must be a supplemental oxygen system equivalent to that provided for main deck passengers. The system must provide an

aural and visual warning to alert the occupants of the LD–MCR compartment of the need to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the LD–MCR compartment is depressed. Procedures for crewmembers in the LD–MCR compartment to follow in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to LD–MCR compartments that are divided into several sections by the installation of curtains or doors:

a. To warn crewmembers who may be sleeping, there must be an aural alert that accompanies automatic presentation of supplemental oxygen masks. The alert must be able to be heard in each section of the LD–MCR compartment. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks are required for each seat or berth. There must also be a means to manually deploy the oxygen masks from the flightdeck.

b. A placard is required adjacent to each curtain that visually divides or separates the LD–MCR compartment into small sections for privacy purposes. The placard must indicate that the curtain is to remain open when the private section it creates is unoccupied.

c. For each section created by the installation of a curtain, the following requirements of these special conditions must be met both with the curtain open and with the curtain closed:

(1) Emergency illumination (Special Condition 5);

(2) Aural emergency alarm (Special Condition 7);

(3) Fasten seat belt signal or return to seat signal as applicable (Special Condition 8); and

(4) Smoke or fire detection (Special Condition 10).

d. Crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the LD–MCR compartment and must meet the requirements of § 25.812(b)(1)(i) at amendment 25–58. An exit sign with reduced background area, as described in Special Condition 4(a), may be used to meet this requirement.

e. For sections within a LD–MCR compartment that are created by the installation of a partition with a door separating the sections, the following requirements of these special conditions must be met with the door open and with the door closed:

(1) There must be a secondary evacuation route from each section to the main deck, or it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated crewmember from this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short period of time, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant from this area must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section that meet the requirements of § 25.812(b)(1)(i) at amendment 25–58, that direct occupants to the primary stairway exit. An exit sign with reduced background area, as described in Special Condition 4(a), may be used to meet this requirement.

(5) Special Conditions 5 (emergency illumination), 7 (aural emergency alarm), 8 (fasten seat belt signal or return to seat signal as applicable) and 10 (smoke and fire detection) must be met both with the door open and the door closed.

(6) Special Conditions 6 (two-way voice communication) and 9 (PBE and other equipment) must be met independently for each separate section, except in lavatories or other small areas that are not intended to be occupied for extended periods of time.

15. Where a waste disposal receptacle is fitted, it must be equipped with a built-in fire extinguisher designed to discharge automatically upon occurrence of a fire in the receptacle.

16. Materials, including finishes or decorative surfaces applied to the materials, must comply with the flammability standards of § 25.853 at amendment 25–66. Mattresses must comply with the flammability standards of § 25.853(b) and (c) at amendment 25–66.

17. A lavatory within the LD–MCR compartment must meet the same requirements as a lavatory installed on the main deck, except with regard to Special Condition 10 for smoke detection.

18. When a LD–MCR compartment is installed or enclosed as a removable module in part of a cargo compartment, or is located directly adjacent to a cargo compartment without an intervening cargo compartment wall, the following conditions apply:

a. Any wall of the LD–MCR compartment, which forms part of the boundary of the reduced cargo compartment and is subject to direct flame impingement from a fire in the cargo compartment, and any interface item between the LD–MCR compartment and the airplane structure or systems must meet the applicable requirements of § 25.855 at amendment 25–60.

b. Means must be provided to ensure that the fire protection level of the cargo compartment meets the applicable requirements of §§ 25.855 at amendment 25–60; 25.857 at amendment 25–60; and 25.858 at amendment 25–54 when the LD–MCR compartment is not installed.

c. Use of each emergency evacuation route must not require occupants of the LD–MCR compartment to enter the cargo compartment in order to return to the passenger compartment.

d. The aural emergency alarm specified in Special Condition 7 must sound in the LD–MCR compartment in the event of a fire in the cargo compartment.

19. Means must be provided to prevent access into the Class C cargo compartment, whether or not the LD–MCR compartment is installed, during all airplane flight operations, and to ensure that the maintenance door is closed and secured during all airplane flight operations.

20. All enclosed stowage compartments within the LD–MCR compartment that are not limited to stowage of emergency equipment or airplane supplied equipment (*i.e.,* bedding), must meet the design criteria given in the table below. As indicated in the table, enclosed stowage compartments larger than 200 ft^3 in interior volume are not addressed by these Special Conditions. The in-flight accessibility of very large enclosed stowage compartments, and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

Fire protection features	Stowage compartment interior volumes		
	Less than 25 ft³	25 ft³ to 57 ft³	57 ft³ to 200 ft³
Materials of Construction [1]	Yes	Yes	Yes.
Detectors [2]	No	Yes	Yes.
Liner [3]	No	No	Yes.
Location Detector [4]	No	Yes	Yes.

[1] *Material:* The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components per the requirements of § 25.853. For compartments less than 25 ft³ in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Detectors:* Enclosed stowage compartments equal to or exceeding 25 ft³ in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight-deck within one minute after the start of a fire;

(b) An aural warning in the crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner:* If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment, no liner would be required for enclosed stowage compartments equal to or greater than 25 ft³ but less than 57 ft³ in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft³ but less than or equal to 200 ft³ in interior volume, a liner must be provided that meets the requirements of § 25.855 at amendment 25–60 for a Class B cargo compartment.

[4] *Location Detector:* LD–MCR compartments that contain enclosed stowage compartments with an interior volume that exceeds 25 ft³ and are located away from one central location, such as the entry to the LD–MCR compartment or a common area within the LD–MCR compartment, would require additional fire protection features or devices to assist the firefighter in determining the location of a fire.

Issued in Des Moines, Washington, on July 8, 2019.

Mary A. Schooley,

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

[FR Doc. 2019–14784 Filed 7–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1067; Product Identifier 2018–NM–158–AD; Amendment 39–19641; AD 2019–10–02]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. This AD was prompted by an event where the airplane did not respond to the flightcrew's flight control inputs because the pitch trim switches did not disconnect the autopilot. This AD requires modifying the wiring installation for the autopilot disconnect logic. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 15, 2019.

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

ADDRESSES: For service information identified in this final rule, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* internet *http://www.saabgroup.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1067.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1067; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3220.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The NPRM published in the **Federal Register** on February 7, 2019 (84 FR 2467). The NPRM was prompted by an event where the airplane did not respond to the flightcrew's flight control inputs because the pitch trim switches did not disconnect the autopilot. The NPRM proposed to require modifying the wiring installation for the autopilot disconnect logic.

We are issuing this AD to address events where the airplane does not respond to the flightcrew's flight control inputs because the autopilot remains engaged, possibly resulting in loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0240, dated November 7, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The MCAI states:

> An occurrence was reported concerning a SAAB 2000 aeroplane, which was struck by lightning following a discontinued approach, with the auto-pilot (AP) engaged. After the lightning strike, the wings rolled level and the flight crew decided to climb but the aeroplane did not respond to flight control inputs as expected. Contrary to flight crew understanding, the pitch trim switches had not disengaged the AP and the flight crew

attempts to override the AP inputs resulted in a temporary loss of control of the aeroplane.

This condition, if not corrected, could lead to further events where, without the flight crew being aware, the AP remains engaged, possibly resulting in loss of control of the aeroplane.

Prompted by these findings, SAAB redesigned the AP disconnect logic, ensuring that the AP disconnects when either of the two main pitch trim switches on each control wheel are operated. SAAB also issued the SB [Service Bulletin 2000–22–008, dated June 15, 2018], providing modification instructions.

For the reason described above, this [EASA] AD requires a change to the AP disconnect logic by modification of the wiring installation.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1067.

Comments

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

Supportive Comment

The commenter, Olivia Vincent, expressed her support for the NPRM.

Request for Additional Flightcrew Training

The commenter, Olivia Vincent, observed that additional flightcrew training in the use of the Rockwell Collins FCC–4003 autopilot systems might be necessary if no further changes to the autopilot disconnect logic are issued.

We infer that the commenter is requesting a revision to this AD to include a training requirement. We disagree with the commenter's observation that additional flightcrew training might be necessary. The FAA has evaluated the need for additional flightcrew training and determined that the existing training is adequate and therefore additional training is not necessary. In addition, we have not received information from the manufacturer or from EASA, the state of design authority for the Saab AB, Saab Aeronautics Model SAAB 2000 airplanes, regarding the need for additional flightcrew training or additional changes to the autopilot disconnect logic beyond those required by this AD. Furthermore, this AD does not change how pilots interface with the airplanes or autopilot. Instead, it requires modifying the wiring installation for the autopilot disconnect logic to ensure that the autopilot disconnects when either of the two main pitch trim switches are operated. We have not revised this AD in response to this issue.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Saab AB, Saab Aeronautics has issued Service Bulletin 2000–22–008, dated June 15, 2018. This service information describes procedures for modifying the wiring for the autopilot disconnect logic.

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

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
12 work-hours × $85 per hour = $1,020	$8,750	$9,770	$78,160

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–10–02 Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems): Amendment 39–19641; Docket No. FAA–2018–1067; Product Identifier 2018–NM–158–AD.

(a) Effective Date

This AD is effective August 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aeronautics Model SAAB 2000 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Reason

This AD was prompted by an event where the airplane did not respond to the flightcrew's flight control inputs because the pitch trim switches did not disconnect the autopilot. We are issuing this AD to address events where the airplane does not respond to the flightcrew's flight control inputs because the autopilot remains engaged, possibly resulting in loss of control of the airplane.

(f) Compliance

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

(g) Modification

Within 3,000 flight hours or 24 months after the effective date of this AD, whichever occurs first: Modify the wiring for the autopilot disconnect logic, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–22–008, dated June 15, 2018.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0240, dated November 7, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1067.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3220.

(j) Material Incorporated by Reference

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

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

(i) Saab Service Bulletin 2000–22–008, dated June 15, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* internet *http://www.saabgroup.com.*

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

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

Issued in Des Moines, Washington, on July 3, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14726 Filed 7–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 500, 520, 522, 524, 526, 529, 556, and 558

[Docket No. FDA–2012–N–1067]

RIN 0910–AG17

New Animal Drugs; Updating Tolerances for Residues of New Animal Drugs in Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to revise the animal drug regulations for tolerances for residues of approved new animal drugs. This final rule is necessary to standardize, simplify, and clarify the determination standards of tolerances and provide definitions for key terms. This final rule will enhance understanding of tolerance determination and improve the overall readability of the relevant regulations.

DATES: This rule is effective September 9, 2019.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule 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: Dong Yan, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0825, email: *dong.yan@fda.hhs.gov.*

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I. Executive Summary

A. Purpose and Coverage of the Final Rule

This final rule revises the animal drug regulations regarding tolerances for residues of approved and conditionally approved new animal drugs in food. Specifically, we provide a revised scope and new section for definitions of key terms FDA uses in the regulations. Additionally, we explain the general considerations for using the tolerance information to ensure the safety of veterinary drug use in food-producing animals. Finally, we provide a uniform format for listing tolerances in part 556 (21 CFR part 556), subpart B, by removing obsolete or confusing terms and cross-referencing tolerances to the approved conditions of use for that new animal drug.

B. Summary of the Major Provisions of the Final Rule

This final rule standardizes and clarifies the standards for determining, codifying, and updating tolerances, and provides a definition section. Major provisions include:

- Establishing a new definitions section with the following definitions in § 556.3 (21 CFR 556.3):
  - Acceptable daily intake;
  - Acute reference dose;
  - Edible tissues;
  - Marker residue;
  - Not required;
  - Residue;
  - Target tissue;
  - Tolerance;
  - Total residue;
  - µg/kg; and
  - Zero.
- Revising the tolerance listings in subpart B to standardize the format of listings and to add cross references to part 520, 522, 524, 526, 529, or 558 (21 CFR part 520, 522, 524, 526, 529, or 558) that contain the approved or conditionally approved conditions of use of the drug.

C. Legal Authority

Our authority for issuing this final rule is provided by sections 512(b)(1)(G) and (H), (d)(1)(F), (d)(2), and (i), and 571(a)(2)(A) and (b)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(b)(1)(G) and (H), (d)(1)(F), (d)(2), and (i), and 360ccc(a)(2)(A) and (b)(1)). These provisions relate to the information new animal drug and conditional new animal drug applicants provide with respect to proposed tolerances, withdrawal periods, and practicable methods, and the process by which FDA establishes and publishes regulations setting tolerances for residues of approved and conditionally approved new animal drugs. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

This final rule will not impose compliance costs, other than reading and understanding the final rule, on current or future sponsors of any approved and conditionally approved new animal drugs. We estimate those annualized costs to range from about $1,000 to about $1,500.

By providing a uniform format for listing tolerances, and removing obsolete and confusing terms, this final rule may provide more clarity to the listing of tolerances.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation	What it means
ARfD	Acute reference dose.
ASDI	Acceptable single-dose intake.
CFR	Code of Federal Regulations.
CVM	Center for Veterinary Medicine.
FDA	U.S. Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FSIS	Food Safety and Inspection Service, United States Department of Agriculture.
GFI	Guidance for Industry.
VICH	International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products.

III. Background

A. History and Scope of This Rulemaking

We issued a proposed rule in the **Federal Register** of December 5, 2012 (77 FR 72254) (2012 proposed rule) to revise part 556 by standardizing and simplifying the codification style, revising the general considerations section, adding a scope section, and adding a definition section to define key terms used in the part. The definition section was proposed to include the terms used by FDA in the determination of tolerances. We proposed a definition section because some of the terms that had been used previously in part 556, subpart B were never defined, and some terminology that had been used was outdated or resulted in confusion to users of the part. We added a new scope section and proposed a revision to the general considerations section to provide additional information and clarification with respect to the tolerances listed in proposed subpart B.

We issued a supplemental notice of proposed rulemaking in the **Federal Register** of October 28, 2016 (81 FR 74962) (2016 supplemental proposed rule) to revise the proposed changes to part 556 to align with and clarify our current thinking. We explained our current thinking about analytical methods used to determine residue levels in tissues for new animal drugs intended for use in food-producing animals. We also explained that methods other than the ''regulatory method'' derived from the practicable method submitted by a sponsor as part of the new animal drug application can be used to determine the quantity of residue in edible tissues for surveillance and enforcement purposes. We removed the definition previously proposed in 2012 for ''regulatory method'' and an additional reference to the term to reserve the term for use with carcinogenic compounds. We also revised the previously proposed definitions for ''marker residue,'' ''tolerance,'' ''not required,'' and ''zero.'' We also removed the previously proposed definition for ''acceptable single-dose intake'' and added a proposed definition for ''acute reference dose'' to be consistent with existing international guidance.

B. General Overview of the Final Rule

This final rule revises the animal drug regulations regarding tolerances for residues of approved and conditionally approved new animal drugs in food. We are finalizing most of the provisions proposed in the 2012 proposed rule as revised by the 2016 supplemental proposed rule. This final rule also reflects revisions FDA made after considering all comments received. We have also made nonsubstantive wording changes for clarity.

This final rule amends part 556 by standardizing and simplifying the codification style and adding definitions for key terms. Specifically, we provide a revised scope and new section for definitions of key terms FDA uses in the regulations. Additionally, we explain the general considerations for using the tolerance information to ensure the safety of veterinary drug use in food-producing animals. Finally, we provide a uniform format for listing tolerances in subpart B, by removing obsolete or confusing terms and cross-referencing tolerances to the approved conditions of use for that new animal drug.

IV. Legal Authority

We are issuing this final rule under sections 512(b)(1)(G) and (H), (d)(1)(F), (d)(2), and (i), and 571(a)(2)(A) and (b)(1) of the FD&C Act. These provisions relate to the information new animal drug and conditional new animal drug applicants provide with respect to proposed tolerances, withdrawal periods, and practicable methods, and the process by which FDA establishes and publishes regulations establishing tolerances for residues of approved and conditionally approved new animal drugs. In addition, section 701(a) of the FD&C Act gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

V. Comments on the 2012 Proposed Rule and 2016 Supplemental Proposed Rule and FDA Response

A. Introduction

We received comments on the 2012 proposed rule and 2016 supplemental proposed rule, each containing one or more comments on one or more issues. We received comments from consumers, public health organizations, and the pharmaceutical industry.

We describe and respond to the comments in section V.B through E of this document. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment letter and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

Some comments address issues that are outside of the scope of this rule. We do not discuss such comments in this document.

B. Comments on Scope

(Comment 1) One comment to the 2012 proposed rule asks FDA to clarify whether the proposed regulations would apply to drug residues in all foods (human and animal food), or only to human foods.

(Response 1) The regulations apply only to foods intended for human consumption. New § 556.5(c) (21 CFR 556.5(c)) states in part ''. . . the finding that the concentration of the marker residue in the target tissue from a tested animal is at or below the tolerance indicates that all edible tissues (excluding milk and eggs unless otherwise indicated) from that tested animal are safe for human consumption.''

C. Comments on Definition Section

We received several comments regarding proposed definitions.

(Comment 2) One comment to the 2012 proposed rule expresses concern that the term ''edible tissues'' as defined in the proposed rule does not include all parts of animals currently consumed as foods in the United States, and thus, residues of drugs in these foods are not included in the toxicological evaluation of new animal drugs. The comment expresses the opinion that many other tissues are eaten by humans and should be included in the toxicology evaluation and tolerance assignments. The comment suggests that to ensure safety of food for humans, the definition of edible tissue be equivalent to, and broad enough to cover, any tissue that will become a component of the food and not be limited to any specific set of tissues.

(Response 2) We typically request residue data for muscle, which is a highly consumed tissue; liver, kidney, and fat (skin with fat for poultry), which are tissues where residues have a tendency to accumulate; and milk, eggs, and honey, if applicable. The edible tissue definition, which includes all the aforementioned edible products, reflects our current thinking on how to address safety of residues in food products derived from animals treated with new animal drugs.

(Comment 3) One comment to the 2012 proposed rule suggests changes to the proposed definition of ''not required'' with respect to tolerances. In the 2012 proposed rule, we proposed that ''not required,'' in reference to tolerances, means that at the time of approval, the drug met one of the following conditions: (1) No withdrawal period (*i.e.,* zero withdrawal) was necessary for residues of the drug to deplete to or below the concentrations considered to be safe or an adequate withdrawal period was inherent in the proposed drug use, and there was no concern about residues resulting from misuse or overdosing; or (2) the drug qualified for a zero withdrawal period because it was poorly absorbed or metabolized rapidly to such an extent as to make selection of an analyte impractical or impossible. The comment proposes that conditions (1) and (2) be replaced with: ''(1) no withdrawal period (*i.e.,* zero withdrawal) was necessary for residues of the drug to deplete to or below the concentrations considered to be safe, or (2) an adequate withdrawal period was inherent in the proposed drug use, or (3) there was no concern about residues resulting from misuse or overdosing, or (4) the drug was poorly absorbed or metabolized rapidly to such an extent as to make selection of an analyte impractical or impossible.''

Additionally, a comment to the 2016 supplemental proposed rule asks FDA to explain what revisions were made to the definition for ''not required'' in reference to tolerance in the 2016 supplemental proposed rule (81 FR 74962 at 74964), and FDA's current practice with regard to the tolerance ''not required.''

(Response 3) We disagree with the comment to the 2012 proposed rule suggesting revisions because the revisions do not accurately reflect the criteria we used in the past to determine that a tolerance is ''not required.''

In the past, we did not assign a tolerance for some drugs when either of the conditions described under (1) or (2) in the 2012 proposed rule were met. However, currently and going forward, FDA generally assigns and will assign a tolerance if a tolerance can be established. There are some situations, however, under which it is not possible to establish a tolerance. For example, a tolerance cannot be established when FDA has determined that an Acceptable Daily Intake (ADI) is not needed for the approval after considering the physical, chemical, toxicological, and exposure characteristics of the drug residues, or when the drug is poorly absorbed or metabolized rapidly so as to make selection of an analyte impractical or impossible.

In the 2016 supplemental proposed rule (81 FR 74962 at 74964), FDA proposed to revise and clarify the definition for ''not required'' in reference to tolerance by separately listing the conditions described under (1) and (2) into two paragraphs, to make it clearer that if either the described conditions under (1) or (2) were met at the time of approval, a tolerance was

''not required.'' In addition, under (1), the phrase ''and there was a rapid depletion of residues'' was added before the phrase ''so there was no concern about residues resulting from misuse or overdosing'' to explain the reason (*i.e.,* rapid depletion of residues) for no concern about residues resulting from misuse or overdosing.

We received no further comment on the revised proposed definition and are finalizing as proposed in the 2016 supplemental proposed rule.

(Comment 4) A few comments to the 2012 proposed rule recommend that FDA be consistent with the terms and definitions used by international organizations, such as the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). Specifically, they recommend that FDA use the VICH definition for Acute Reference Dose (ARfD) to replace the FDA-proposed definition for Acceptable Single-Dose Intake (ASDI). One comment states that FDA should use the VICH term to avoid the confusion of having two terms that mean virtually the same thing, while another comment also recommends that we include the phrase ''microgram (µg) or milligram (mg)/kg of body weight'' in the definition for ARfD, as defined in the relevant VICH guideline background information for the definition of ARfD.

(Response 4) We agree with the comment suggesting FDA replace the proposed definition of ASDI with the VICH definition of ARfD. In the 2016 supplemental proposed rule (81 FR 74962 at 74964 and 74965), we proposed to harmonize with the VICH by removing the definition of ''acceptable single-dose intake (ASDI)'' and adding the definition of ''acute reference dose (ARfD),'' referenced in our draft guidance for industry ((GFI) #232 (VICH GL54)) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish an Acute Reference Dose (ARfD)'' (80 FR 31041, June 1, 2015), which has since been finalized (Ref. 1 and 82 FR 40010, August 23, 2017). We proposed ARfD to be defined as ''an estimate of the amount of residues expressed on a body weight basis that can be ingested in a period of 24 hours or less without adverse effects or harm to the health of the human consumer.'' We disagree that the phrase ''microgram (µg) or milligram (mg)/kg of body weight'' should be included in the definition for ARfD, because the VICH definition for ARfD is not limited to being reported as ''microgram (µg) or milligram (mg)/kg of body weight'' (GFI #232 (VICH GL54)). We received no further comment on these proposed revisions and are finalizing as proposed in the 2016 supplemental proposed rule.

(Comment 5) One comment to the 2012 proposed rule recommends that FDA use the term ''point of departure'' (POD) instead of ''no observed effect level (NOEL)'' for calculation of the ADI.

(Response 5) The ADI definition in the 2012 proposed rule stated that an ADI is calculated by dividing the NOEL (from the most appropriate toxicological study) by a safety factor. We agree with the comment that the term ''POD,'' or threshold, is more appropriate than the term ''NOEL'' for calculation of the ADI, because the term ''POD'' is more inclusive and reflects FDA's current and past practice for the derivation of an ADI.

However, since the publication of the 2012 proposed rule, GFI #232 (VICH GL54) has been published, which includes a different definition for ADI than the one included in the 2012 proposed rule. There are no fundamental scientific differences between the ADI definition from the 2012 proposed rule and the ADI definition found in GFI #232 (VICH GL54). As a result, we are amending the ADI definition and using the ADI definition from GFI #232 (VICH GL54) in this final rule, to be consistent with the VICH definition for ADI.

Unlike the ADI definition in the 2012 proposed rule, the ADI definition found in GFI #232 (VICH GL54) and adopted here does not include a calculation for an ADI and therefore does not use the term NOEL or POD. We note, however, that we use the term POD in the description for calculation of an ADI in the revision of guidance GFI #3 entitled ''General Principles for Evaluating the Human Food Safety of New Animal Drugs Used in Food-Producing Animals'' (Ref. 2 and 83 FR 27333, June 12, 2018).

(Comment 6) One comment to the 2012 proposed rule requests clarification on the proposed definition for ''regulatory method'' and on the use of the term in proposed § 556.5(d), which stated that FDA requires that a drug sponsor develop a regulatory method to measure drug residues in edible tissues of approved target species. This comment notes that a regulatory method has historically been used to refer to the ''required determinative and confirmatory procedures for regulatory surveillance of residue concentrations in meat products entering the food supply for comparison to the tolerance post-commercialization of the product.'' The comment also states the context of the proposed rule appears to be the method(s) used to collect data to support the setting of the tolerances preapproval. The comment asks if the proposed rule implies that tolerances may be established using analytical procedures other than the determinative procedure. In addition, the comment states it should be clarified if regulatory method is referring to method(s) used preapproval for setting the tolerance versus a finite method(s) used for determining post-commercialization residue to compare to the tolerance. Additionally, another comment to the 2016 supplemental proposed rule suggests that, instead of removing the term ''regulatory method'' from the definitions listed in part 556, FDA keep this term and add the term ''carcinogenic compounds'' to the definitions and specify that a regulatory method is only required for carcinogenic compounds.

(Response 6) We realized that, in the 2012 proposed rule, the term ''regulatory method'' proposed in § 556.3 and used in proposed § 556.5(d) caused some confusion; thus, the 2016 supplemental proposed rule explains our current thinking about the term and its use (81 FR 74962 at 74963). We explained in the 2016 supplemental proposed rule that an analytical method other than the practicable method, which is described in § 514.1(b)(7) (21 CFR 514.1(b)(7)), can be used for surveillance and enforcement purposes for non-carcinogenic compounds, as long as the performance criteria of that method are comparable to those of the practicable method submitted by the sponsor as part of the new animal drug application. Such an analytical method other than the practicable method can be used for surveillance and enforcement purposes for non-carcinogenic compounds, so long as the performance criteria (*e.g.,* sensitivity, specificity, accuracy, and precision) of that method are comparable to those of the practicable method submitted by the sponsor as part of the new animal drug application. In addition, we proposed a revision to the definition of ''zero'' in proposed § 556.3, in reference to tolerances, by deleting ''when using a method of detection prescribed or approved by FDA'' from the definition, because an analytical method other than the practicable method can be used for surveillance and enforcement purposes for non-carcinogenic compounds. In the 2016 supplemental proposed rule we proposed to revise § 556.5(d) to align with our current thinking and to remove the term ''regulatory method'' from this provision because we are reserving this

term for use with carcinogenic compounds (part 500, subpart E (21 CFR part 500, subpart E)). Further, the regulations under part 556 are dedicated to tolerances for non-carcinogenic compounds approved for use in food-producing animals, while those under part 500, subpart E, entitled ''Regulation of Carcinogenic Compounds Used in Food-Producing Animals,'' are dedicated to carcinogenic compounds for use in food-producing animals. FDA's intention is to clearly separate the purpose of these two parts in Title 21 of the Code of Federal Regulations and, therefore, does not agree with the recommendation. We are finalizing as proposed in the 2016 supplemental proposed rule and removing the term ''regulatory method'' from part 556.

(Comment 7) We received two comments to the 2016 supplemental proposed rule regarding the proposed changes in the tolerance definition. The comments express concern that by replacing the term ''target tissue'' with ''edible tissue'' in the definition, the focus about using target tissue to indicate safety of other edible tissues from treated animals is likely to be lost.

(Response 7) FDA's revised definition reflects the fact that we can establish tolerances for both target and non-target tissue. We intend to continue to use the target tissue tolerance to indicate safety of all of the edible tissue (excluding milk and eggs, unless otherwise specified) from treated animals.

(Comment 8) One comment to the 2016 supplemental proposed rule asks us to explain how FDA will interpret the revised definition for ''zero'' in proposed § 556.3, which reads, ''zero, in reference to tolerances in this part, means any residues detected in the tissue renders it unsafe.'' The comment states that ''zero'' is defined by the sensitivity of the testing methodology and asks what would happen if the ''testing method increases their sensitivity level that it will be chasing zero?'' The comment asks FDA to explain how this will influence zero tolerance and ''updating new withdrawal times'' and how this new information will be communicated to the industry. The comment also recommends that in the proposed definition for ''zero,'' the word ''tissue'' be replaced with ''edible tissue,'' to be consistent throughout the document.

(Response 8) We agree with the comment that ''zero'' is defined by the sensitivity of the testing methodology. As explained in the preamble of the 2012 proposed rule (77 FR 72254 at 72256), in approving certain animal drugs in the past, FDA assigned a ''zero'' tolerance, with ''zero'' meaning that no residues could be detected using the ''approved analytical method.'' Often, the analytical method chosen to determine ''zero'' represented the limit of analytical method technology at the time of the evaluation. However, we recognize that equipment, reagents, and methodology change over time and the analytical method (practicable method) submitted by the sponsor in support of drug approval may become obsolete. Therefore, we explained in the 2016 supplemental proposed rule (81 FR 74962 at 74964) that an analytical method other than the practicable method can be used for surveillance and enforcement purposes for non-carcinogenic compounds. Such an analytical method should have the same capability as the practicable method to determine the quantity of the drug residues such that the tolerance, withdrawal period, or other use restrictions continue to ensure that the use of the drug will be safe. Therefore, the assigned withdrawal periods will not need to be changed.

In response to the last part of the comment that we replace ''tissue'' with ''edible tissue'' in the definitions section, we agree and finalize the codified as the comment suggested.

(Comment 9) A comment to the 2016 supplemental proposed rule observes that new terms such as ''practicable method,'' ''analytical method,'' ''edible tissue,'' and ''acute reference dose'' were used to replace ''regulatory method,'' ''target tissue,'' and ''acute single dose intake''; however, these new terms are not present in FDA's draft revised GFI #3 (81 FR 47397, July 21, 2016) (since finalized), and the inconsistency will lead to confusion between the regulation and guidance.

(Response 9) We interpret the term, ''acute single dose intake,'' in the comment to mean ''acceptable single-dose intake.'' We disagree with the comment that the terms, ''practicable method,'' ''analytical method,'' ''edible tissue,'' and ''acute reference dose'' are not present in the guidance. Although revised GFI #3 does not have a definition section or glossary, all of these terms are used in the guidance. We do not believe there is any inconsistency in how these terms are used and therefore do not believe that will lead to confusion between the regulation and the guidance.

(Comment 10) One comment to the 2016 supplemental proposed rule observes that many of the revised terms proposed for part 556 remain as currently defined in 21 CFR 500.80. The comment expresses concern that the existence of different definitions will lead to confusion.

(Response 10) The regulations under part 500, including those terms listed under 21 CFR 500.82, implement the Diethylstilbestrol (DES) Proviso to the Delaney Clause in section 512(d)(1)(I) of the FD&C Act (21 U.S.C. 360b(d)(1)(I)), which allows cancer-causing compounds to be used in food-producing animals if, among other conditions, no residue of such drug will be found in any edible portion of such animal after slaughter or in any food yielded by or derived from the living animals. Because there are different requirements for approving a new animal drug under these provisions than those for approving non-carcinogenic new animal drugs for use in food-producing animals, a different definition is needed for the term ''marker residue'' depending on whether the new animal drug is a carcinogenic compound or a non-carcinogenic compound. The definitions of ''residue'' and ''target tissue,'' although slightly different in wording, have the same meaning in both parts 500 and 556, and we do not believe this will lead to confusion.

(Comment 11) One comment to the 2016 supplemental proposed rule asks FDA to explain the differentiation of residue method requirements for carcinogenic and non-carcinogenic compounds.

(Response 11) Section 512(d)(1)(I) of the FD&C Act provides that an animal drug will not be approved if, among other reasons, the drug is a carcinogen, unless the Secretary of Health and Human Services finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice, that no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary by regulations) in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals. Thus, the FD&C Act requires the use of the approved regulatory method as promulgated in regulation to show ''no residues'' of carcinogens; however, there is no such requirement to use an approved regulatory method for measuring residues of non-carcinogenic compounds for post-approval residue surveillance and enforcement. Therefore, an analytical method other than the practicable method (§ 514.1(b)(7)) can be used for residue surveillance and enforcement purpose for non-carcinogenic compounds.

D. Comments on Analytical Method

We received eight comments regarding the statement in the 2016 supplemental proposed rule that an

analytical method other than the practicable method can be used for post-approval residue surveillance and enforcement (81 FR 74962 at 74964).

(Comment 12) One comment recommends that FDA modify the proposed revision to § 556.5 General Considerations by removing the phrase ''FDA uses the practicable method to determine the quantity of the drug residues that can safely remain in edible tissue (*i.e.,* the tolerance) . . .'' from the provision. The comment states that the quantity of drug residues that can safely remain in the edible tissues is based on the safe concentration derived from the ADI. In addition, the comment states that ''while the practicable method may be utilized to determine the ratio of the marker residue to the total drug residues, the work typically precedes the finalization of the official marker residue method.''

(Response 12) FDA does not agree that the phrase should be removed from the sentence under § 556.5 General Considerations and is finalizing as proposed. In proposed § 556.5(d) of the 2016 supplemental proposed rule, we said that we require a drug sponsor to submit a practicable method as part of their new animal drug application. We use the practicable method to determine the quantity of the drug residues that can safely remain in edible tissues (*i.e.,* the tolerance), the withdrawal period, and any other use restrictions necessary to ensure that the proposed use of the drug will be safe. We think that it is clear that the phrase refers to establishment of a tolerance, which is based not only on the safe concentration derived from the ADI, but also on the marker residue or other residues measured by the practicable method.

(Comment 13) Two comments to the 2016 proposed rule express concerns that, with the implementation of the rule, an analytical method other than the practicable method may be used for post-approval residue surveillance and compliance when that other analytical method is not actually equivalent to the practicable method. The comments advocate for proper validation of the analytical method before its use for residue surveillance and compliance. One of the comments asks FDA to clarify the terms ''performance criteria'' and ''comparable'' used in the 2016 supplemental proposed rule as they relate to the requirements that an analytical method other than the practicable method must meet before it can be used for residue surveillance and enforcement. It recommends that FDA add a definition for the term ''performance criteria'' and provisions in the final rule to ensure that the original marker residue to total residue ratio is achieved with the analytical method.

(Response 13) FDA establishes tolerances using the practicable method (defined at § 514.1(b)(7)) submitted by a sponsor as part of the new animal drug application. The practicable method is used to collect data for tolerance assignment. After the drug product is approved, FDA makes the practicable method available for monitoring drug residues in the food supply. In the 2016 supplemental proposed rule, we stated that as technologies have evolved, many of the older methods have become obsolete. In addition, there is an increased reliance on multiresidue methods in the monitoring of the food supply. We also stated that an analytical method other than the practicable method can be used for residue surveillance and enforcement purposes for non-carcinogenic compounds, as long as the performance criteria (*e.g.,* sensitivity, specificity, accuracy, and precision) of the analytical method are comparable to those of the practicable method. FDA considers the performance criteria of the two methods to be ''comparable'' if the analytical method has been shown, through appropriate validation, to have the same capability as the practicable method to determine the quantity of the drug residues remaining in edible tissues of treated animals so that the tolerance, withdrawal period, or other use restrictions continue to ensure that the use of the drug will be safe. The proposal included sensitivity, specificity, accuracy, and precision as examples of the performance criteria. As a result, we do not believe additional definitions are necessary.

(Comment 14) One comment to the 2016 supplemental proposed rule asks FDA to clarify how the Food Safety and Inspection Service, United States Department of Agriculture (FSIS) (USDA) methods will be viewed by FDA and whether this supplemental proposed rule is ''intended to indicate that any multi-residue method (MRM), independent of version, can be used, and the version changes have no impact on the data.''

(Response 14) We interpret that the comment is asking whether the supplemental proposed rule is intended to indicate that any multiresidue method (MRM), independent of version, can be used for surveillance and enforcement purposes. The supplemental proposed rule is intended to indicate, as explained above, that an analytical method other than the practicable method can be used for surveillance and enforcement purposes for non-carcinogenic compounds, as long as the performance criteria *(e.g.,* sensitivity, specificity, accuracy, and precision) of that method are comparable to those of the practicable method submitted by the sponsor as part of the new animal drug application.

(Comment 15) One comment suggests that ''the availability of advanced methods that improve upon the practicable method necessarily means that the tolerance, withdrawal period, and the need for use restrictions of many drugs must be reassessed using the best available technologies.''

(Response 15) The 2016 supplemental proposed rule stated that an analytical method other than the practicable method can be used for post-approval residue surveillance and enforcement, which allows the use of evolving analytical technologies while maintaining the tolerance, withdrawal period, and other restrictions as part of the conditions of the approval. The practicable method is used to collect data for tolerance assignment. A different method may be used for surveillance and enforcement purposes as long as it has the same capability as the practicable method to measure residues to ensure the established tolerance is not exceeded. If an analytical method has the same capability as the practicable method to determine the quantity of the same marker residue in the same tissue, then the tolerance, withdrawal period, or other use restrictions for the approved drug will continue to ensure that the use of the drug will be safe.

(Comment 16) One comment suggests that, in the cases where the performance criteria of a new analytical method and a practicable method are not comparable, FDA consider implementing a strategy to correct the tolerance based on the recovery of the marker residue observed when the new analytical method is used, with the goal of ensuring that the use of the approved drug is safe while avoiding the need for new studies to update the marker to total residue ratio.

(Response 16) FDA does not think that it is necessary to change the tolerance based on the recovery of the marker residue observed with a new analytical method. The point of using an analytical method with comparable performance criteria as the practicable method is to allow newer more useful methods to be used for surveillance and enforcement purposes, as long as the newer method has the same capability as the practicable method to determine the quantity of the drug residues so that the tolerance, withdrawal period, or other use restrictions continue to ensure

that the use of the drug will be safe. Such a policy ensures a safe food supply and allows regulatory agencies to take advantages of scientific advances in analytical methodology.

(Comment 17) One comment to the 2016 supplemental proposed rule asks that, if FSIS MRMs are used prior to an active pharmaceutical ingredient (API) being approved, can the FSIS methods be used [to support a new animal drug approval] with or without modification [vis-à-vis version changes]; if the data FSIS generated for validation can be submitted to Center for Veterinary Medicine (CVM); and if a sponsor can submit a request for FSIS to provide all data on their API.

(Response 17) FDA encourages drug sponsors to take advantage of available information from government laboratories and industry for the development of an analytical method to support a new animal drug approval. The modification of a method already validated in a government laboratory may allow for a scaled down interlaboratory method trial process during the drug application review period. Although FDA does not object to a sponsor requesting information from FSIS, we defer to USDA on whether, how, and under what conditions such information is made available.

(Comment 18) A comment asks FDA to encourage sponsors to utilize the same analytical methods as those used by USDA FSIS for creation of the approved analytical method, because of the many associated benefits.

(Response 18) Although, in theory, we agree that submitting a practicable method that is in use by USDA FSIS may be beneficial, we note that continued use of such a method by USDA FSIS is not guaranteed, and as newer technologies become available and relied on, the same need to use an analytical method other than the practicable method for monitoring the food supply may appear after approval of the new animal drug application. We also note that the USDA FSIS MRMs, which are used for screening purposes, may or may not be appropriate to use to establish a tolerance, withdrawal period, and other conditions of safe use, which is the purpose behind requiring submission of a practicable method as part of the new animal drug application. Therefore, as long as a method meets the requirements of § 514.1(b)(7) for the sponsor of a new animal drug application to submit a practicable method, FDA declines the commenter's request to encourage sponsors to use USDA FSIS methods to meet those requirements. We encourage drug sponsors to reference FDA's relevant GFI documents for the method performance recommendations. We further encourage drug sponsors to use a method that is in line with the recommendations in the relevant GFIs, regardless of the method's origin.

E. Comments on Subpart B, Listing of Tolerances for Residues of Approved and Conditionally Approved New Animal Drugs

(Comment 19) We received two comments to the 2012 proposed rule about the removal of safe concentrations from part 556. One comment agrees with our decision and states this will reduce the potential for confusion. A second comment expresses concern that, for some drugs for which FDA historically listed only ADI and safe concentrations, removing the listing of safe concentrations will lead to the loss of valuable toxicological information about the drugs. The comment cites fenprostalene as an example. The comment asks that FDA keep pertinent toxicological information for these drugs for which tolerances are not required.

(Response 19) We agree with the comment that removing safe concentrations from part 556 will reduce the potential for confusion. We disagree with the comment that toxicological information about a drug is lost when listings of safe concentrations for that drug are removed, so long as the ADI for that drug is listed. Toxicological information for the residue of a drug is determined through toxicological evaluations and reflected by the assigned ADI. Safe concentrations for an edible tissue are calculated from the ADI using a formula in which the only variable is the ADI (safe concentration = ADI × Human Body Weight/Food Consumption Value) (see GFI #3 ''General Principles for Evaluating the Human Food Safety of New Animal Drugs Used in Food-Producing Animals'' Ref. 2 and 83 FR 27333). When there is an ADI assigned for the residue of a drug, the ADI is listed under that drug's name in part 556, together with any tolerances (if tolerances are established). Therefore, after removing safe concentrations from the listings, toxicological information about the drug is still reflected by the ADI. Listing of the ADI alone in part 556 provides sufficient toxicological information for the drug. We note that the safe concentrations remain available through the Freedom of Information Drug Summaries, available on the CVM website at *https://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/ucm2006466.htm.* Additionally, safe concentrations can be calculated with the ADI in part 556 using the formula described above.

(Comment 20) One comment to the 2012 proposed rule questions why FDA's ''safe level of residue'' for the same drug is different in different food products. The commenter is concerned that FDA's decision is not based on science, but ''on rule of law.'' The comment uses carbendazim in orange juice as an example.

(Response 20) The comment uses the example of carbendazim in orange juice; however, because the proposed rule addresses tolerances for residues of drugs in edible tissues of treated animals, we assume the commenter is asking why the tolerance for the same drug may be different in different edible tissues from a treated animal.

FDA assigns one ADI to reflect the quantity of the drug residues that humans can safely consume on a daily basis. The ADI is based on the toxicological, microbiological, or pharmacological properties of the drug and represents the total amount of residues that humans can safely consume on a daily basis from the different food sources of the residue (*i.e.,* food derived from the food-producing animal species for which the drug is approved).

FDA assigns a tolerance based on not only the ADI, but also the ratio of the marker residue to total residue in the specific edible tissue, which can potentially differ as a function of pharmacokinetic properties of the drug in the food-producing animal species for which the drug is approved. The marker residue is the residue whose concentration is in a known relationship to the concentration of total residue in an edible tissue. In addition, the tolerance also takes into account the amount of the edible tissue that is consumed. Therefore, different tolerances, rather than a single tolerance, are often needed and assigned for different edible tissues of the same food-producing animal species, or for the same edible tissue from different food-producing animal species, to ensure that daily human consumption of the total drug residue in the edible tissues will not exceed the ADI.

(Comment 21) One comment to the 2016 supplemental proposed rule asks FDA to clarify the regulatory/enforcement use of available surveillance residue methods for non-target tissues in a species of livestock where a tolerance has not been established for that tissue but has been established for another tissue.

(Response 21) When CVM establishes a tolerance for a specific edible tissue as part of a new animal drug approval,

CVM provides, for surveillance and enforcement purpose, an analytical method that has been evaluated in an interlaboratory study for assay of the residue in the specific edible tissue. A tolerance assigned for a residue in a specific edible tissue or tissues as listed in part 556, subpart B applies only to the specific tissue or tissues.

(Comment 22) A comment to the 2012 proposed rule expresses concern that, as testing abilities improve over time, ''smaller and smaller'' levels of detection are attained. The end result could be ''that there will be no food naturally produced that will be totally free of detectable residues.'' The comment also observes that the proposed rule establishes that approved drugs meet established tolerance levels, but that there are drugs that are approved for use in food-producing animals that have no published tolerance levels. The comment asks where FDA stands on this, *i.e.,* when a drug is approved, but no tolerance exists for a particular tissue. The comment also questions why some new animal drugs for use in food-producing animals have been approved without a tolerance even though residues are able to be detected at very low concentrations as analytical methods improve.

(Response 22) The detection limit for the analytical methods is not a basis to determine if a tolerance needs to be assigned or if a tolerance is not required for approval of a new animal drug. However, in the past, during the new animal drug approval process FDA determined that a tolerance was not required for some drugs. As we explained in the 2016 supplemental proposed rule, ''not required'' means: (1) No withdrawal period was necessary for residues of the drug to deplete to or below the concentrations considered to be safe, or an adequate withdrawal period was inherent in the proposed drug use, and there was a rapid depletion of residues, so there was no concern about residues resulting from misuse or overdosing; or (2) No withdrawal period was necessary because the drug was poorly absorbed or metabolized rapidly so as to make selection of an analyte impractical (81 FR 74962 at 74966). Currently, FDA's general practice is to establish a tolerance for all new animal drugs we approve. However, as discussed earlier, FDA recognizes that there are some situations for which it is not possible to establish a tolerance. For example, a tolerance cannot be established when FDA has determined that an ADI is not needed for the approval after considering the physical, chemical, toxicological, and exposure characteristics of the drug residues, or when the drug is poorly absorbed or metabolized rapidly so as to make selection of an analyte impractical or impossible. Under both circumstances, FDA requires that drug sponsors provide toxicology and residue information to ensure that the approved use is safe even though a tolerance is not assigned.

(Comment 23) A comment to the 2012 proposed rule recommends that the regulation should also include tolerances for residues of ''new as well as old drugs,'' as old and/or forgotten drugs may have new or undiscovered impacts in human health, especially those drugs used in different countries from which the United States receives imported animal-derived food.

(Response 23) ''New animal drug'' is a term defined by section 201(v) of the FD&C Act (21 U.S.C. 321(v)). With very limited exceptions, drugs intended for use for animals meet the definition of ''new animal drug.'' Since 1968, FDA has had a specific statutory requirement under section 512(i) of the FD&C Act to codify any tolerance established as a consequence of the approval of a new animal drug application (NADA). Subpart B in part 556 was created to satisfy this requirement; it is a listing of tolerances assigned for ''new animal drugs'' approved or conditionally approved for use in food-producing animals in the United States. Tolerances for substances administered to food-producing animals as food additives prior to 1968 were added to this listing as appropriate if these substances became the subject of an approved NADA.

When approval of an NADA is withdrawn, section 512(i) of the FD&C Act requires that the Agency revoke the regulations that were published following the approval. That revocation includes the regulation for any tolerance listed in part 556; thus, the tolerance is removed for any drug for which approval has been withdrawn.

Regarding importation of animal-derived food, in addition to establishing tolerances for approved new animal drugs, FDA also has authority to establish import tolerances for new animal drugs not approved in the United States, but used lawfully in another country, to ensure that food imported into the United States is safe (section 512(a)(6) of the FD&C Act).

(Comment 24) A comment to the 2012 proposed rule agrees with FDA's proposal to delete salt designations and safe concentrations from the tolerance listings in part 556, subpart B. However, the comment suggests that it is not necessary to delete the word ''uncooked'' from the individual listings for tolerances in subpart B.

(Response 24) Section 556.5, General Considerations clarifies that, ''All tolerances refer to the concentrations of the marker residue, or other residue indicated for monitoring, permitted in uncooked tissues.'' Therefore, the word ''uncooked'' is not necessary in the listing of tolerances, so we are finalizing as proposed.

F. Other Comments

(Comment 25) One comment to the 2012 proposed rule expresses concern that an unintended consequence of this rule is that it would have the effect of acting as a ''non-tariff trade barrier as it does not conform and is contradictory to the practices of our trading partners.''

(Response 25) We recognize the importance of harmonizing international food safety standards to facilitate trade. We also recognize that sometimes, because of our requirement to meet applicable U.S. statutes and regulations governing food safety, our tolerances are sometimes not harmonized with international food safety standards.

FDA participates in the trilateral (European Union, Japan, United States) VICH to harmonize the technical requirements for veterinary product registration. This harmonization develops common guidelines, including the development of data to support an ADI and tolerance for a particular drug. FDA also participates in The Codex Committee on Residues of Veterinary Drugs in Foods, which determines priorities for the consideration of residues of veterinary drugs in foods and recommends maximum residue limits (MRLs) for veterinary drugs to The Codex Alimentarius Commission of the Food and Agriculture Organization and the World Health Organization of the United Nations.[1] The Codex Alimentarius Commission develops harmonized international food standards, guidelines, and codes of practice to protect the health of the consumers and ensure fair practices in the food trade. Again, although FDA recognizes the value in harmonizing requirements and standards, we are required to follow U.S. law with respect to our standard setting activities.

VI. Effective/Compliance Date

The rule is effective September 9, 2019.

[1] See *http://www.fao.org/fao-who-codexalimentarius/committees/committee/en/?committee=CCRVDF.*

VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule would not impose compliance costs on current or future sponsors of any approved or conditionally approved new animal drugs, and because we did not receive any comments pertaining to this same assertion in the 2016 supplemental proposed rule, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $150 million, using the most current (2017) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

All entities affected by this final rule will incur the one-time cost for reading and understanding this rule. We use the time required to complete this activity to estimate the burden of this activity. To understand this rule, affected entities will read the preamble and codified, which together contain almost 16,800 words. If those reviewing the rule read at the average adult reading speed of approximately 200 words to 250 words per minute, the time to read and understand the regulation is about 67 to 84 minutes per person. There are currently 41 sponsors with approved applications for new animal drugs for use in food-producing animals that will read the final rule. We also estimate that approximately one sponsor per year will submit a first-time application for approval of a new animal drug for use in a food-producing animal. Thus, we estimate that about 51 firms would need to read and understand this rule over the next 10 years.

To value the time for complying with reading and understanding the rule, we use wages calculated from the Bureau of Labor Statistics' national industry-specific occupational employment and wage estimates for the pharmaceutical and medical manufacturing industry (Ref. 3).[2] [3] We use the average of the $71.06 hourly wage of management occupations (occupation code 11–0000) and the $79.52 hourly wage of legal occupations. We double this average hourly wage to account for benefits and overhead, yielding an average hourly labor cost of $150.58. We estimate the cost for the one person to read and understand the rule ranges from $169 to $211. The total costs for reading and understanding the rule over 10 years range from around $8,600 to around $10,800.

In table 1, FDA provides the Regulatory Information Service Center and Office of Information and Regulatory Affairs Consolidated Information Center accounting information.

TABLE 1—ECONOMIC DATA: COSTS AND BENEFITS STATEMENT

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year					7 3		
Annualized Quantified					7 3		
Qualitative	Standardizing and simplifying the determination standards and codification style regarding tolerances should provide more clarity for industry members.						
Costs:							
Annualized Monetized $millions/year	$0.0011 $0.0010	$0.0010 $0.0009	$0.0013 $0.0011	2017 2017	7 3	10 10	
Annualized Quantified					7 3		
Qualitative.							
Transfers:							

[2] May 2017 National Industry-Specific Occupational Employment and Wage Estimates for the North American Industry Classification System (NAICS) 325400—Pharmaceutical and Medicine Manufacturing. We use estimates from NAICS 325400 because detailed estimates for NAICS 325412 are not available. Please see *http://www.bls.gov/oes/*.

[3] This wage is slightly higher than that of management occupations for NAICS 622110—General Medical and Surgical Hospitals, but this difference does not significantly impact of the cost of the final rule.

TABLE 1—ECONOMIC DATA: COSTS AND BENEFITS STATEMENT—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Federal Annualized Monetized $millions/year					7 3		
From/To	From:			To:			
Other Annualized Monetized $millions/year					7 3		
From/To	From:			To:			

Effects:
State, Local or Tribal Government: No Effect.
Small Business: The final rule will not have a significant impact on a substantial number of small entities that manufacture new animal drugs for use in food-producing animals.
Wages: No effect.
Growth: No effect.

Table 2 presents a summary of the costs, cost savings, and net costs of the final rule. We estimate that the final rule has net costs with present values that range from about $11,000 to $17,000, well below the de minimis cost threshold for Executive Order 13771.

TABLE 2—EXECUTIVE ORDER 13771 SUMMARY TABLE

[In $ millions 2016 dollars, over a perpetual time horizon]

	Primary (7%)	Lower bound (7%)	Upper bound (7%)	Primary (3%)	Lower bound (3%)	Upper bound (3%)
Present Value of Costs	$.011	$.009	$.012	$.014	$.013	$.016
Present Value of Cost Savings	0	0	0	0	0	0
Present Value of Net Costs	.011	.009	.012	.014	.013	.016
Annualized Costs	0.0007	0.0007	0.0008	0.0004	0.0004	0.0005
Annualized Cost Savings	0	0	0	0	0	0
Annualized Net Costs	0.0007	0.0007	0.0008	0.0004	0.0004	0.0005

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, Guidance for Industry #232, ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish an Acute Reference Dose (ARfD), VICH GL54,'' *http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM448430.pdf,* August 2017.

2. FDA, Guidance for Industry #3, ''General Principles for Evaluating the Human Food Safety of New Animal Drugs Used In Food-Producing Animals,'' *https://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052180.pdf,* June 2018.

3. Bureau of Labor Statistics, United States Department of Labor, May 2017 National Industry-Specific Occupational Employment and Wage Estimates for the North American Industry Classification System (NAICS) 325400—Pharmaceutical and Medicine

Manufacturing. Available at *http://www.bls.gov/oes/.*

List of Subjects

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

21 CFR Parts 520, 522, 524, 526, and 529

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I, subchapter E, is amended as follows:

PART 500—GENERAL

■ 1. The authority citation for part 500 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

■ 2. Amend § 500.82, in paragraph (b), by alphabetically adding a definition for ''No residue'' to read as follows:

§ 500.82 Definitions.

* * * * *

(b) * * *

No residue means the marker residue is below the limit of detection using the approved regulatory method. The ''no residue'' designation applies only to compounds of carcinogenic concern.

* * * * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 4. In § 520.462, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 520.462 Clorsulon drench.

* * * * *

(c) *Related tolerances.* See § 556.163 of this chapter.

* * * * *

■ 5. In § 520.1840, add paragraph (c) to read as follows:

§ 520.1840 Poloxalene.

* * * * *

(c) *Related tolerances.* See § 556.517 of this chapter.

* * * * *

■ 6. In § 520.2325b, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 520.2325b Sulfaquinoxaline drench.

* * * * *

(c) *Related tolerances.* See § 556.685 of this chapter.

* * * * *

■ 7. In § 520.2640, revise paragraph (c) to read as follows:

§ 520.2640 Tylosin.

* * * * *

(c) *Related tolerances.* See § 556.746 of this chapter.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 9. In § 522.150, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 522.150 Azaperone.

* * * * *

(c) *Related tolerances.* See § 556.68 of this chapter.

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■ 10. In § 522.468, add paragraph (c) to read as follows:

§ 522.468 Colistimethate sodium powder for injection.

* * * * *

(c) *Related tolerances.* See § 556.167 of this chapter.

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■ 11. In § 522.770, revise paragraph (c) to read as follows:

§ 522.770 Doramectin.

* * * * *

(c) *Related tolerances.* See § 556.222 of this chapter.

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■ 12. In § 522.850, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 522.850 Estradiol valerate and norgestomet in combination.

* * * * *

(c) *Related tolerances.* See § 556.240 of this chapter.

* * * * *

■ 13. In § 522.1077, redesignate paragraphs (c) and (d) as paragraphs (d) and (e) and add new paragraph (c) to read as follows:

§ 522.1077 Gonadorelin.

* * * * *

(c) *Related tolerances.* See § 556.304 of this chapter.

* * * * *

■ 14. In § 522.1079, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 522.1079 Serum gonadotropin and chorionic gonadotropin.

* * * * *

(c) *Related tolerances.* See § 556.304 of this chapter.

* * * * *

■ 15. In § 522.1192, add paragraph (c) to read as follows:

§ 522.1192 Ivermectin.

* * * * *

(c) *Related tolerances.* See § 556.344 of this chapter.

* * * * *

■ 16. In § 522.1242, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 522.1242 Levamisole.

* * * * *

(c) *Related tolerances.* See § 556.350 of this chapter.

* * * * *

■ 17. In § 522.1662a, add paragraph (l) to read as follows:

§ 522.1662a Oxytetracycline hydrochloride injection.

* * * * *

(l) For related tolerances see § 556.500 of this chapter.

■ 18. In § 522.2120, redesignate paragraphs (c) and (d) as paragraphs (d) and (e) and add new paragraph (c) to read as follows:

§ 522.2120 Spectinomycin dihydrochloride injection.

* * * * *

(c) *Related tolerances.* See § 556.600 of this chapter.

* * * * *

■ 19. In § 522.2477, add paragraph (c) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

* * * * *

(c) *Related tolerances.* See §§ 556.240 and 556.739 of this chapter.

* * * * *

■ 20. In § 522.2640, revise paragraph (c) to read as follows:

§ 522.2640 Tylosin.

* * * * *

(c) *Related tolerances.* See § 556.746 of this chapter.

* * * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 524.770 [Amended]

■ 22. In § 524.770, in paragraph (c), remove ''§ 556.225'' and in its place add ''§ 556.222''.

■ 23. In § 524.920, revise paragraph (c) to read as follows:

§ 524.920 Fenthion.

* * * * *

(c) *Related tolerances.* See § 556.280 of this chapter.

* * * * *

■ 24. In § 524.1044e, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 524.1044e Gentamicin spray.

* * * * *

(c) *Related tolerances.* See § 556.300 of this chapter.

* * * * *

■ 25. In § 524.1600b, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 524.1600b Nystatin, neomycin, thiostrepton, and triamcinolone ophthalmic ointment.

* * * * *

(c) *Related tolerances.* See §§ 556.430 and 556.470 of this chapter.

* * * * *

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

■ 26. The authority citation for part 526 continues to read as follows:

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

■ 27. In § 526.820, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 526.820 Erythromycin.

* * * * *

(c) *Related tolerances.* See § 556.230 of this chapter.

* * * * *

■ 28. In § 526.1696d, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 526.1696d Penicillin G procaine-novobiocin for intramammary infusion.

* * * * *

(c) *Related tolerances.* See §§ 556.460 and 556.510 of this chapter.

* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 29. The authority citation for part 529 continues to read as follows:

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

■ 30. In § 529.400, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 529.400 Chlorhexidine tablets and suspension.

* * * * *

(c) *Related tolerances.* See § 556.120 of this chapter.

* * * * *

■ 31. Revise part 556 to read as follows:

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

Subpart A—General Provisions

Sec.

556.1 Scope.
556.3 Definitions.
556.5 General considerations.

Subpart B—Specific Tolerances for Residues of Approved and Conditionally Approved New Animal Drugs

Sec.

556.34 Albendazole.
556.36 Altrenogest.
556.38 Amoxicillin.
556.40 Ampicillin.
556.50 Amprolium.
556.52 Apramycin.
556.60 Avilamycin.
556.68 Azaperone.
556.70 Bacitracin.
556.75 Bambermycins.
556.100 Carbadox.
556.110 Carbomycin.
556.113 Ceftiofur.
556.115 Cephapirin.
556.118 Chloramine-T.
556.120 Chlorhexidine.
556.150 Chlortetracycline.
556.160 Clopidol.
556.163 Clorsulon.
556.165 Cloxacillin.
556.167 Colistimethate.
556.168 Coumaphos.
556.169 Danofloxacin.
556.170 Decoquinate.
556.180 Dichlorvos.
556.185 Diclazuril.
556.200 Dihydrostreptomycin.
556.222 Doramectin.
556.224 Efrotomycin.
556.226 Enrofloxacin.
556.227 Eprinomectin.
556.230 Erythromycin.
556.240 Estradiol and related esters.
556.260 Ethopabate.
556.273 Famphur.
556.275 Fenbendazole.
556.277 Fenprostalene.
556.280 Fenthion.
556.283 Florfenicol.
556.286 Flunixin.
556.292 Gamithromycin.
556.300 Gentamicin.
556.304 Gonadotropin.
556.308 Halofuginone.
556.310 Haloxon.
556.330 Hygromycin B.
556.344 Ivermectin.
556.346 Laidlomycin.
556.347 Lasalocid.
556.350 Levamisole.
556.360 Lincomycin.
556.370 Lubabegron.
556.375 Maduramicin.
556.380 Melengestrol.
556.410 Metoserpate.
556.420 Monensin.
556.425 Morantel.
556.426 Moxidectin.
556.428 Narasin.
556.430 Neomycin.
556.445 Nicarbazin.
556.460 Novobiocin.
556.470 Nystatin.
556.490 Ormetoprim.
556.495 Oxfendazole.
556.500 Oxytetracycline.
556.510 Penicillin.
556.513 Piperazine.
556.515 Pirlimycin.
556.517 Poloxalene.
556.540 Progesterone.
556.560 Pyrantel.
556.570 Ractopamine.
556.580 Robenidine.
556.592 Salinomycin.
556.597 Semduramicin.
556.600 Spectinomycin.
556.610 Streptomycin.
556.620 Sulfabromomethazine.
556.625 Sulfachloropyrazine.
556.630 Sulfachlorpyridazine.
556.640 Sulfadimethoxine.
556.650 Sulfaethoxypyridazine.
556.660 Sulfamerazine.
556.670 Sulfamethazine.
556.685 Sulfaquinoxaline.
556.700 Sulfomyxin.
556.710 Testosterone.
556.720 Tetracycline.
556.730 Thiabendazole.
556.732 Tiamulin.
556.733 Tildipirosin.
556.735 Tilmicosin.
556.739 Trenbolone.
556.741 Tripelennamine.
556.745 Tulathromycin.
556.746 Tylosin.
556.748 Tylvalosin.
556.750 Virginiamycin.
556.760 Zeranol.
556.765 Zilpaterol.
556.770 Zoalene.

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

Subpart A—General Provisions

§ 556.1 Scope.

(a) The Federal Food, Drug, and Cosmetic Act requires an applicant seeking approval or conditional approval of a new animal drug to submit a proposed tolerance as part of its new animal drug application when such a tolerance is needed to assure that the proposed use of the new animal drug will be safe (see sections 512(b)(1)(H)

and 571(a)(2)(A) of the Federal Food, Drug, and Cosmetic Act). FDA assigns tolerances for animal drugs used in food-producing animals as part of the application approval process. Tolerances for approved and conditionally approved new animal drugs are codified in subpart B of this part.

(b) Compounds that have been found to be carcinogenic are regulated under subpart E of part 500 of this chapter.

§ 556.3 Definitions.

As used in this part:

Acceptable daily intake (ADI) means the daily intake which, during up to an entire life of a human, appears to be without adverse effects or harm to the health of the consumer. The ADI most often will be set on the basis of the drug's toxicological, microbiological, or pharmacological properties. It is usually expressed in micrograms or milligrams of the chemical per kilogram of body weight per day.

Acute reference dose (ARfD) means an estimate of the amount of residues expressed on a body weight basis that can be ingested in a period of 24 hours or less without adverse effects or harm to the health of the human consumer.

Edible tissues means muscle, liver, kidney, fat, skin with fat in natural proportions, whole eggs, whole milk, and honey.

Marker residue means the residue whose concentration is in a known relationship to the concentration of total residue in an edible tissue.

mg/kg means milligrams per kilogram.

Not required, in reference to tolerances in this part, means that at the time of approval:

(1) No withdrawal period was necessary for residues of the drug to deplete to or below the concentrations considered to be safe, or an adequate withdrawal period was inherent in the proposed drug use, and there was a rapid depletion of residues, so there was no concern about residues resulting from misuse or overdosing; or

(2) No withdrawal period was necessary because the drug was poorly absorbed or metabolized rapidly so as to make selection of an analyte impractical or impossible.

ppb means parts per billion (equivalent to nanograms per gram (ng/g) or µg/kg).

ppm means parts per million (equivalent to micrograms per gram (µg/g) or mg/kg).

ppt means parts per trillion (equivalent to picograms per gram (pg/g) or nanograms per kilogram (ng/kg)).

Residue means any compound present in edible tissues that results from the use of a drug, and includes the drug, its metabolites, and any other substance formed in or on food because of the drug's use.

Target tissue means the edible tissue selected to monitor for residues in the target animals.

Tolerance means the maximum concentration of a marker residue, or other residue indicated for monitoring, that can legally remain in a specific edible tissue of a treated animal.

Total residue means the aggregate of all compounds that results from the use of an animal drug, including the drug, its metabolites, and any other substances formed in or on food because of such drug use.

µg/kg means microgram per kilogram.

Zero, in reference to tolerances in this part, means any residues detected in the edible tissue renders it unsafe.

§ 556.5 General considerations.

(a) The tolerances listed in subpart B of this part pertain only to the species and production classes of the animal for which the drug use has been approved or conditionally approved. Approved and conditionally approved conditions of use in parts 516, 520, 522, 524, 526, 529, and 558 of this chapter, including the species and production classes of animals, are referenced in each tolerance section in subpart B of this part.

(b) All tolerances refer to the concentrations of a marker residue, or other residue indicated for monitoring, permitted in uncooked tissues.

(c) After a tolerance is listed, the finding that the concentration of the marker residue in the target tissue from a tested animal is at or below the tolerance indicates that all edible tissues (excluding milk and eggs unless otherwise indicated) from that tested animal are safe for human consumption. If a listed tolerance is not expressly linked to a target tissue, then the tolerance is specific only for the named edible tissue and inferences cannot be made about the safety of the other edible tissues from the tested animal.

(d) FDA requires that a drug sponsor submit a practicable method as part of their new animal drug application. FDA uses the practicable method to determine the quantity of the drug residues that can safely remain in edible tissues (*i.e.,* the tolerance), the withdrawal period, and any other use restrictions necessary to ensure that the proposed use of the drug will be safe.

Subpart B—Specific Tolerances for Residues of Approved and Conditionally Approved New Animal Drugs

§ 556.34 Albendazole.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of albendazole is 5 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for albendazole 2-aminosulfone (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 0.2 ppm.

(ii) Muscle: 0.05 ppm.

(2) *Sheep.* (i) Liver (target tissue): 0.25 ppm.

(ii) Muscle: 0.05 ppm.

(3) *Goat.* (i) Liver (target tissue): 0.25 ppm.

(ii) [Reserved]

(c) *Related conditions of use.* See §§ 520.38a and 520.38b of this chapter.

§ 556.36 Altrenogest.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of altrenogest is 0.04 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for altrenogest (marker residue) are:

(1) *Swine.* (i) Liver (target tissue): 4 ppb.

(ii) Muscle: 1 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See § 520.48 of this chapter.

§ 556.38 Amoxicillin.

(a) [Reserved]

(b) *Tolerances.* The tolerance for amoxicillin is:

(1) *Cattle.* Edible tissues: 0.01 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.88d, 522.88, and 526.88 of this chapter.

§ 556.40 Ampicillin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for ampicillin are:

(1) *Cattle.* Edible tissues: 0.01 ppm.

(2) *Swine.* Edible tissues: 0.01 ppm.

(c) *Related conditions of use.* See §§ 520.90e, 520.90f, 522.90a, and 522.90b of this chapter.

§ 556.50 Amprolium.

(a) [Reserved]

(b) *Tolerances.* The tolerances for amprolium are:

(1) *Cattle.* (i) Liver, kidney, and muscle: 0.5 ppm.

(ii) Fat: 2.0 ppm.

(2) *Chickens and turkeys.* (i) Liver and kidney: 1 ppm.

(ii) Muscle: 0.5 ppm.

(iii) Eggs:

(A) Egg yolks: 8 ppm.

(B) Whole eggs: 4 ppm.

(3) *Pheasants.* (i) Liver: 1 ppm.
(ii) Muscle: 0.5 ppm.
(c) *Related conditions of use.* See §§ 520.100, 558.55, and 558.58 of this chapter.

§ 556.52 Apramycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of apramycin is 25 µg/kg of body weight per day.
(b) *Tolerances.* The tolerance for apramycin (marker residue) is:
(1) *Swine.* Kidney (target tissue): 0.1 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See §§ 520.110 and 558.59 of this chapter.

§ 556.60 Avilamycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of avilamycin is 1.1 mg/kg of body weight per day.
(b) *Tolerances.* The tolerances for avilamycin are:
(1) *Chickens.* Edible tissues (excluding eggs): Not required.
(2) *Swine.* Edible tissues: Not required.
(c) *Related conditions of use.* See § 558.68 of this chapter.

§ 556.68 Azaperone.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of azaperone is 0.63 µg/kg of body weight per day.
(b) *Tolerances.* The tolerance for azaperone is:
(1) *Swine.* Edible tissues: Not required.
(2) [Reserved]
(c) *Related conditions of use.* See § 522.150 of this chapter.

§ 556.70 Bacitracin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of bacitracin is 0.05 mg/kg of body weight per day.
(b) *Tolerances.* The tolerances for bacitracin are:
(1) *Cattle.* Edible tissues: 0.5 ppm.
(2) *Chickens, turkeys, pheasants, quail.* Edible tissues: 0.5 ppm.
(3) *Swine.* Edible tissues: 0.5 ppm.
(c) *Related conditions of use.* See §§ 520.154a, 520.154c, 558.76, and 558.78 of this chapter.

§ 556.75 Bambermycins.

(a) [Reserved]
(b) *Tolerances.* The tolerances for bambermycins are:
(1) *Cattle.* Edible tissues (excluding milk): Not required.
(2) *Chickens and turkeys.* Edible tissues (excluding eggs): Not required.
(3) *Swine.* Edible tissues: Not required.
(c) *Related conditions of use.* See § 558.95 of this chapter.

§ 556.100 Carbadox.

(a) [Reserved]
(b) *Tolerances.* The tolerance for quinoxaline-2-carboxylic acid (marker residue) is:
(1) *Swine.* Liver (target tissue): 30 ppb.
(2) [Reserved]
(c) *Related conditions of use.* See § 558.115 of this chapter.

§ 556.110 Carbomycin.

(a) [Reserved]
(b) *Tolerances.* The tolerance for carbomycin is:
(1) *Chickens.* Edible tissues (excluding eggs): Zero.
(2) [Reserved]
(c) *Related conditions of use.* See § 520.1660a of this chapter.

§ 556.113 Ceftiofur.

(a) *Acceptable daily intake and acute reference dose*—(1) *Acceptable daily intake (ADI).* The ADI for total residue of ceftiofur is 30 µg/kg of body weight per day.
(2) *Acute reference dose (ARfD).* The ARfD for total residue of ceftiofur is 0.830 mg/kg of body weight.
(b) *Tolerances.* The tolerances for desfuroylceftiofur (marker residue) are:
(1) *Cattle.* (i) Kidney (target tissue): 0.4 ppm.
(ii) Liver: 2 ppm.
(iii) Muscle: 1 ppm.
(iv) Milk: 0.1 ppm.
(2) *Chickens and turkeys.* Edible tissues (excluding eggs): Not required.
(3) *Goats.* (i) Kidney (target tissue): 8 ppm.
(ii) Liver: 2 ppm.
(iii) Muscle: 1 ppm.
(iv) Milk: 0.1 ppm.
(4) *Sheep.* Edible tissues (excluding milk): Not required.
(5) *Swine.* (i) Kidney (target tissue): 0.25 ppm.
(ii) Liver: 3 ppm.
(iii) Muscle: 2 ppm.
(c) *Related conditions of use.* See §§ 522.313a, 522.313b, 522.313c, and 526.313 of this chapter.

§ 556.115 Cephapirin.

(a) [Reserved]
(b) *Tolerances.* The tolerances for cephapirin are:
(1) *Cattle.* (i) Edible tissues (excluding milk): 0.1 ppm.
(ii) Milk: 0.02 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See §§ 526.363 and 526.365 of this chapter.

§ 556.118 Chloramine-T.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of chloramine-T is 5 µg/kg of body weight per day.
(b) *Tolerances.* The tolerance for *para*-toluenesulfonamide (marker residue) is:
(1) *Fish.* Muscle/skin (target tissue): 0.9 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See § 529.382 of this chapter.

§ 556.120 Chlorhexidine.

(a) [Reserved]
(b) *Tolerances.* The tolerance for chlorhexidine is:
(1) *Cattle.* Edible tissues (excluding milk): Zero.
(2) [Reserved]
(c) *Related conditions of use.* See § 529.400 of this chapter.

§ 556.150 Chlortetracycline.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of tetracyclines including chlortetracycline, oxytetracycline, and tetracycline is 25 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for the sum of tetracycline residues are:
(1) *Cattle.* (i) Liver: 6 ppm.
(ii) Kidney and fat: 12 ppm.
(iii) Muscle: 2 ppm.
(2) *Chickens, turkeys, and ducks.* (i) Liver: 6 ppm.
(ii) Kidney and fat: 12 ppm.
(iii) Muscle: 2 ppm.
(iv) Eggs: 0.4 ppm for chlortetracycline only.
(3) *Sheep.* (i) Liver: 6 ppm.
(ii) Kidney and fat: 12 ppm.
(iii) Muscle: 2 ppm.
(4) *Swine.* (i) Liver: 6 ppm.
(ii) Kidney and fat: 12 ppm.
(iii) Muscle: 2 ppm.
(c) *Related conditions of use.* See §§ 520.441, 520.443, 520.445, 558.128, and 558.140 of this chapter.

§ 556.160 Clopidol.

(a) [Reserved]
(b) *Tolerances.* The tolerances for clopidol are:
(1) *Chickens and turkeys.* (i) Liver and kidney: 15 ppm.
(ii) Muscle: 5 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See § 558.175 of this chapter.

§ 556.163 Clorsulon.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of clorsulon is 8 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for clorsulon (marker residue) are:
(1) *Cattle.* (i) Kidney (target tissue): 1.0 ppm.
(ii) Muscle: 0.1 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See §§ 520.462 and 522.1193 of this chapter.

§ 556.165 Cloxacillin.

(a) [Reserved]
(b) *Tolerances.* The tolerance for cloxacillin is:
(1) *Cattle.* Edible tissues: 0.01 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 526.464a, 526.464b, and 526.464c of this chapter.

§ 556.167 Colistimethate.

(a) [Reserved]

(b) *Tolerances.* The tolerance for colistimethate is:

(1) *Chickens.* Edible tissues (excluding eggs): Not required.

(2) [Reserved]

(c) *Related conditions of use.* See § 522.468 of this chapter.

§ 556.168 Coumaphos.

(a) [Reserved]

(b) *Tolerances.* The tolerances for coumaphos (measured as coumaphos and its oxygen analog, O,O-diethyl O-3-chloro-4-methyl-2-oxo-2 H-1-benzopyran-7-yl phosphate) are:

(1) *Cattle.* (i) Edible tissues (excluding milk): 1 ppm.

(ii) Milk fat: 0.5 ppm.

(2) *Chickens.* (i) Edible tissues (excluding eggs): 1 ppm.

(ii) Eggs: 0.1 ppm.

(c) *Related conditions of use.* See § 558.185 of this chapter.

§ 556.169 Danofloxacin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of danofloxacin is 2.4 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for danofloxacin (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 0.2 ppm.

(ii) Muscle: 0.2 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 522.522 of this chapter.

§ 556.170 Decoquinate.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of decoquinate is 75 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for decoquinate are:

(1) *Cattle.* (i) Muscle: 1 ppm.

(ii) Other edible tissues (excluding milk): 2 ppm.

(2) *Chickens.* (i) Muscle: 1 ppm.

(ii) Other edible tissues (excluding eggs): 2 ppm.

(3) *Goats.* (i) Muscle: 1 ppm.

(ii) Other edible tissues (excluding milk): 2 ppm.

(c) *Related conditions of use.* See §§ 520.543 and 558.195 of this chapter.

§ 556.180 Dichlorvos.

(a) [Reserved]

(b) *Tolerances.* The tolerance for dichlorvos is:

(1) *Swine.* Edible tissues: 0.1 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.596 and 558.205 of this chapter.

§ 556.185 Diclazuril.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of diclazuril is 25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for diclazuril are:

(1) *Chickens and turkeys.* (i) Liver: 3 ppm.

(ii) Muscle: 0.5 ppm.

(iii) Skin/fat: 1 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.198 of this chapter.

§ 556.200 Dihydrostreptomycin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for dihydrostreptomycin are:

(1) *Cattle.* (i) Kidney: 2.0 ppm.

(ii) Other edible tissues (excluding milk): 0.5 ppm.

(iii) Milk: 0.125 ppm.

(2) *Swine.* (i) Kidney: 2.0 ppm.

(ii) Other edible tissues: 0.5 ppm.

(c) *Related conditions of use.* See §§ 522.650, 526.1696b, and 526.1696c of this chapter.

§ 556.222 Doramectin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of doramectin is 0.75 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for doramectin (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 100 ppb.

(ii) Muscle: 30 ppb.

(2) *Swine.* Liver (target tissue): 160 ppb.

(c) *Related conditions of use.* See §§ 522.770 and 524.770 of this chapter.

§ 556.224 Efrotomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of efrotomycin is 10 µg/kg of body weight per day.

(b) *Tolerances.* The tolerance for efrotomycin is:

(1) *Swine.* Edible tissues: Not required.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.235 of this chapter.

§ 556.226 Enrofloxacin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of enrofloxacin is 3 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for enrofloxacin are:

(1) *Cattle.* Liver (target tissue): 0.1 ppm desethylene ciprofloxacin (marker residue).

(2) *Swine.* Liver (target tissue): 0.5 ppm enrofloxacin (marker residue).

(c) *Related conditions of use.* See § 522.812 of this chapter.

§ 556.227 Eprinomectin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of eprinomectin is 10 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for eprinomectin B_{1a} (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 1.5 ppm.

(ii) Muscle: 100 ppb.

(iii) Milk: 12 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 522.814 and 524.814 of this chapter.

§ 556.230 Erythromycin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for erythromycin are:

(1) *Cattle.* (i) Edible tissues (excluding milk): 0.1 ppm.

(ii) Milk: Zero.

(2) *Chickens and turkeys.* (i) Edible tissues (excluding eggs): 0.125 ppm.

(ii) Eggs: 0.025 ppm.

(3) *Swine.* Edible tissues: 0.1 ppm.

(c) *Related conditions of use.* See §§ 520.823, 522.820, 526.820, and 558.248 of this chapter.

§ 556.240 Estradiol and related esters.

(a) [Reserved]

(b) *Residues.* Residues of estradiol are not permitted in excess of the following increments above the concentrations of estradiol naturally present in untreated animals:

(1) *Cattle.* (i) Muscle: 120 ppt.

(ii) Fat: 480 ppt.

(iii) Kidney: 360 ppt.

(iv) Liver: 240 ppt.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 522.840, 522.842, 522.850, 522.1940, 522.2477, and 522.2478 of this chapter.

§ 556.260 Ethopabate.

(a) [Reserved]

(b) *Tolerances.* The tolerances for ethopabate, measured as metaphenetidine, are:

(1) *Chickens.* (i) Liver: 1.5 ppm.

(ii) Kidney: 1.5 ppm.

(iii) Muscle: 0.5 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.58 of this chapter.

§ 556.273 Famphur.

(a) [Reserved]

(b) *Tolerances.* The tolerance for famphur including its oxygen analog is:

(1) *Cattle.* Edible tissues (excluding milk): 0.1 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.1242g, 524.900, and 558.254 of this chapter.

§ 556.275 Fenbendazole.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of fenbendazole is 40 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for fenbendazole are:

(1) *Cattle.* (i) Liver (target tissue): 0.8 ppm fenbendazole (marker residue).
(ii) Muscle: 0.4 ppm fenbendazole.
(iii) Milk: 0.6 ppm fenbendazole sulfoxide.
(2) *Chickens.* (i) Liver (target tissue): 5.2 ppm fenbendazole sulfone (marker residue).
(ii) Eggs: 1.8 ppm fenbendazole sulfone (marker residue).
(3) *Goats.* (i) Liver (target tissue): 0.8 ppm fenbendazole (marker residue).
(ii) Muscle: 0.4 ppm fenbendazole.
(4) *Swine.* (i) Liver (target tissue): 3.2 ppm fenbendazole (marker residue).
(ii) Muscle: 2 ppm fenbendazole.
(5) *Turkeys.* (i) Liver (target tissue): 6 ppm fenbendazole sulfone (marker residue).
(ii) Muscle: 2 ppm fenbendazole sulfone.
(c) *Related conditions of use.* See §§ 520.905a, 520.905c, 520.905d, 520.905e, and 558.258 of this chapter.

§ 556.277 Fenprostalene.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of fenprostalene is 0.08 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for fenprostalene are:
(1) *Cattle.* Edible tissues (excluding milk): Not required.
(2) *Swine.* Edible tissues: Not required.
(c) *Related conditions of use.* See § 522.914 of this chapter.

§ 556.280 Fenthion.

(a) [Reserved]
(b) *Tolerances.* The tolerance for fenthion is:
(1) *Cattle.* Edible tissues (excluding milk): 0.1 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See § 524.920 of this chapter.

§ 556.283 Florfenicol.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of florfenicol is 10 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for florfenicol amine (marker residue) are:
(1) *Cattle.* (i) Liver (target tissue): 3.7 ppm.
(ii) Muscle: 0.3 ppm.
(2) *Swine.* (i) Liver (target tissue): 2.5 ppm.
(ii) Muscle: 0.2 ppm.
(3) *Catfish.* Muscle (target tissue): 1 ppm.
(4) *Freshwater-reared warmwater finfish (other than catfish) and salmonids.* Muscle/skin (target tissue): 1 ppm.
(c) *Related conditions of use.* See §§ 520.955, 522.955, 522.956, and 558.261 of this chapter.

§ 556.286 Flunixin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of flunixin is 0.72 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for flunixin are:
(1) *Cattle.* (i) Liver (target tissue): 125 ppb flunixin free acid (marker residue).
(ii) Muscle: 25 ppb flunixin free acid.
(iii) Milk: 2 ppb 5-hydroxy flunixin (marker residue).
(2) *Swine.* (i) Liver (target tissue): 30 ppb flunixin free acid (marker residue).
(ii) Muscle: 25 ppb flunixin free acid.
(c) *Related conditions of use.* See §§ 522.956, 522.970, 522.1664, and 524.970 of this chapter.

§ 556.292 Gamithromycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of gamithromycin is 10 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for gamithromycin (marker residue) are:
(1) *Cattle.* (i) Liver (target tissue): 500 ppb.
(ii) Muscle: 150 ppb.
(2) [Reserved]
(c) *Related conditions of use.* See § 522.1014 of this chapter.

§ 556.300 Gentamicin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of gentamicin is 60 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for gentamicin are:
(1) *Chickens and turkeys.* Edible tissues (excluding eggs): 0.1 ppm.
(2) *Swine.* (i) Liver: 0.3 ppm.
(ii) Kidney (target tissue): 0.4 ppm gentamicin (marker residue).
(iii) Fat: 0.4 ppm.
(iv) Muscle: 0.1 ppm.
(c) *Related conditions of use.* See §§ 522.1044a, 520.1044b, 520.1044c, and 524.1044e of this chapter.

§ 556.304 Gonadotropin.

(a) *Acceptable daily intake (ADI).* The ADI for residues of total gonadotropins (human chorionic gonadotropin and pregnant mare serum gonadotropin) is 42.25 International Units per kilogram of body weight per day.
(b) *Tolerances.* The tolerances for gonadotropin are:
(1) *Cattle.* Edible tissues (excluding milk): Not required.
(2) *Fish.* Edible tissues: Not required.
(3) *Swine.* Edible tissues: Not required.
(c) *Related conditions of use.* See §§ 522.1077, 522.1079, and 522.1081 of this chapter.

§ 556.308 Halofuginone.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of halofuginone hydrobromide is 0.7 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for halofuginone (marker residue) are:
(1) *Chickens.* Liver (target tissue): 0.16 ppm.
(2) *Turkeys.* Liver (target tissue): 0.13 ppm.
(c) *Related conditions of use.* See § 558.265 of this chapter.

§ 556.310 Haloxon.

(a) [Reserved]
(b) *Tolerances.* The tolerance for haloxon is:
(1) *Cattle.* Edible tissues (excluding milk): 0.1 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See §§ 520.1120a and 520.1120b of this chapter.

§ 556.330 Hygromycin B.

(a) [Reserved]
(b) *Tolerances.* The tolerances for hygromycin B are:
(1) *Chickens.* Edible tissues: Zero.
(2) *Swine.* Edible tissues: Zero.
(c) *Related conditions of use.* See § 558.274 of this chapter.

§ 556.344 Ivermectin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of ivermectin is 1 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for 22,23-dihydroavermectin B_1a (marker residue) are:
(1) *American bison.* Liver (target tissue): 15 ppb.
(2) *Cattle.* (i) Liver (target tissue): 100 ppb.
(ii) Muscle: 10 ppb.
(3) *Reindeer.* Liver (target tissue): 15 ppb.
(4) *Sheep.* Liver (target tissue): 30 ppb.
(5) *Swine.* (i) Liver (target tissue): 20 ppb.
(ii) Muscle: 20 ppb.
(c) *Related conditions of use.* See §§ 520.1192, 520.1195, 520.1197, 522.1192, 522.1193, 524.1193, and 558.300 of this chapter.

§ 556.346 Laidlomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of laidlomycin is 7.5 µg/kg of body weight per day.
(b) *Tolerances.* The tolerance for laidlomycin (marker residue) is:
(1) *Cattle.* Liver (target tissue): 0.2 ppm.
(2) [Reserved]
(c) *Related conditions of use.* See § 558.305 of this chapter.

§ 556.347 Lasalocid.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of lasalocid is 10 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for lasalocid (marker residue) are:

(1) *Cattle.* Liver (target tissue): 0.7 ppm.

(2) *Chickens.* (i) Skin with adhering fat (target tissue): 1.2 ppm.

(ii) Liver: 0.4 ppm.

(3) *Rabbits.* Liver (target tissue): 0.7 ppm.

(4) *Sheep.* Liver (target tissue): 1.0 ppm.

(5) *Turkeys.* (i) Liver (target tissue): 0.4 ppm.

(ii) Skin with adhering fat: 0.4 ppm.

(c) *Related conditions of use.* See § 558.311 of this chapter.

§ 556.350 Levamisole.

(a) [Reserved]

(b) *Tolerances.* The tolerances for levamisole are:

(1) *Cattle.* Edible tissues (excluding milk): 0.1 ppm.

(2) *Sheep.* Edible tissues (excluding milk): 0.1 ppm.

(3) *Swine.* Edible tissues: 0.1 ppm.

(c) *Related conditions of use.* See §§ 520.1242a, 520.1242b, 520.1242d, 520.1242e, 520.1242f, 520.1242g, 522.1242, and 524.1240 of this chapter.

§ 556.360 Lincomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of lincomycin is 25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for lincomycin are:

(1) *Chickens.* Edible tissues (excluding eggs): Not required.

(2) *Swine.* (i) Liver: 0.6 ppm.

(ii) Muscle: 0.1 ppm.

(c) *Related conditions of use.* See §§ 520.1263c, 522.1260, and 558.325 of this chapter.

§ 556.370 Lubabegron.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of lubabegron is 3 micrograms per kilogram of body weight per day.

(b) *Tolerances.* The tolerance for lubabegron (marker residue) is:

(1) *Cattle.* Liver (target tissue): 10 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.330 of this chapter.

§ 556.375 Maduramicin.

(a) [Reserved]

(b) *Tolerances.* The tolerance for maduramicin (marker residue) is:

(1) *Chickens.* Fat (target tissue): 0.38 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.340 of this chapter.

§ 556.380 Melengestrol.

(a) [Reserved]

(b) *Tolerances.* The tolerance for melengestrol is:

(1) *Cattle.* Fat: 25 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.342 of this chapter.

§ 556.410 Metoserpate.

(a) [Reserved]

(b) *Tolerances.* The tolerance for metoserpate is:

(1) *Chickens.* Edible tissues (excluding eggs): 0.02 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 520.1422 of this chapter.

§ 556.420 Monensin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of monensin is 12.5 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for monensin are:

(1) *Cattle.* (i) Liver: 0.10 ppm.

(ii) Muscle, kidney, and fat: 0.05 ppm.

(iii) Milk: Not required.

(2) *Chickens and turkeys.* Edible tissues (excluding eggs): Not required.

(3) *Goats.* Edible tissues (excluding milk): 0.05 ppm.

(4) *Quail.* Edible tissues (excluding eggs): Not required.

(c) *Related conditions of use.* See § 558.355 of this chapter.

§ 556.425 Morantel.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of morantel tartrate is 10 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for N-methyl-1,3-propanediamine (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 0.7 ppm.

(ii) Milk: Not required.

(2) *Goats.* (i) Liver (target tissue): 0.7 ppm.

(ii) Milk: Not required.

(c) *Related conditions of use.* See §§ 520.1450a, 520.1450b, 520.1450c, and 558.360 of this chapter.

§ 556.426 Moxidectin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of moxidectin is 4 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for moxidectin (marker residue) are:

(1) *Cattle.* (i) Fat (target tissue): 900 ppb.

(ii) Liver: 200 ppb.

(iii) Muscle: 50 ppb.

(iv) Milk: 40 ppb.

(2) *Sheep.* (i) Fat (target tissue): 900 ppb.

(ii) Liver: 200 ppb.

(iii) Muscle: 50 ppb.

(c) *Related conditions of use.* See §§ 520.1454, 522.1450, and 524.1450 of this chapter.

§ 556.428 Narasin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of narasin is 5 µg/kg of body weight per day.

(b) *Tolerances.* The tolerance for narasin (marker residue) is:

(1) *Chickens.* Abdominal fat (target tissue): 480 ppb.

(2) [Reserved]

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

§ 556.430 Neomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of neomycin is 6 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for neomycin are:

(1) *Cattle.* (i) Kidney (target tissue): 7.2 ppm.

(ii) Liver: 3.6 ppm.

(iii) Muscle: 1.2 ppm.

(iv) Fat: 7.2 ppm.

(v) Milk: 0.15 ppm.

(2) *Sheep and goats.* (i) Kidney (target tissue): 7.2 ppm.

(ii) Liver: 3.6 ppm.

(iii) Muscle: 1.2 ppm.

(iv) Fat: 7.2 ppm.

(v) Milk: 0.15 ppm.

(3) *Swine.* (i) Kidney (target tissue): 7.2 ppm.

(ii) Liver: 3.6 ppm.

(iii) Muscle: 1.2 ppm.

(iv) Fat: 7.2 ppm.

(4) *Turkeys.* (i) Skin with adhering fat: 7.2 ppm.

(ii) Liver: 3.6 ppm.

(iii) Muscle: 1.2 ppm.

(c) *Related conditions of use.* See §§ 520.1484, 524.1600b, 558.365, and 558.455 of this chapter.

§ 556.445 Nicarbazin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of nicarbazin (4,4′-dinitrocarbanilide and 2-hydroxy-4,6-dimethylpyrimidine) is 200 µg/kg of body weight per day.

(b) *Tolerances.* The tolerance for 4,4′-dinitrocarbanilide (marker residue) is:

(1) *Chickens.* Liver (target tissue): 52 ppm.

(2) [Reserved]

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

§ 556.460 Novobiocin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for novobiocin are:

(1) *Cattle.* (i) Edible tissues (excluding milk): 1 ppm.

(ii) Milk: 0.1 ppm.

(2) *Chickens, turkeys, and ducks.* Edible tissues (excluding eggs): 1 ppm.

(c) *Related conditions of use.* See §§ 526.1590, 526.1696d, and 558.415 of this chapter.

§ 556.470 Nystatin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for nystatin are:

(1) *Cattle.* Edible tissues (excluding milk): Zero.

(2) *Chickens and turkeys.* Edible tissues: Zero.

(c) *Related conditions of use.* See §§ 524.1600b and 558.430 of this chapter.

§ 556.490 Ormetoprim.

(a) [Reserved]

(b) *Tolerances.* The tolerances for ormetoprim are:

(1) *Chickens, turkeys, ducks, and chukar partridges.* Edible tissues (excluding eggs): 0.1 ppm.

(2) *Salmonids and catfish.* Edible tissues: 0.1 ppm.

(c) *Related conditions of use.* See § 558.575 of this chapter.

§ 556.495 Oxfendazole.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of oxfendazole is 7 µg/kg of body weight per day.

(b) *Tolerances.* The tolerance for fenbendazole (marker residue) is:

(1) *Cattle.* Liver (target tissue): 0.8 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.1629 and 520.1630 of this chapter.

§ 556.500 Oxytetracycline.

(a) *Acceptable daily intake (ADI).* The ADI for total tetracycline residues (chlortetracycline, oxytetracycline, and tetracycline) is 25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for the sum of tetracycline residues are:

(1) *Cattle.* (i) Muscle: 2 ppm.

(ii) Liver: 6 ppm.

(iii) Fat and kidney: 12 ppm.

(iv) Milk: 0.3 ppm.

(2) *Chickens and turkeys.* (i) Muscle: 2 ppm.

(ii) Liver: 6 ppm.

(iii) Fat and kidney: 12 ppm.

(3) *Finfish.* Muscle (with adhering skin when edible): 2 ppm.

(4) *Lobster.* Muscle: 2 ppm.

(5) *Swine and sheep.* (i) Muscle: 2 ppm.

(ii) Liver: 6 ppm.

(iii) Fat and kidney: 12 ppm.

(c) *Related conditions of use.* See §§ 520.1660a, 520.1660c, 520.1660d, 522.1660a, 522.1660b, 522.1662a, 522.1664, 529.1660, 558.450, and 558.455 of this chapter.

§ 556.510 Penicillin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for penicillin are:

(1) *Cattle.* (i) Edible tissues (excluding milk): 0.05 ppm.

(ii) Milk: Zero.

(2) *Chickens.* Edible tissues: Zero.

(3) *Pheasants and quail.* Edible tissues: Zero.

(4) *Sheep and swine.* Edible tissues: Zero.

(5) *Turkeys.* Edible tissues (excluding eggs): 0.01 ppm.

(c) *Related conditions of use.* See §§ 520.1696b, 522.1696a, 522.1696b, 526.1696a, 526.1696b, 526.1696c, and 526.1696d of this chapter.

§ 556.513 Piperazine.

(a) [Reserved]

(b) *Tolerances.* The tolerances for piperazine are:

(1) *Chickens and turkeys.* Edible tissues (excluding eggs): 0.1 ppm.

(2) *Swine.* Edible tissues: 0.1 ppm.

(c) *Related conditions of use.* See § 520.1807 of this chapter.

§ 556.515 Pirlimycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of pirlimycin is 0.01 mg/kg of body weight per day.

(b) *Tolerances.* The tolerances for pirlimycin (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 0.5 ppm.

(ii) Muscle: 0.3 ppm.

(iii) Milk: 0.4 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 526.1810 of this chapter.

§ 556.517 Poloxalene.

(a) [Reserved]

(b) *Tolerances.* The tolerance for poloxalene is:

(1) *Cattle.* Edible tissues (excluding milk): Not required.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.1840, 558.464, and 558.465 of this chapter.

§ 556.540 Progesterone.

(a) [Reserved]

(b) *Residues.* Residues of progesterone are not permitted in excess of the following increments above the concentrations of progesterone naturally present in untreated animals:

(1) *Cattle and sheep.* (i) Muscle: 5 ppb.

(ii) Liver: 15 ppb.

(iii) Kidney: 30 ppb.

(iv) Fat: 30 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 522.1940 and 529.1940 of this chapter.

§ 556.560 Pyrantel.

(a) [Reserved]

(b) *Tolerances.* The tolerances for pyrantel are:

(1) *Swine.* (i) Liver and kidney: 10 ppm.

(ii) Muscle: 1 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.2045 and 558.485 of this chapter.

§ 556.570 Ractopamine.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of ractopamine hydrochloride is 1.25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for ractopamine (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 0.09 ppm.

(ii) Muscle: 0.03 ppm.

(2) *Swine.* (i) Liver (target tissue): 0.15 ppm.

(ii) Muscle: 0.05 ppm.

(3) *Turkeys.* (i) Liver (target tissue): 0.45 ppm.

(ii) Muscle: 0.1 ppm.

(c) *Related conditions of use.* See § 558.500 of this chapter.

§ 556.580 Robenidine.

(a) [Reserved]

(b) *Tolerances.* The tolerances for robenidine are:

(1) *Chickens.* (i) Skin and fat: 0.2 ppm.

(ii) Other edible tissues (excluding eggs): 0.1 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.515 of this chapter.

§ 556.592 Salinomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of salinomycin is 5 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for salinomycin are:

(1) *Chickens.* Edible tissues (excluding eggs): Not required.

(2) *Quail.* Edible tissues (excluding eggs): Not required.

(c) *Related conditions of use.* See § 558.550 of this chapter.

§ 556.597 Semduramicin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of semduramicin is 3 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for semduramicin are:

(1) *Chickens.* (i) Liver: 400 ppb.

(ii) Muscle: 130 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.555 of this chapter.

§ 556.600 Spectinomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of spectinomycin is 25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for spectinomycin are:

(1) *Cattle.* (i) Kidney (target tissue): 4 ppm spectinomycin (marker residue).

(ii) Muscle: 0.25 ppm.

(2) *Chickens and turkeys.* Edible tissues (excluding eggs): 0.1 ppm.

(3) *Swine.* Edible tissues: Not required.

(c) *Related conditions of use.* See §§ 520.1265, 520.2123b, 520.2123c, 522.2120, and 522.2121 of this chapter.

§ 556.610 Streptomycin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for streptomycin are:

(1) *Cattle and swine.* (i) Kidney: 2.0 ppm.

(ii) Other edible tissues (excluding milk): 0.5 ppm.

(2) *Chickens.* (i) Kidney: 2.0 ppm.

(ii) Other edible tissues (excluding eggs): 0.5 ppm.

(c) *Related conditions of use.* See § 520.2158 of this chapter.

§ 556.620 Sulfabromomethazine.

(a) [Reserved]

(b) *Tolerances.* The tolerances for sulfabromomethazine are:

(1) *Cattle.* (i) Edible tissues (excluding milk): 0.1 ppm.

(ii) Milk: 0.01 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 520.2170 of this chapter.

§ 556.625 Sulfachloropyrazine.

(a) [Reserved]

(b) *Tolerances.* The tolerance for sulfachloropyrazine is:

(1) *Chickens.* Edible tissues (excluding eggs): Zero.

(2) [Reserved]

(c) *Related conditions of use.* See § 520.2184 of this chapter.

§ 556.630 Sulfachlorpyridazine.

(a) [Reserved]

(b) *Tolerances.* The tolerances for sulfachlorpyridazine are:

(1) *Cattle and swine.* Edible tissues (excluding milk): 0.1 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.2200 and 522.2200 of this chapter.

§ 556.640 Sulfadimethoxine.

(a) [Reserved]

(b) *Tolerances.* The tolerances for sulfadimethoxine are:

(1) *Catfish and salmonids.* Edible tissues: 0.1 ppm.

(2) *Cattle.* (i) Edible tissues (excluding milk): 0.1 ppm.

(ii) Milk: 0.01 ppm.

(3) *Chickens, turkeys, ducks, and chukar partridges.* Edible tissues (excluding eggs): 0.1 ppm.

(c) *Related conditions of use.* See §§ 520.2220a, 520.2220d, 520.2220e, 522.2220, and 558.575 of this chapter.

§ 556.650 Sulfaethoxypyridazine.

(a) [Reserved]

(b) *Tolerances.* The tolerances for sulfaethoxypyridazine are:

(1) *Cattle.* (i) Edible tissues (excluding milk): 0.1 ppm.

(ii) Milk: Zero.

(2) *Swine.* Edible tissues: Zero.

(c) *Related conditions of use.* See §§ 520.2240a, 520.2240b, and 522.2240 of this chapter.

§ 556.660 Sulfamerazine.

(a) [Reserved]

(b) *Tolerances.* The tolerance for sulfamerazine is:

(1) *Trout.* Edible tissues: Zero.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.582 of this chapter.

§ 556.670 Sulfamethazine.

(a) [Reserved]

(b) *Tolerances.* The tolerances for sulfamethazine are:

(1) *Cattle.* Edible tissues (excluding milk): 0.1 ppm.

(2) *Chickens and turkeys.* Edible tissues (excluding eggs): 0.1 ppm.

(3) *Swine.* Edible tissues: 0.1 ppm.

(c) *Related conditions of use.* See §§ 520.2260a, 520.2260b, 520.2260c, 520.2261a, 520.2261b, 522.2260, 558.140, and 558.630 of this chapter.

§ 556.685 Sulfaquinoxaline.

(a) [Reserved]

(b) *Tolerances.* The tolerances for sulfaquinoxaline are:

(1) *Cattle.* Edible tissues (excluding milk): 0.1 ppm.

(2) *Chickens and turkeys.* Edible tissues (excluding eggs): 0.1 ppm.

(c) *Related conditions of use.* See §§ 520.2325a, 520.2325b, and 558.586 of this chapter.

§ 556.700 Sulfomyxin.

(a) [Reserved]

(b) *Tolerances.* The tolerances for sulfomyxin are:

(1) *Chickens and turkeys.* Edible tissues (excluding eggs): Zero.

(2) [Reserved]

(c) *Related conditions of use.* See § 522.2340 of this chapter.

§ 556.710 Testosterone.

(a) [Reserved]

(b) *Residues.* Residues of testosterone are not permitted in excess of the following increments above the concentrations of testosterone naturally present in untreated animals:

(1) *Cattle.* (i) Fat: 2.6 ppb.

(ii) Kidney: 1.9 ppb.

(iii) Liver: 1.3 ppb.

(iv) Muscle: 0.64 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See § 522.842 of this chapter.

§ 556.720 Tetracycline.

(a) *Acceptable daily intake (ADI).* The ADI for total tetracycline residues (chlortetracycline, oxytetracycline, and tetracycline) is 25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for the sum of tetracycline residues are:

(1) *Cattle and sheep.* (i) Kidney and fat: 12 ppm.

(ii) Liver: 6 ppm.

(iii) Muscle: 2 ppm.

(2) *Chickens and turkeys.* (i) Kidney and fat: 12 ppm.

(ii) Liver: 6 ppm.

(iii) Muscle: 2 ppm.

(3) *Swine.* (i) Kidney and fat: 12 ppm.

(ii) Liver: 6 ppm.

(iii) Muscle: 2 ppm.

(c) *Related conditions of use.* See §§ 520.2345c and 520.2345d of this chapter.

§ 556.730 Thiabendazole.

(a) [Reserved]

(b) *Tolerances.* The tolerances for thiabendazole are:

(1) *Cattle.* (i) Edible tissues (excluding milk): 0.1 ppm.

(ii) Milk: 0.05 ppm.

(2) *Swine.* Edible tissues: 0.1 ppm.

(3) *Sheep and goats.* (i) Edible tissues (excluding milk): 0.1 ppm.

(ii) Milk: 0.05 ppm.

(4) *Pheasants.* Edible tissues (excluding eggs): 0.1 ppm.

(c) *Related conditions of use.* See §§ 520.2380a, 520.2380b, 520.2380c, and 558.600 of this chapter.

§ 556.732 Tiamulin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of tiamulin is 25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerance for 8-alpha-hydroxymutilin (marker residue) is:

(1) *Swine.* Liver (target tissue): 0.6 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See §§ 520.2455 and 558.612 of this chapter.

§ 556.733 Tildipirosin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of tildipirosin is 10 µg/kg of body weight per day.

(b) *Tolerances.* The tolerance for tildipirosin (the marker residue) is:

(1) *Cattle.* (i) Liver (the target tissue): 10 ppm.

(ii) [Reserved]

(2) [Reserved]

(c) *Related conditions of use.* See § 522.2460 of this chapter.

§ 556.735 Tilmicosin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of tilmicosin is 25 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for tilmicosin (marker residue) are:
(1) *Cattle.* (i) Liver (target tissue): 1.2 ppm.
(ii) Muscle: 0.1 ppm.
(2) *Sheep.* (i) Liver (target tissue): 1.2 ppm.
(ii) Muscle: 0.1 ppm.
(3) *Swine.* (i) Liver (target tissue): 7.5 ppm.
(ii) Muscle: 0.1 ppm.
(c) *Related conditions of use.* See §§ 520.2471, 522.2471, and 558.618 of this chapter.

§ 556.739 Trenbolone.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of trenbolone is 0.4 µg/kg of body weight per day.
(b) *Tolerances.* The tolerance for trenbolone is:
(1) *Cattle.* Edible tissues (excluding milk): Not required.
(2) [Reserved]
(c) *Related conditions of use.* See §§ 522.2476, 522.2477, and 522.2478 of this chapter.

§ 556.741 Tripelennamine.

(a) [Reserved]
(b) *Tolerances.* The tolerances for tripelennamine are:
(1) *Cattle.* (i) Edible tissues (excluding milk): 200 ppb.
(ii) Milk: 20 ppb.
(2) [Reserved]
(c) *Related conditions of use.* See § 522.2615 of this chapter.

§ 556.745 Tulathromycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of tulathromycin is 15 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for CP–60,300 (marker residue) are:
(1) *Cattle.* Liver (target tissue): 5.5 ppm.
(2) *Swine.* Kidney (target tissue): 15 ppm.
(c) *Related conditions of use.* See § 522.2630 of this chapter.

§ 556.746 Tylosin.

(a) [Reserved]
(b) *Tolerances.* The tolerances for tylosin are:
(1) *Cattle.* (i) Liver, kidney, fat, and muscle: 0.2 ppm.
(ii) Milk: 0.05 ppm.
(2) *Chickens and turkeys.* (i) Liver, kidney, fat, and muscle: 0.2 ppm.
(ii) Eggs: 0.2 ppm.
(3) *Swine.* Liver, kidney, fat, and muscle: 0.2 ppm.
(c) *Related conditions of use.* See §§ 520.2640, 522.2640, 558.625, and 558.630 of this chapter.

§ 556.748 Tylvalosin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of tylvalosin is 47.7 µg/kg of body weight per day.
(b) *Tolerances.* A tolerance for tylvalosin in edible tissues of swine is not required.
(c) *Related conditions of use.* See §§ 520.2645 and 558.633 of this chapter.

§ 556.750 Virginiamycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of virginiamycin is 250 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for virginiamycin are:
(1) *Cattle.* Edible tissues (excluding milk): Not required.
(2) *Chickens.* Edible tissues (excluding eggs): Not required.
(3) *Swine.* (i) Kidney, skin, and fat: 0.4 ppm.
(ii) Liver: 0.3 ppm.
(iii) Muscle: 0.1 ppm.
(4) *Turkeys.* Edible tissues (excluding eggs): Not required.
(c) *Related conditions of use.* See § 558.635 of this chapter.

§ 556.760 Zeranol.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of zeranol is 1.25 µg/kg of body weight per day.
(b) *Tolerances.* The tolerances for zeranol are:
(1) *Cattle.* Edible tissues (excluding milk): Not required.
(2) *Sheep.* Edible tissues (excluding milk): 20 ppb.
(c) *Related conditions of use.* See § 522.2680 of this chapter.

§ 556.765 Zilpaterol.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of zilpaterol is 0.083 µg/kg of body weight per day.
(b) *Tolerances.* The tolerance for zilpaterol freebase (marker residue) is:
(1) *Cattle.* Liver (target tissue): 12 ppb.
(2) [Reserved]
(c) *Related conditions of use.* See § 558.665 of this chapter.

§ 556.770 Zoalene.

(a) [Reserved]
(b) *Tolerances.* The tolerances for zoalene and its metabolite 3-amino-5-nitro-*o*-toluamide are:
(1) *Chickens.* (i) Liver and kidney: 6 ppm.
(ii) Muscle: 3 ppm.
(iii) Fat: 2 ppm.
(2) *Turkeys.* Liver and muscle: 3 ppm.
(c) *Related conditions of use.* See § 558.680 of this chapter.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.68 [Amended]

■ 33. In § 558.68, in paragraph (c), remove ''556.68'' and in its place add ''556.60''.

■ 34. In § 558.95, add paragraph (c) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(c) *Related tolerances.* See § 556.75 of this chapter.

* * * * *

■ 35. In § 558.185, revise paragraph (c) to read as follows:

§ 558.185 Coumaphos.

* * * * *

(c) *Related tolerances.* See § 556.168 of this chapter.

* * * * *

■ 36. In § 558.235, revise paragraph (a), redesignate paragraph (b) as paragraph (d), and add new paragraphs (b) and (c) to read as follows:

§ 558.235 Efrotomycin.

(a) *Specifications.* Type A medicated articles containing 14.5 grams efrotomycin per pound.
(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.
(c) *Related tolerances.* See § 556.224 of this chapter.

* * * * *

■ 37. In § 558.464, revise paragraph (a), redesignate paragraph (b) as paragraph (d), and add new paragraphs (b) and (c) to read as follows:

§ 558.464 Poloxalene.

(a) *Specifications.* Dry Type A medicated articles containing 53 percent poloxalene or liquid Type A medicated articles containing 99.5 percent poloxalene.
(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.
(c) *Related tolerances.* See § 556.517 of this chapter.

* * * * *

■ 38. In § 558.465, revise paragraph (a), redesignate paragraph (b) as paragraph (d), and add new paragraphs (b) and (c) to read as follows:

§ 558.465 Poloxalene free-choice liquid Type C feed.

(a) *Specifications.* Type A medicated articles containing 99.5 percent poloxalene.
(b) *Sponsor.* See No. 066104 in § 510.600(c) of this chapter.
(c) *Related tolerances.* See § 556.517 of this chapter.

* * * * *

§ 558.625 [Amended]

■ 39. In § 558.625, in paragraph (c), remove ''556.740'' and in its place add ''556.746''.

§ 558.630 [Amended]

■ 40. In § 558.630, in paragraph (c), remove ''556.740'' and in its place add ''556.746''.

Dated: June 20, 2019.

Norman E. Sharpless,

Acting Commissioner of Food and Drugs.

Dated: June 25, 2019.

Eric D. Hargan,

Deputy Secretary, Department of Health and Human Services.

[FR Doc. 2019–14098 Filed 7–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8179]

Organizations Under Common Control; Eighty Percent Control Test for a Brother-Sister Controlled Group; Correcting Amendment

AGENCY: Internal Revenue Service.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to Treasury Decision 8179, which was published in the **Federal Register** for Wednesday, March 2, 1988. Treasury Decision 8179 issued final regulations and withdrew temporary regulations relating to organizations under common control for purposes of certain rules relating to pension, profit-sharing, and stock bonus plans. Treasury Decision 8179 was corrected on May 9, 1988; however, the corrections were not properly incorporated into the Code of Federal Regulations.

DATES:

Effective date. This correction is effective on July 11, 2019.

Applicability date: March 2, 1988.

FOR FURTHER INFORMATION CONTACT: Dara Alderman at (202) 317–5500.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 8179) that are the subject of this correction are under section 52 of the Internal Revenue Code. Treasury Decision 8179 was corrected at 53 FR 16408, May 9, 1988; however, the Office of the Federal Register did not properly incorporate the correction into the Code of Federal Regulations at that time.

Need for Correction

As published March 2, 1988 (53 FR 6603), the final regulations (TD 8179; FR Doc. 88–4451) contain an error that needed to be corrected. Treasury Decision 8179 was corrected at 53 FR 16408, May 9, 1988; however, the Office of the Federal Register did not properly incorporate the correction into the Code of Federal Regulations.

Applicability of Correction

Generally, the amendments to the regulations under section 52 of the Code (relating to tax credits for employees) apply to taxable years beginning after December 31, 1976. However, because the May 9, 1988 correction was not properly incorporated into the Code of Federal Regulations at the time of publication, with respect to taxable years that began prior to the Effective date, the Internal Revenue Service will not challenge the application of either published version of the regulation.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

§ 1.52–1 [Amended]

■ **Par. 2.** In § 1.52–1, paragraph (d)(1)(i) is amended by removing the language ''§ 1.414(c)–4(b)(1))'' and adding ''§ 1.414(c)–4'' in its place.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2019–14424 Filed 7–10–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 510

Technical Amendments to North Korea Sanctions Regulations

Correction

In rule document 2019–13652, appearing on pages 30868 through 30870, in the issue of Friday, June 28, 2019 make the following correction:

On page 30869, in the first column, in the second paragraph, on the twelfth line, ''§§ '' should read ''sections''.

[FR Doc. C1–2019–13652 Filed 7–10–19; 8:45 am]

BILLING CODE 1300–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0761; FRL–9996–38–Region 9]

Air Plan Approval; Arizona; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Arizona's Regional Haze Progress Report (''Progress Report'' or ''Report''), submitted on November 12, 2015, as a revision to its state implementation plan (SIP). This SIP revision addresses requirements of the Clean Air Act (CAA) and the EPA's rules that require states to submit periodic reports describing progress toward reasonable progress goals (RPGs) established for regional haze and a determination of adequacy of the state's existing regional haze plan. The EPA is approving the Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: This rule is effective on August 12, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0761. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Panah Stauffer, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3247, *stauffer.panah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Background Information
II. Public Comment
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background Information

On March 27, 2019, the EPA published a notice of proposed rulemaking (NPRM) proposing to approve the Progress Report submitted by the Arizona Department of Environmental Quality (ADEQ) on November 12, 2015.[1] A detailed discussion of the Report and the EPA's rationale for approving the SIP revision is provided in the NPRM and will not be restated here.

II. Public Comment

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. Final Action

The EPA is approving the Progress Report, submitted by ADEQ on November 12, 2015, as meeting the applicable requirements of the CAA and the federal Regional Haze Rule, as set forth in 40 CFR 51.308(g), as a revision to the Arizona SIP. The EPA is approving Arizona's determination that the existing regional haze plan is adequate to meet the state's visibility goals and requires no substantive revision at this time, as set forth in 40 CFR 51.308(h).

We have also determined that Arizona fulfilled the requirements in 40 CFR 51.308(i) regarding state coordination with federal land managers.

IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: June 27, 2019.

Deborah Jordan,

Acting Regional Administrator, EPA Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

[1] 84 FR 11455.

Subpart D—Arizona

■ 2. In § 52.120 (e), amend Table 1 by adding an entry for ''Arizona State Implementation Plan Revision: Regional Haze 5-Year Progress Report'' before the entry for ''Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); Implementation of the 2008 Lead National Ambient Air Quality Standards, excluding the appendices.''

The addition reads as follows:

§ 52.120 Identification of plan.

* * * * *

(e) * * *

TABLE 1—EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively][1]

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
The State of Arizona Air Pollution Control Implementation Plan Clean Air Act Section 110(a)(2) State Implementation Plan Elements (Excluding Part D Elements and Plans)				
* *	*	*	* *	*
Arizona State Implementation Plan Revision: Regional Haze 5-Year Progress Report, excluding Appendix A-Public Process.	State-wide	November 12, 2015 ..	July 11, 2019, [Insert **Federal Register** Citation].	
* *	*	*	* *	*

[1] Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

* * * * *

■ 3. Section 52.145 is amended by adding paragraph (n) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(n) *Approval.* On November 12, 2015, the Arizona Department of Environmental Quality submitted the ''Arizona State Implementation Plan Revision: Regional Haze 5-Year Progress Report'' (''Progress Report''). The Progress Report meets the requirements of the Regional Haze Rule in 40 CFR 51.308.

[FR Doc. 2019–14692 Filed 7–10–19; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0807; FRL–9996–24–Region 4]

Air Plan Approval; Kentucky: Jefferson County Existing and New VOC Water Separators Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve two revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ), through a letter dated March 15, 2018. The changes were submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) (also referred to herein as Jefferson County) and make minor ministerial amendments to applicability dates and clarify standards applicable to both existing and new volatile organic compounds (VOC) water separators. EPA is approving these changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective August 12, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0609. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the Air, Pesticides and Toxics Management Division), U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through a letter dated March 15, 2018.[1] EPA is finalizing approval of the portions of these SIP revisions that make changes to the District's Regulation 6.26, *Standards of Performance for Existing Volatile Organic Compound Water Separators,* and Regulation 7.36, *Standards of Performance for New Volatile Organic Compound Water Separators.*[2] The

[1] EPA notes that the Agency received the SIP revision on March 23, 2018.

[2] EPA also notes that the Agency received several other revisions to the Jefferson County portion of the Kentucky SIP submitted with the same March

March 15, 2018, SIP revisions make minor and administrative changes that clarify the applicability of these regulations, as well as correct an applicability date overlap of four years between the standards for new and existing VOC water separators. The SIP revisions update the current SIP-approved versions of Regulation 6.26 (Version 2) and Regulation 7.36 (Version 3) to Version 3 and Version 4, respectively.

In a notice of proposed rulemaking (NPRM) published on March 29, 2019 (84 FR 11919), EPA proposed to approve the aforementioned changes to Regulations 6.26 and 7.36 in the Jefferson County portion of the Kentucky SIP, which address the control of emissions from existing and new VOC water separators, respectively. The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before April 29, 2019. EPA received no comments on the proposed action, so EPA is now taking final action to approve the above-referenced revisions.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County's Regulation 6.26, *Standards of Performance for Existing Volatile Organic Compound Water Separators,* Version 3, and Regulation 7.36, *Standards of Performance for New Volatile Organic Compound Water Separators,* Version 4, both State effective January 17, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

15, 2018, cover letter. EPA will be considering action on the remaining revisions in separate actions.

[3] *See* 62 FR 27968 (May 22, 1997).

III. Final Action

EPA is taking final action to approve the aforementioned changes to the Jefferson County portion of the Kentucky SIP. These rule adoptions do not contravene federal permitting requirements or existing EPA policy, nor will they impact the National Ambient Air Quality Standards or interfere with any other applicable requirement of the Act.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: June 26, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart (S)—Kentucky

■ 2. Section 52.920(c), Table 2, is amended:

■ a. Under ''Reg 6—Standards of Performance for Existing Affected Facilities'' by revising the entry for ''6.26''; and

■ b. Under ''Reg 7—Standards of Performance for New Affected Facilities'' by revising the entry for ''7.36'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

* * * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	**Federal Register** notice	District effective date	Explanation
*	*	*	*	*	*
Reg 6—Standards of Performance for Existing Affected Facilities					
*	*	*	*	*	*
6.26	Standards of Performance for Existing Volatile Organic Compound Water Separators.	7/11/2019	[Insert citation of publication].	1/17/18	
*	*	*	*	*	*
Reg 7—Standards of Performance for New Affected Facilities					
*	*	*	*	*	*
7.36	Standards of Performance for New Volatile Organic Compound Water Separators.	7/11/2019	[Insert citation of publication].	1/17/18	
*	*	*	*	*	*

* * * * *

[FR Doc. 2019–14631 Filed 7–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0397; FRL–9996–28–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Basic Inspection and Maintenance Program Certification State Implementation Plan for the Baltimore Nonattainment Area Under the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. This SIP revision satisfies a Clean Air Act (CAA) requirement for enactment of a vehicle emissions inspection and maintenance (I/M) program in the Baltimore area—where ambient air quality has been classified by EPA as ''Moderate'' or higher nonattainment of federal ozone national ambient air quality standards (NAAQS) established in 2008 (hereafter referred to as the 2008 ozone NAAQS). The CAA requires states to demonstrate that any moderate ozone nonattainment area has adopted a basic I/M program (as defined by the CAA). In the event an I/M program was previously enacted to meet a prior NAAQS or other CAA requirement, the state must show that the enacted I/M program continues to meet applicable federal requirements for a basic I/M program. Maryland's SIP revision that is the subject of this action pertains to CAA requirements for a basic I/M program in the Baltimore area for the 2008 ozone NAAQS. EPA is approving Maryland's I/M program certification, in accordance with the requirements of the CAA.

DATES: This final rule is effective on August 12, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0397. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2176. Mr. Rehn can also be reached via electronic mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On March 19, 2019 (84 FR 9993), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of Maryland's SIP revision certifying that the existing vehicle emission inspection program implemented in the Baltimore ozone nonattainment area satisfies the CAA

requirement under section 182(b)(4) to adopt a vehicle inspection program in areas newly classified as moderate nonattainment under the 2008 ozone NAAQS. The rationale for EPA's proposed action on the State's I/M certification SIP was explained in the NPRM and will not be restated here. No adverse public comments were received on the NPRM; three supportive comments were received on the NPRM. The formal SIP revision [SIP #18–01] was submitted by Maryland on March 15, 2018.

II. Final Action

EPA is approving the submitted motor vehicle I/M certification as a revision to the Maryland SIP for the Baltimore ozone nonattainment area.

III. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action to approve Maryland's certification that the existing Baltimore vehicle emissions inspection program meets CAA requirements for a basic I/M program for the Baltimore ozone nonattainment area for the 2008 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 25, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry ''Basic vehicle emission inspection and maintenance (I/M) program requirement certification for the 2008 ozone national ambient air quality standard'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
Basic vehicle emission inspection and maintenance (I/M) program requirement certification for the 2008 ozone national ambient air quality standard.	Baltimore	3/15/2018	7/11/2019, *[Insert* **Federal Register** *citation].*	Certification that Maryland's previously approved regulation at COMAR 11.14.08 meets the requirement for a basic I/M program in the Baltimore Area for the 2008 ozone NAAQS.

[FR Doc. 2019–14691 Filed 7–10–19; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R05–OAR–2018–0368; EPA–R05–OAR–2018–0556; FRL–9988–38–Region 5]

Air Plan Approval; Illinois; Indiana; Revised Designation of Illinois and Indiana 2012 $PM_{2.5}$ Unclassifiable Areas

Correction

In rule document 2018–27903, appearing on pages 66631–66635, in the issue of Thursday, December 27, 2018, make the following correction:

§ 81.315 Indiana. [Corrected]

■ On page 66634, in the table titled ''Indiana—2012 Annual $PM_{2.5}$ NAAQS [Primary]'', in the second column titled ''Date [2]'', the dates that read ''1/28/2018'', should read 01/28/2019''.

[FR Doc. C1–2018–27903 Filed 7–10–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RIN 0648–XT007

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from three large medium or giant BFT per vessel per day/trip to one large medium or giant BFT per vessel per day/trip for the remainder of the June through August 2019 subquota period. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective July 11, 2019, through August 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260 or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The baseline quota for the General category is 555.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The baseline subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. This action would adjust the daily retention limit for the remainder of the second time period in 2019, June through August.

Adjustment of General Category Daily Retention Limit

The default General category retention limit is one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). NMFS adjusted the daily retention limit for the beginning of the June through August 2019 subquota period from the default level of one large medium or giant BFT to three large medium or giant BFT (84 FR 22734, May 20, 2019). NMFS has considered the relevant regulatory determination criteria and their applicability to the General category BFT retention limit for the remainder of the June through August 2019 subquota time period. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Prolonged opportunities to land BFT over the longest time-period allowable would support the collection

of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including landings and catch rates during the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Commercial-size BFT are currently readily available to vessels fishing under the General category quota. As of July 8, 2019, the General category has landed approximately 60 mt, representing 21 percent of the General category subquota for the June 1 through August 31 period. If current catch rates continue with the three-fish daily limit, the available subquota for June 1 through August 31 period will be reached or exceeded, and NMFS would need to close the fishery earlier than otherwise would be necessary under a lower limit. NMFS intends to provide General category participants in all areas and time periods opportunities to harvest the General category quota without exceeding it, through active inseason management such as retention limit adjustments and/or the timing and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), while extending the season as long as practicable. NMFS is setting the limit for the remainder of the June through August 2019 subquota period in such a way that NMFS believes, informed by past experience, increases the likelihood that the fishery will remain open throughout the subperiod and year.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). The adjusted retention limit would be consistent with the established quotas and with the quotas established and analyzed in the 2018 BFT quota final rule, which implemented the ICCAT quota consistent with ATCA, and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. NMFS anticipates that some underharvest of the 2018 adjusted U.S. BFT quota will be carried forward to 2019 to the Reserve category, in accordance with the regulations, this summer when complete BFT catch information for 2018 is available and finalized. It is also important that NMFS limit landings to the subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.,* fish caught at each age) that was assumed in the projections of stock rebuilding. Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

Based on these considerations, NMFS has determined that a one-fish General category retention limit is warranted for the remainder of the June–August 2019 subquota period. The limit would provide a reasonable opportunity to harvest the full U.S. BFT quota (including the expected increase in available 2019 quota based on 2018 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS adjusts the General category retention limit from three to one large medium or giant BFT per vessel per day/trip, effective July 11, 2019, through August 31, 2019.

Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply through August 31, 2019), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of one fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to vessels permitted in the General category, as well as to HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. For information regarding the HMS Charter/Headboat commercial sale endorsement, see 82 FR 57543, December 6, 2017.

Unless NMFS publishes a subsequent adjustment in the **Federal Register**, the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) will apply for the September 2019 General category fishery, which begins September 1, 2019.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat vessel owners are required to report their own catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery.

Prior notice and an opportunity for public comment is impracticable because the regulations implementing the 2006 Consolidated HMS FMP, as amended, intended that inseason retention limit adjustments would allow the agency to respond quickly to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, adjustment to the General

category BFT daily retention limit from the current level is warranted.

Delays in adjusting the retention limit may result in the available June 1 through August 31 subquota being reached or exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under the lower limit being set for the remainder of this period. Such delays could adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT if the fishery were to remain open for as feasible throughout the remaining subquota periods. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP, as amended. Adjustment of the retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in all geographic areas, consistent with objectives of the 2006 Consolidated HMS FMP and provide equitable opportunities.

Prior notice and an opportunity for public comment is also impracticable for the retention limit adjustment to one fish for the remainder of the June through August 2019 subquota period. Avoiding delay in implementation will also allow fishermen to take advantage of the availability of fish on the fishing grounds and of quota. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 8, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–14778 Filed 7–8–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 133
Thursday, July 11, 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

Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters

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

ACTION: Granting in part and denying in part a petition for rulemaking; notice of proposed interpretive rule; request for comment.

SUMMARY: This document responds to the petition for rulemaking submitted on October 18, 2018 (Gas Industry Petition), by a number of parties asking the Department of Energy (DOE) to issue an interpretive rule and to withdraw related, previously published proposals. The Gas Industry Petition was published in the **Federal Register** on November 1, 2018, for public review and input. After carefully considering the public comments on the petition, DOE has decided to grant the request for an interpretive rule. DOE has not made, and does not presently propose, any changes or revisions to current policies, legal requirements, or rulemakings with respect to condensing and non-condensing products/equipment. Decisions about whether and how this interpretation of the term ''feature'' in the context of condensing/non-condensing products/equipment will apply to existing rulemakings will be the subject of subsequent actions. Thus, DOE is denying the Gas Industry Petitioners' request to withdraw its earlier proposed rules for residential furnaces and commercial water heaters.

DATES: Written comments and information are requested on or before September 9, 2019.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: ResFurnaceCommWaterHeater2018STD0018@ee.doe.gov. Include Docket No. EERE–2018–BT–STD–0018 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

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, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information, see section VI of this document (Public Participation).

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at: *http://www.regulations.gov/docket?D=EERE-2018-BT-STD-0018.*

FOR FURTHER INFORMATION CONTACT: Ms. Sofie Miller, Senior Advisor, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5000. Email: *Sofie.Miller@ee.doe.gov.*

Mr. Eris Stas, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The Department sought public comments on the petition for rulemaking submitted on October 18, 2018, by the American Public Gas Association (APGA), Spire, Inc., the Natural Gas Supply Association (NGSA), the American Gas Association (AGA), and the National Propane Gas Association (NPGA), collectively referred to as the ''Gas Industry Petitioners,'' asking DOE to: (1) Issue an interpretive rule stating that DOE's proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of ''performance characteristics'' within the meaning of the Energy Policy and Conservation Act of 1975 [1] (EPCA; 42 U.S.C. 6291 *et seq.*), as amended (*i.e.,* by setting standards which can only be met by condensing combustion technology products/equipment and thereby precluding the distribution in commerce of non-condensing combustion technology products/equipment) and (2) withdraw the proposed energy conservation standards for residential furnaces [2] and commercial water heaters [3] based upon

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] Standards for non-weatherized residential furnaces were published in a notice of proposed rulemaking at 80 FR 13120 (March 12, 2015) (Docket No. EERE–2014–BT–STD–0031–0032) and in a supplemental notice of proposed rulemaking at 81 FR 65720 (Sept. 23, 2016) (Docket No. EERE–2014–BT–STD–0031–0230).

[3] Standards for commercial water heating equipment were published in a notice of proposed rulemaking at 81 FR 34440 (May 31, 2016) (Docket No. EERE–2014–BT–STD–0042).

such findings. DOE published the petition in the **Federal Register** on November 1, 2018 (83 FR 54883), which had a comment period scheduled to close on January 30, 2019. DOE received two requests from interested parties seeking an extension of the comment period in order to develop additional data relevant to the petition. DOE granted those requests through publication in the **Federal Register** of a document extending the comment period on the notice of petition for rulemaking until March 1, 2019. 84 FR 449 (Jan. 29, 2019).

The 90-day public comment period, including the 30-day extension to submit comments, invited public input in order to better understand stakeholder perspectives and increase transparency around a complex issue involving DOE's legal authority. DOE received comments from a variety of stakeholders, including representatives from gas industry associations, the manufactured housing industry, efficiency advocates, consumer advocates, State organizations and Attorneys General, and individuals (mostly form letter comments). In general, the gas industry associations and the manufactured housing industry supported the petition, and the advocates and State officials opposed it. Specifically, DOE received comment on the notice of petition from:

- Air-Conditioning, Heating & Refrigeration Institute (AHRI);
- A.O. Smith Corporation (A.O. Smith);
- Appliance Standards Awareness Project (ASAP)/American Council for an Energy-Efficient Economy (ACEEE)/ Alliance to Save Energy (ASE)/ Consumer Federation of America (CFA)/ National Consumer Law Center (NCLC) (ASAP *et al.* Joint Comment);
- California Energy Commission (CEC);
- Center for Efficient Living (CEL);
- EarthJustice/National Resources Defense Council (EarthJustice/NRCD Joint Comment);
- Emissol LLC;
- Indiana Manufactured Housing Association/Recreation Vehicle Indiana Council (IMHA/RVIC Joint Comment);
- Manufactured Housing Industry of Arizona (MHIA);
- Manufactured Housing Institute (MHI);
- Manufactured & Modular Home Association of Minnesota (MMHAM);
- Mississippi Manufactured Housing Association (MMHA);
- Mitsubishi Electric US (Mitsubishi);
- Mortex Products, Inc. (Mortex);
- National Consumer Law Center/ Consumer Federation of America (NCLC/CFA Joint Comment);
- National Electrical Manufacturers Association (NEMA);
- National Multifamily Housing Council/National Apartment Association/National Leased Housing Association (NMHC/NAA/NLHA Joint Comment);
- Natural Resources Defense Council (NRDC);
- New Mexico Manufactured Housing Association (NMMHA);
- Nortek Global HVAC (Nortek);
- Northeast Energy Efficiency Partnerships (NEEP);
- Northwest Energy Efficiency Alliance (NEEA);
- Northwest Energy Efficiency Alliance/Northeast Energy Efficiency Partnership/Pacific Gas and Electric/ National Grid (NEEA/NEEP/PG&E/ National Grid Joint Comment);
- Oliver Technologies, Inc.;
- Pacific Gas and Electric Company (PG&E)/San Diego Gas and Electric (SDG&E)/Southern California Edison (SCE) (CA IOUs Joint Comment);
- Plumbing-Heating-Cooling Contractors Association (PHCC);
- Rheem Manufacturing Company (Rheem);
- Southern Company;
- Spire Inc./American Public Gas Association (APGA)/American Gas Association (AGA)/National Propane Gas Association (NPGA)/Natural Gas Supply Association (NGSA) (Gas Industry Petitioners Joint Comment);
- State Attorneys General (of NY, DC, IL, ME, MA, MN, NJ, OR, VT, and WA) and Corporation Counsel of New York City (Multi-State AGs Joint Comment);
- Suburban Propane;
- Triple-T;
- VEIC;
- Weil-McLain;
- Wisconsin Housing Alliance (WHA), and
- 22 individuals.

The comments were carefully and fully considered by DOE. DOE is issuing this notice of proposed interpretive rule to provide the public additional information about DOE's interpretation of EPCA's ''features'' provision [4] in the context of condensing vs. non-condensing furnaces and water heaters, as informed by public comments. The following sections of this document set forth the relevant legal authority, describe the Department's historical interpretation of EPCA's ''features'' provision as applied to condensing vs. non-condensing products/equipment, provide summary responses to significant and recurring comments received through the public comment process, and propose an interpretation of the relevant statutory provision.

This proposed interpretive rule does not change or revise any current policies or legal requirements with respect to residential furnaces and commercial water heaters. Decisions about whether and how this interpretation will apply to existing products/equipment utilizing condensing/non-condensing technology will be the subject of subsequent actions.

II. Summary Description

A. Relevant Statutory Provisions

In this document, DOE explains its historical interpretation regarding the evaluation of what constitutes a product ''feature'' which cannot be eliminated under EPCA, specifically in the context of residential furnaces and commercial water heaters. For covered consumer products, the key statutory provision at issue can be found at 42 U.S.C. 6295(o)(4), which provides that the Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding.

Where the Secretary finds such ''performance characteristics (including reliability), features, sizes, capacities, and volumes'' (collectively referred to hereafter as ''features'') to exist, the statute provides a potential remedy at 42 U.S.C. 6295(q)(1), which provides that a rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—(A) consume a different kind of energy from that consumed by other covered products within such group (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class). In making a determination under 42 U.S.C. 6295(q)(1) concerning whether a

[4] *See* 42 U.S.C. 6295(o)(4); 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa); 6316(a).

performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

These provisions also apply to covered non-ASHRAE commercial and industrial equipment through the provision at 42 U.S.C. 6316(a). (Under the statute, ''ASHRAE equipment'' refers to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, which are addressed by the ASHRAE in Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings.*)

ASHRAE equipment has its own separate statutory scheme under EPCA, with the default situation being that DOE must adopt the level set forth in ASHRAE Standard 90.1 unless the Department has clear and convincing evidence to adopt a more-stringent standard (*see* 42 U.S.C. 6313(a)(6)). Under 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa), there is a similar ''features'' provision which provides that the Secretary may not prescribe an amended standard under the subparagraph if the Secretary finds (and publishes the finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States at the time of the finding of the Secretary. However, it is noted that this provision contains the specific limitation that it applies to an amended standard prescribed *under this subparagraph* (*i.e.,* when DOE is acting under its authority to set a more-stringent standard). There is no companion ''features'' provision under 42 U.S.C. 6313(a)(6)(A), which is the provision that would apply when DOE is adopting the levels set by ASHRAE. Congress was clearly aware of the features issue, and it chose to act in the context of DOE standard setting, but not ASHRAE standard setting. There is likewise no companion provision to 42 U.S.C. 6295(q)(1) for ASHRAE equipment.

B. DOE's Historical Interpretation

With this statutory background in mind, in the March 12, 2015, notice of proposed rulemaking (NOPR) for energy conservation standards for residential furnaces, DOE set forth in detail its rationale for why it did not considering the venting of non-condensing furnaces to constitute a product ''feature'' under 42 U.S.C. 6295(o)(4). 80 FR 13120, 13137–13138.

As discussed previously, when evaluating and establishing energy conservation standards, the statute requires DOE to divide covered products into product classes by the type of energy used, by capacity, or by other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider factors such as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) Historically, DOE has viewed utility as an aspect of the product that is accessible to the layperson and is based on user operation, rather than performing a theoretical function. This interpretation has been implemented consistently in DOE's previous rulemakings by determining utility through the value the item brings to the consumer, rather than through analyzing more complicated design features, or costs that anyone, including the consumer, manufacturer, installer, or utility companies may bear. DOE reasoned that this approach is consistent with EPCA requiring a separate and extensive analysis of economic justification for the adoption of any new or amended energy conservation standard (see 42 U.S.C. 6295(o)(2)(A)–(B) and (3)).

Under EPCA, DOE has typically addressed consumer utility by establishing separate product classes or otherwise taken action when a consumer may value a product feature based on the consumer's everyday needs. For instance, DOE has determined that it would be impermissible under 42 U.S.C. 6295(o)(4) to include elimination of oven door windows as a technology option to improve the energy efficiency of cooking products.[5] DOE reached this conclusion based upon how consumers typically use the product: Peering through the oven window to judge if an item is finished cooking, as opposed to checking the timer and/or indicator light or simply opening the oven door to see if the item is finished cooking.

[5] 63 FR 48038, 48041 (Sept. 8, 1998).

DOE has also determined that consumers may value other qualities such as ability to self-clean,[6] size,[7] and configuration.[8] This determination, however, can change depending on the technology and the consumer, and it is conceivable that certain products may disappear from the market entirely due to shifting consumer demand. DOE stated that it has determined such value on a case-by-case basis through its own research, as well as public comments received.

DOE offered a cautionary note that disparate products may have very different consumer utilities, thereby making direct comparisons difficult and potentially misleading. For instance, in a 2011 rulemaking, DOE created separate product classes for vented and ventless residential clothes dryers based on DOE's recognition of the ''unique utility'' that ventless clothes dryers offer to consumers. 76 FR 22454, 22485 (April 21, 2011). This utility could be characterized as the ability to have a clothes dryer in a living area where vents are impossible to install (*i.e.,* an apartment in a high-rise building). As explained in that April 2011 direct final rule technical support document, ventless dryers can be installed in locations where venting dryers would be precluded due to venting restrictions.

But in another rulemaking, DOE found that water heaters that utilize heat pump technology did not need to be put in a separate product class from conventional types of hot water heaters that utilize electric resistance technology, even though water heaters utilizing heat pumps require the additional installation of a condensate drain that a hot water heater utilizing electric resistance technology does not require. 74 FR 65852, 65871 (Dec. 11, 2009). DOE found that regardless of these installation factors, the heat pump water heater and the conventional water heater still had the same utility to the consumer: Providing hot water. *Id.* In both cases, DOE made its finding based on consumer type and utility type, rather than product design criteria that impact product efficiency. These distinctions in both the consumer type and the utility type are important because, taken to the extreme, each design differential could be designated a different ''product class'' and,

[6] 73 FR 62034, 62048 (Oct. 17, 2008) (separating standard ovens and self-cleaning ovens into different product classes).

[7] 77 FR 32307, 32319 (May 31, 2012) (creating a separate product class for compact front-loading residential clothes washers).

[8] 75 FR 59469, 59487 (Sept. 27, 2010) (creating a separate product class for refrigerators with bottom-mounted freezers).

therefore, require different energy conservation standards.

DOE expressed concern that tying the concept of ''feature'' to a specific technology would effectively lock-in the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality for the consumer. DOE stated that it was very concerned that determining features solely on product technology could undermine the Department's Appliance Standards Program. DOE reasoned that if it is required to maintain separate product classes to preserve less-efficient technologies, future advancements in the energy efficiency of covered products would become largely voluntary, an outcome which seems inimical to Congress's purposes and goals in enacting EPCA.

Turning to the product at issue in that rulemaking, DOE noted that residential furnaces are currently divided into several product classes. For example, furnaces are separated into product classes based on their fuel source (gas, oil, or electricity), which is required by statute. For that rulemaking, DOE analyzed only two product classes for residential furnaces: (1) Non-weatherized gas-fired furnaces (NWGFs) and (2) mobile home gas-fired furnaces (MHGFs). DOE did not additionally separate NWGFs and MHGFs into condensing and noncondensing product classes.

In that rulemaking, DOE tentatively concluded that the methods by which a furnace is vented did not provide any separate performance-related impacts, and, therefore, DOE had no statutory basis for defining a separate class based on venting and drainage characteristics. DOE reasoned that NWGF and MHGF venting methods did not provide unique utility to consumers beyond the basic function of providing heat, which all furnaces perform. The possibility that installing a non-condensing furnace may be less costly than a condensing furnace due to the difference in venting methods did not justify separating the two types of NWGFs into different product classes. Unlike the consumers of ventless dryers, which DOE had determined to be a performance-related feature based on the impossibility of venting in certain circumstances (*e.g.,* high-rise apartments), DOE reasoned that consumers of condensing NWGFs are homeowners that may either use their existing venting or have a feasible alternative to obtain heat. In other words, homeowners would still be able to obtain heat regardless of the venting. In contrast, DOE reasoned that a resident of a high-rise apartment or condominium building that is not architecturally designed to accommodate vented clothes dryers would have no option in terms of installing and enjoying the utility of a dryer in their home unless he or she used a ventless dryer.

As explained above, DOE's conclusion in the March 12, 2015 NOPR was that the utility of a furnace involves providing heat to a consumer. DOE reasoned that such utility is provided by any type of furnace, but to the extent that a consumer has a preference for a particular fuel type (*e.g.,* gas), improvements in venting technology may eventually allow a consumer to obtain the efficiency of a condensing furnace using the existing venting in a residence by sharing venting space with water heaters. DOE postulated that this update in technology significantly would reduce the cost burden associated with installing condensing furnaces and reduce potential instances of ''orphaned'' water heaters, where the furnace and water heater can no longer share the same venting (due to one unit being condensing and the other noncondensing). In other words, when mature, this technology could allow consumers to switch from a non-condensing furnace to a condensing furnace in a greater variety of applications, such as urban row houses. For more information, interested parties were asked to consult appendix 8L of the NOPR TSD.

C. The Gas Industry Petition

As noted above, on October 18, 2018, DOE received a petition from the Gas Industry Petitioners asking DOE to: (1) Issue an interpretive rule stating that DOE's proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of ''performance characteristics'' within the meaning of the Energy Policy and Conservation Act of 1975, as amended (*i.e.,* by setting standards which can only be met by condensing combustion technology products/equipment) and (2) withdraw the proposed energy conservation standards for residential furnaces and commercial water heaters based upon such findings. In their petition, the Gas Industry Petitioners argue that DOE misinterpreted its mandate under section 325(o)(4) of EPCA by failing to consider as a ''feature'' of the subject residential furnaces and commercial water heating equipment the compatibility of a product/equipment with conventional atmospheric venting systems and the ability to operate without generating liquid condensate requiring disposal via a plumbing connection. Consequently, the Gas Industry Petitioners assert that DOE's proposals would make unavailable non-condensing products/equipment with such features, which currently exist in the marketplace, in contravention of the statute. The petition makes a number of technical, legal, and economic arguments in favor of its suggested interpretation, and it points to DOE's past precedent related to space constraints and differences in available electrical power supply (and associated installation costs) as supporting its call to find that non-condensing technology amounts to a performance-related ''feature.'' Based upon these arguments, the Gas Industry Petitioners conclude that DOE should issue an interpretive rule treating non-condensing technology as a ''feature'' under EPCA, withdraw its rulemaking proposals for both residential furnaces and commercial water heaters, and proceed on the basis of this revised interpretation.

III. Response to Comments

DOE received a number of comments on the Gas Industry Petition with commenters both supporting the petition for rulemaking and opposing the petition. Comments from gas industry associations, certain manufacturer associations, and certain individual manufacturers generally expressed support for the petition. Comments from efficiency advocacy organizations, consumer advocacy organizations, other manufacturers, and certain States and Attorneys General generally oppose it. The following sections of this proposed interpretive rule summarize the comments received on the Gas Industry Petition and provide DOE's responses to those comments. DOE then proposes an interpretation consistent with its statutory authority and that considers the comments received along with all other available information. To aid in organizing the comments, this section categorizes public comments on the Gas Industry Petition in terms of legal authority, technical matters, implementation, and other related issues.

A. Legal Authority

As DOE explained in section II.B of this document, for the purpose of EPCA, DOE has in prior instances considered product/equipment ''features'' in the context of the consumer's interaction with the appliance in question. With the submission of the Gas Industry Petition, DOE is re-evaluating its prior

interpretations in the context of the petition and providing stakeholders and the interested public an opportunity to submit comments and information to further inform DOE's consideration, particularly in regards to its technical implications, as well as the needs of consumers (including those with low incomes).

DOE is issuing the interpretation as an interpretative rule within the meaning of the Administrative Procedure Act (APA). 5 U.S.C. 551(4), 553(b). DOE is publishing a proposed interpretation to solicit comment and to provide the public with a clear and transparent explanation of DOE's view of a specific legal question: Whether non-condensing technology and associated venting constitutes a performance-related ''feature'' under 42 U.S.C. 6295(o)(4),[9] as would support a separate product/equipment class under 42 U.S.C. 6295(q)(1),[10] including the authority that Congress conferred on DOE through those provisions.

1. Legal Authority To Set Separate Product/Equipment Classes Based Upon Condensing and Non-Condensing Technologies

The Gas Industry petition raises the issue of whether non-condensing technology, including the associated venting, constitutes a ''performance characteristic'' or ''feature'' under 42 U.S.C. 6295(o)(4), and if it is so, whether it justifies a separate product/equipment class under 42 U.S.C. 6295(q)(1). Commenters had divergent views regarding DOE's legal authority to determine non-condensing technology used in furnaces and water heaters, including the associated venting, is a ''performance characteristic'' or ''feature'' within the meaning of the statute, and whether as a ''performance characteristic'' or ''feature'' it would justify a separate product/equipment class and standard. Such views are summarized in the immediately following paragraphs.

Comments from the gas industry, certain manufacturers, housing associations, and a number of individuals generally supported the interpretation of ''performance characteristic'' and ''feature'' put forth in the Gas Industry Petition (*i.e.,* non-condensing technology and the associated venting is a ''performance characteristic'' for the purpose of EPCA), arguing that DOE is statutorily prohibited from adopting standards that would effectively eliminate this performance characteristic. (Gas Industry Petitioners Joint Comment, No. 44 at pp. 1 and 3; Mortex, No. 58 at p. 1; Weil-McLain, No. 29 at p. 1; PHCC, No. 53 at p. 1; Southern Company, No. 33 at p. 1; Suburban Propane, No. 13 at p. 1; Nortek, No. 35 at pp. 1 and 2; NMHC/NAA/NLHA Joint Comment, No. 41 at p. 1; Baker, No. 4 at p. 1; Matchneer, No. 21 at p. 1) These commenters emphasized the point presented in the Gas Industry Petition that the ability to use category I venting[11] and to operate without formation of condensate are performance characteristics and/or features that DOE cannot eliminate under EPCA.

Southern Company asserted that non-condensing furnaces and water heaters provide ''unique utility'' in terms of their ability to commonly vent with other gas appliances, vent into masonry chimneys, operate in unconditioned space without freeze protection, easily install in retrofit applications, and operate without the need to dispose of condensate. (Southern Company, No. 33 at p. 2) Nortek stated that an energy conservation standard that requires the use of condensing technology would eliminate the ability to combine the venting of other non-condensing appliances with the furnace or commercial water heater. (Nortek, No. 35 at p. 2) NMHC, NAAA, and NLHA stated that in the context of existing multifamily properties, installation of a condensing unit may require construction of an entirely new ventilation system within the apartment to meet the horizontal venting requirements of the condensing furnace unit, and in many properties, there is not sufficient clearance on the exterior wall of the property to locate a ventilation pipe due to existing windows and doors. (NMHC/NAA/NLHA Joint Comment, No. 41 at p. 2) Regarding commercial hot water heaters, Rheem stated that according to the Energy Information Agency (EIA) 2012 Commercial Buildings Energy Consumption Survey (CBECS) data, more than half of all commercial buildings were constructed before condensing commercial water heaters were introduced to the market and that in older buildings having greater than 3-stories with the water heater(s) located in the interior of the building structure, it is generally difficult, if not impossible, to replace non-condensing water heaters with condensing water heaters due primarily to the need to replace or reline existing vents/chimneys. (Rheem, No. 34 at p. 2) Southern Company further commented that non-condensing units can be installed in unconditioned space without the use of potentially dangerous heat tapes or other devices that prevent condensate from freezing. (Southern Company, No. 33 at p. 4)

Several of the commenters in support of the Gas Industry Petition asserted that there is precedent for establishing separate product classes for non-condensing furnaces and water heaters. (Gas Industry Petitioners Joint Comment, No. 44 at pp. 5–6; Mortex, No. 58 at p. 2; Southern Company, No. 33 at pp. 2–4; Nortek, No. 35 at p. 2; MHI, No. 54 at p. 2) The Gas Industry Petitioners stated that the issues facing the replacement of a non-condensing unit with a condensing unit are similar, but greater in magnitude, to installation issues for products that DOE has established separate ''space-constrained'' product classes. (Gas Industry Petitioners Joint Comment, No. 44 at pp. 4–5) Southern Company specifically referenced as applicable precedent the separate product classes established for gas-fired natural draft commercial packaged boilers, the standard-size equipment class for package terminal air conditioners and heat pumps, space-constrained central air conditioners and heat pumps, tabletop water heaters, and compact products such as clothes dryers. (Southern Company, No. 33 at pp. 3–4) Mortex and Southern Company pointed to the establishment of separate classes of furnace fans based on use in a condensing versus non-condensing furnace as support for establishing separate classes as requested in the Gas Industry Petition. (Mortex, No. 58 at p. 2; Southern Company, No. 33 at p. 3)

Various other commenters opposed the Gas Industry Petition and asserted that the method of venting, type of type of vent, and condensate disposal system associated with a furnace or water heater does not qualify as a performance-related characteristic or feature under EPCA. (CA IOUs Joint Comment, No. 45 at pp. 1–2; EarthJustice/NRDC Joint Comment, No. 55 at p. 1; Mitsubishi, No. 10 at p. 1; Multi-State AGs Joint Comment, No. 49 at pp. 1–2, 6; NEMA, No. 46 at p. 4; NEEA, No. 59 at pp. 1–2; CEC, No. 56 at pp. 1–2 ; NCLC/CFA Joint Comment, No. 50 at pp. 1–2; ASAP *et al.* Joint Comment, No. 61 at p. 4) Referencing DOE's prior, tentative analysis of the issue under EPCA, commenters stated that condensing and non-condensing furnaces and water heaters provide

[9] 42 U.S.C. 6316(a) for non-ASHRAE equipment; 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) for ASHRAE equipment where DOE is setting more-stringent standards.

[10] 42 U.S.C. 6316(a) for non-ASHRAE equipment.

[11] Category I venting has a non-positive vent pressure and is suitable for non-condensing appliances.

identical performance characteristics in the form of warm air or hot water, respectively; that installation cost is not a performance characteristic for the purpose of 42 U.S.C. 6295(o)(4); and that non-condensing technology does not justify a separate product class. (CA IOUs Joint Comment, No. 45 at pp. 2–3; EarthJustice/NRDC Joint Comment, No. 55 at pp. 5 and 13; Multi-State AGs Joint Comment, No. 49 at p. 7; NEEA, No. 59 at p. 5; CEC, No. 56 at p. 2; CEL, No. 3 at p. 1; NCLC/CFA Joint Comment, No. 50 at p. 5; ASAP *et al.* Joint Comment, No. 61 at p. 4) NEMA stated that increased cost of installation is not a performance characteristic or feature under paragraphs 42 U.S.C. 6295(o)(4) and (q)(1). (NEMA, No. 46 at pp. 4, 11) NEMA further stated that while the type of venting may be a ''characteristic'' or ''feature,'' it is not one that has utility to the consumer; the consumer suffers no loss of utility by no longer being able to use a ''type B'' metal vent with a condensing furnace. (NEMA, No, 46 at pp. 15–16) While NEMA agreed with the result of DOE's tentative determination, NEMA cautioned that DOE should not exclusively conflate an appliance's ''basic function'' with a useful feature, capacity, characteristic, size, or volume. (NEMA, No. 46 at p. 17)

EarthJustice and NRDC argued that Congress intended the provision at 42 U.S.C. 6295(o)(4) only to address the possibility that efficiency standards could completely destroy the market for a covered product. (EarthJustice/NRDC Joint Comment, No. 55 at p. 3) Additionally, EarthJustice and NRDC asserted that the difference in language between 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(iii)(II)(aa) indicates that ''performance characteristic'' means something different for residential products and commercial equipment. Specifically, this comment imparts significant meaning to Congress's placement of a single parentheses within these two statutory provisions; on the residential side, 42 U.S.C. 6295(o)(4) describes ''performance characteristics'' as ''(including reliability)'' and then following with ''features, sizes, capacities, and volumes,'' but on the commercial side, 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) describes ''performance characteristics'' as ''(including reliability, features, sizes, capacities, and volumes).'' (EarthJustice/NRDC Joint Comment, No. 55 at p. 4) EarthJustice and NRDC continued that the method of venting and condensate disposal are not performance features under either provision, but ''installation features.'' (EarthJustice/NRDC Joint Comment, No. 55 at p. 4)

A number of commenters stated that not every technology design option should be captured as a separate ''performance characteristic'' or ''feature,'' because such approach would preclude DOE from ever setting incrementally more stringent energy conservation standards. (CA IOUs Joint Comment, No. 45 at p. 3; NRDC, No. 60 at p. 4, 6–7; Multi-State AGs Joint Comment, No. 49 at p. 7; A.O. Smith, No. 51 at p. 3; CEC, No. 56 at p. 1) Commenters asserted that the appropriate precedent is DOE's prior determination in the residential water heater rulemaking in which DOE determined that heat pump heaters provide hot water to a residence just as a traditional electric storage water heater does, and, therefore, a standard level that effectively bans electric resistance heating does not violate 42 U.S.C. 6295(o)(4). (CA IOUs Joint Comment, No. 45 at p. 3; NEMA, No. 46 pp. 7–8)

In opposition to the petition, commenters further stated that to the extent that there are installation cost differences between the venting technologies, those costs should be addressed in DOE's economic analysis and are not relevant to the determination of product/equipment classes. (CA IOUs Joint Comment, No. 45 at pp. 3–4; EarthJustice/NRDC Joint Comment, No. 55 at p. 7; NRDC, No. 60 at p. 8; ASAP *et al.* Joint Comment, No. 61 at pp. 3–4) EarthJustice and NRDC did state that DOE appropriately established separate product classes for through-the-wall central air conditioners and heat pumps to avoid requiring changes in the physical size of the through-the-wall systems and modifications to the buildings in which they are installed. (EarthJustice/NRDC Joint Comment, No. 55 at p. 10–11)

A number of commenters stated that with rare exceptions, condensing furnaces and water heaters are no more difficult to install than non-condensing units, and they added that in the small number of situations where there are difficulties, there are work-arounds. (Mitsubishi, No. 10 at pp. 1–2, 6; Multi-State AGs Joint Comment, No. 49 at p. 8; NEEP, No. 48 at p. 1; NEEA, No. 59 at pp. 1–2; CEC, No. 56 at p. 3; A.O. Smith, No. 51 at p. 4; Triple-T, No. 63 at p. 1) NEEA and the State Attorneys General provided the summary of a survey of residential furnace installers, based on which they stated that the percentage of homes with the conditions necessary to present significant issues is likely to be less than 5 percent of the retrofit installations. (NEEA, No. 59 at p. 2; Multi-State AGs Joint Comment, No. 49 at p. 8) The State Attorneys General added that those interviewed for the survey stated that even in ''difficult'' cases, technical solutions are possible. (Multi-State AGs Joint Comment, No. 49 at p. 8) Mitsubishi stated that cases where installation of condensing equipment is more difficult than replacing with non-condensing equipment are rare, and it estimated that such conditions exist in less than 1 percent of the total housing stock. (Mitsubishi, No. 10 at p. 4) The CEC identified a commercially-available product (*i.e.,* FasNSeal 80/90 by DuraVent) that allows for combined venting of an atmospheric appliance and a condensing appliance, thereby mitigating the issue of ''orphaned'' water heaters. (CEC, No. 56 at p. 3)

In response, DOE recognizes the importance of its interpretation of ''performance characteristic'' and ''feature'' in the context of condensing vs. non-condensing furnaces, water heaters, and similarly situated products/equipment. The submission of comments and other information pursuant to the Gas Industry Petition has heightened DOE's awareness of the real world impacts facing consumers of such products/equipment. In the past, DOE viewed venting of condensing vs. non-condensing as a technological and economic issue incidental to the appliance's purpose of providing heat or hot water to a dwelling or business. DOE has now come to see that it may have been too narrow in its focus. Commenters have made persuasive arguments that a consumer's interaction with and perception of a furnace or water heater may go beyond its primary function.

For example, adoption of an energy conservation standard requiring the use of condensing technology could potentially impact a home's aesthetics, if a new installation or retrofit were to entail additional venting in the conditioned space. Consumers would likely notice the new venting, and it might deprive them of some enjoyment related to the appearance of their home. In other cases, the condensing furnace may be of a different size or shape, and it may require modifications to existing utility closets or similarly constrained spaces, again potentially impacting the aesthetics of a room's layout. To that extent, non-condensing appliances may be similar to the space-constrained appliances which EarthJustice and NRDC point to in their comments as an appropriate use of EPCA's features provision. (DOE requests comments regarding any size-related impacts of the use of condensing technology, such as

that related to the need for more heat exchanger surface area.)

Although DOE continues to believe that the distinction between condensing and non-condensing appliances is largely a matter of economics for most consumers, for some subset of the population, it is something much more than that. As commenters representing the manufactured housing industry and individual owners of such units made clear, energy conservation standards at condensing levels could price some low-income consumers out of the housing market entirely. Below that level, other low-income consumers could face a financial hardship once they are forced to purchase a condensing furnace, which on average for mobile home gas furnaces costs between $152 and $331 (total installed cost; 2015$) more than a non-condensing furnace.[12] (Consistently, DOE's data support the finding in the fuel switching analysis of the September 23, 2016 supplemental notice of proposed rulemaking (September 2016 SNOPR) that accounted for instances where installation of a condensing furnace was either too difficult or costly, with the result being substitution of another type of heating product. 81 FR 65720, 65791–65793 (Sept. 23, 2016) (*see also* Chapter 8J of the SNOPR technical support document (TSD)). For such consumers, there could be difficult choices to be made between heat and other necessities such as food or medical care. The potential for overall energy savings after a long payback period does little to ameliorate such short-term impacts. In light of these reasons, DOE has tentatively concluded that the totality of such concerns may raise non-condensing appliances (and their associated venting) sufficiently in the consciousness of the consumer as to be deemed a ''feature'' under EPCA. DOE does not believe that its proposed interpretation would have a cascading effect that would prevent it from ever setting a standard that would eliminate a less-efficient technology; instead, DOE would continue to determine ''features'' based upon consumer utility on a case-by-case basis.

2. Legal Authority To Set a ''Small'' Furnaces Product Class for Mobile Home Furnaces

Manufactured housing associations, certain manufacturers to the manufactured housing industry, and a number of individuals faulted DOE's 2016 furnaces SNOPR (81 FR 65720 (Sept. 23, 2016)) for its failure to consider a ''small'' mobile home furnaces product class. Due to the cost impacts to manufactured housing consumers and these consumers' sensitivity to price increases, these commenters argued that DOE should have considered a ''small'' product class for mobile home furnaces. According to these commenters, manufactured housing is disproportionately impacted due to the comparatively high number of manufactured homes that rely on non-condensing gas furnaces as compared to site-built homes, as well as the disproportionate number of homes in the south where the payback of a high-efficiency furnace is less. (MHI, No. 54 at pp. 1, 3–4; MMHAM, No. 43 at p. 2; MMHA, No. 42 at p. 2; IMHA–RVIC, No. 32 at p. 2; NMMHA, No. 28 at pp. 1–2; WHA, No. 24 at pp. 1–2; MHIA, No. 23 at p. 2; Oliver Technologies, No. 16 at p. 1; Mortex, No. 58 at p. 2; Individuals, Nos. 17–22, 25–27, 30–31, 36–40, 47, 57 at pp. 1–2)

In the September 2016 furnaces SNOPR, DOE explained its rationale for proposing that energy conservation standards for mobile home gas furnaces should be set at 92 percent annual fuel utilization efficiency (AFUE). 81 FR 65720, 65743–65744 (Sept. 23, 2016). First, DOE stated that under the proposed standard, 63 percent of mobile home gas furnaces (MHGFs) would see a net benefit from such standards, whereas only 8 percent would experience a net cost. DOE anticipated minimal fuel switching, because for new mobile homes, the type of heating equipment tends to be determined by the intended location of the home, the expected heating load, and the availability of a gas supply. For replacement applications, DOE found that switching away from gas is not likely because the cost increase for installing a condensing furnace relative to a non-condensing furnace is not a significant factor due to a much simpler venting system compared to installation of a non-weatherized gas furnace (NWGF). *Id.* at 81 FR 65743. As to the costs, DOE's analyses determined that the expected average cost of a condensing furnace in a new mobile home is comparable to a non-condensing furnace, because the increase in the price of the product is offset by a lower installation cost for a condensing furnace for most installations.[13] The SNOPR noted that new furnaces installed in mobile homes must be approved by the U.S. Department of Housing and Urban Development, which requires special sealed combustion (direct vent) for all non-condensing and condensing installations of manufactured home furnaces. (24 CFR 3280.709(d)(1)) For condensing installations, the polyvinyl chloride (PVC) piping is usually less expensive than the metal vent system used for non-condensing furnaces. Thus, DOE reasoned that there is not likely to be any effect on the affordability of single-section mobile homes due to the SNOPR's proposed MHGF standard. *Id.* at 81 FR 65744.

Nevertheless, to the extent DOE moves to consider non-condensing furnaces and water heaters (and associated ductwork) to be a ''feature'' under EPCA, these commenters' concerns should be resolved, because mobile home purchasers would retain the choice of purchasing a furnace using non-condensing or condensing technology.

B. Fuel Switching

A number of commenters expressed concern that a national condensing furnaces standard would drive fuel switching and/or extend the use of less efficient appliances, because consumers who cannot afford more-expensive condensing technology will choose to switch to a non-gas heating option, repair their existing gas furnace, or use other less-efficient means of heating such as space heaters. (Gas Industry Petitioners Joint Comment, No. 44 at p. 3; MHI, No. 54 at p. 5; PHCC, No. 53 at p. 2; NMHC/NAA/NLHA Joint Comment, No. 41 at p. 2)

In contrast, the CEC argued that fuel switching is a cost impact, not a utility impact, as it does not disrupt service to the consumer of warm air or hot water. (CEC, No. 56 at p. 3) The CEC also stated that the costs related to fuel switching were included in DOE's life-cycle cost analysis in the September 2016 SNOPR for residential furnaces. (CEC, No. 56 at p. 3)

EarthJustice and NRDC stated that fuel switching is not an obstacle to amended standards under EPCA. These commenters noted that for small gas furnaces, EPCA required that DOE prescribe energy conservation standards at a level ''which the Secretary determines is not likely to result in a

[12] See chapter 8 of the September 2016 SNOPR TSD for Residential Furnaces (Available at: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0217*).

[13] In the SNOPR, DOE stated that the standard for MHGF furnace fans requires technology (improved PSC motor) that entails a slight price increase ($11) in 2013$ compared to the baseline PSC motor (see furnace fan energy conservation standards final rule; available at: *https://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0011-0117*). This cost is applicable to less than 50 percent of installations because the rest of the market is already comprised of MHGFs with improved PSC motors or motors with higher efficiencies.

significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement,'' and asserted that Congress could have easily extended this requirement to other gas products but did not. EarthJustice and NRDC stated that, therefore, Congress did not intend to prevent the adoption of standards that may lead consumers to change their space or water heating energy sources. These commenters further argued that Congress's instruction to avoid fuel-switching in the initial small furnaces rulemaking would be superfluous if other parts of the statute were already intended to prohibit fuel switching. (EarthJustice/NRDC Joint Comment, No. 55 at pp. 8–9)

As the commenters noted, DOE addressed the potential for fuel switching in the September 2016 SNOPR. 81 FR 65720, 65723, and Chapter 8 of the September 2016 SNOPR Technical Support Document (TSD).[14] DOE agrees with the CEC, EarthJustice, and NRDC that concerns about fuel switching alone or in isolation would probably not justify a determination that non-condensing appliances (and associated venting) constitute a ''feature'' deserving a separate product/equipment class under EPCA. However, for the reasons previously stated, DOE has tentatively concluded that the choice of purchasing a non-condensing appliance is something that matters to some significant portion of consumers (especially persons with low-incomes), with concerns ranging from impacts on the aesthetics of the home to overall choice of housing options. To the extent DOE determines non-condensing technology (and associated venting) to be a feature, any fuel switching among such appliances going forward will be voluntary on the part of the consumer and not driven by government regulation.

C. Analytical Issues

Some commenters raised concerns with the analytical methodology underlying DOE's rulemakings for residential furnaces and commercial water heaters. (Gas Industry Petitioners Joint Comment, No. 44 at pp. 12–13; Rheem, No. 34 at pp. 2–3; NMHC/NAA/NLHA Joint Comment, No. 41 at p. 2; Weil McLain, No. 29 at p. 1) Among the issues raised by these commenters were that the national average approach to economic justification fails to consider the excessive localized costs that are certain to be incurred if non-condensing performance characteristics are eliminated. (Weil McLain, No. 29 at pp. 1–2)

DOE has attempted in prior residential furnaces and commercial water heaters rulemakings to capture localized effects (*e.g.,* regional climate, local utility rates, building type, local contractor labor rates, high-cost installations) in the life-cycle cost (LCC) analyses. DOE presented the average LCC results in summary form in the September 23, 2016 SNOPR. 81 FR 65720, 65814–65816. In chapter 8 of the September 23, 2016 furnaces SNOPR TSD, DOE presented the results in charts showing the mean and median LCC savings, along with the 5th, 25th, 75th, and 95th percentiles, to demonstrate the impacts of more extreme cases (both positive and negative). The same type of analysis was conducted for commercial water heaters in the May 31, 2016 NOPR. 81 FR 34440, 34482–34488.

Commenters also asserted that there is a fundamental flaw in DOE's modeling approach in that the base-case distribution of efficiencies is assigned randomly, rather than accounting for some consumers making economically rational decisions. (Gas Industry Petitioners Joint Comment, No. 44 at pp. 11–12) In response, DOE would point out that the base-case efficiency distributions for residential furnaces and commercial water heaters are not entirely random. For furnaces, assignment of efficiency in the base-case was based on both the region and specific building in which it is installed, with the market shares of furnace efficiencies first assigned by region based on historical shipments data and then allocated to specific buildings within each region based on the existing furnace being replaced. For commercial water heaters, the no-new-standards case and the selections in the LCC model were also not completely random, and rather were based on distributions of models in DOE's database, which included all commercially-available equipment on the market at the time and which (due to the absence of shipments data) represented the best data available to DOE at the time.

Furthermore, Rheem suggested that the EIA 2003 CBECS data used in DOE's commercial water heaters proposal is outdated, and DOE should recalculate results using more up-to-date data and re-evaluate its proposed standards accordingly. (Rheem, No. 34 at p. 2) In response, DOE notes that CBECS 2003 was the most recent version available at the time the analysis was conducted for the notice of proposed rulemaking for commercial water heating equipment. In any potential future rulemaking documents for commercial water heating equipment, DOE would update its analysis to utilize the most recent version of CBECS (currently the 2012 version).

The National Multifamily Housing Council (NMHC), the National Apartment Association (NAA), and the National Leased Housing Association (NLHA) commented that DOE did not include an adequate analysis of the venting and condensate disposal system installation costs for multi-story, multi-family properties in its proposals. (NMHC/NAA/NLHA Joint Comment, No. 41 at p. 2) In response, DOE notes that requirements specific to multi-story, multi-family properties were considered in the LCC analyses for residential furnaces and commercial water heating equipment. DOE acknowledged that multi-family buildings may require additional measures to replace non-condensing furnaces with condensing furnaces, noted that it did not find data that would allow a reliable estimation of the associated costs, and, therefore, requested comment on the issue. 81 FR 65720, 65778. DOE estimated in the September 23, 2016 SNOPR that more than 60 percent of replacement multi-family NWGF installations would not be impacted by the proposed standard. 81 FR 65720, 65780. For commercial water heaters, in the May 2016 NOPR, DOE included RECS data for multi-family buildings in the building sample used for its analysis, in order to account for the unique venting requirements of multi-family buildings, such as the vent length. 81 FR 34440, 34482 (May 31, 2016).[15]

Rheem stated that efficiency standards for commercial water heaters that require condensing technology could lead to fuel switching or multiple residential water heaters as alternatives, and suggested that DOE should consider such costs as part of the life-cycle cost analysis for commercial water heaters. (Rheem, No. 34 at p. 3) As discussed in the May 2016 NOPR, DOE considered whether to model fuel switching in the analysis for commercial water heating equipment and tentatively determined that fuel switching would be unlikely to occur. 81 FR 34440, 34494 (May 31, 2016).

[14] The September 2016 SNOPR TSD is available at *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0217.*

[15] See chapter 8 and Appendix 8–D of the Commercial Water Heating Equipment NOPR TSD for further discussion. Available at: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0042-0016.*

Finally, Southern Company argued that DOE's analysis for residential furnaces grossly overestimates the capabilities of DuraVent FNS 80/90 as a technological solution, because it does not allow a condensing appliance to operate with the same utility as a non-condensing model due to restrictions on the circumstances in which it can be used. (Southern Company, No. 33 at pp. 6–8)

DOE clarifies that it considered use of the DuraVent FasNSeal (FNS) 80/90 only as a sensitivity analysis; DOE's main analysis does not assume that the DuraVent FNS 80/90 would be used in any installations. Because of the uncertainty regarding applicability of FNS 80/90 and other new venting technologies, and lack of available field data on such venting installations, DOE has consistently maintained its approach of only using this option in a sensitivity analysis rather than its main analysis. In this sensitivity analysis, DOE only applied the FNS80/90 option to installations that could meet the FNS 80/90 installation requirements. While the previously noted comment from the CEC identified the FNS 80/90 (CEC, No. 56 at p. 3) as a means to address orphaned water heaters, the technology is only commercially available for applications with metal vents, and as pointed out by Southern, can only be used in certain situations where the vent can be installed at the appropriate angle to drain condensate. To address stakeholders' concerns regarding overestimating the number of installations that could use new venting technologies, DOE plans to include an additional sensitivity analysis in any potential future rulemaking documents for furnaces, where the FNS 80/90 option is applied to installations that can currently meet the FNS 80/90 installation requirements.

Finally, DOE notes that in its February 2019 NOPR regarding proposed changes to its Process Rule, the Department has announced its plans to conduct a peer review of its suite of rulemaking analyses as a second phase to the revisions of its Process Rule. 84 FR 3910, 3936–3938 (Feb. 13, 2019). Thus, DOE anticipates an ongoing discussion about potential refinements to its analytical methodologies and modeling, including those issues raised by commenters on the Gas Industry Petition.

D. Consumer Impacts

A number of efficiency and consumer advocacy organizations and the State Attorneys General argued that granting the requests in the Gas Industry Petition would negatively impact consumers due to lost energy and cost savings. (NEEP, No. 48 at p. 1; NEEA, No. 59 at p. 3; NCLC/CFA, No. 50 at pp. 2–3; Multi-State AGs Joint Comment, No. 49 at pp. 9–10; ASAP *et al.* Joint Comment, No. 61 at pp. 1–3) The State Attorneys General also asserted that such action would disrupt State and local energy and climate goals. (Multi-State AGs Joint Comment, No. 49 at pp. 9–10) The Center for Efficient Living argued that the Gas Industry Petitioners do not represent the parties most directly impacted by the regulations at issue, as compared to consumers and manufacturers, but instead, DOE must recognize the significant advances in heating, ventilation, and air-conditioning technology in the past 10 years and not take actions which counteract the associated public health, indoor air quality (IAQ), and environmental benefits. (CEL, No. 3 at p. 1)

In contrast, individual commenters who support manufactured housing stated that Federal regulation should encourage manufactured housing as an affordable ownership option, but DOE's proposal inhibits that by increasing new home or retrofit costs, thereby potentially pricing consumers out of the manufactured housing market. These commenters stated that the median household income of manufactured homeowners is $30,000, which makes them very sensitive to any change in first cost of a new home or retrofit costs (*e.g.,* reworking existing utility closets due to larger units). It was also noted that there is no exemption or other accommodation for ''small'' furnaces, which are often used in manufactured homes. (Matchneer *et al.* (Form Comments), Nos. 17–22, 25–27, 30–31, 36–40, 47, 57 at p. 1)

As discussed, in establishing and amending energy conservation standards, EPCA prescribes a number of factors that DOE must consider. These factors include the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE historically has accounted for and considered the potential energy savings to consumers through the LCC and PBP analyses in all of its rulemakings. In contrast, however, EPCA's ''features'' provision demonstrates that Congress intended certain aspects of products with consumer utility to be preserved despite the energy savings or other benefits that might result from their elimination. (42 U.S.C. 6295(o)(4); 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa); 42 U.S.C. 6316(a)) DOE recognizes the important policy concerns raised by these commenters, but the Department is constrained to act within its statutory authority. Thus, to the extent DOE interprets EPCA's ''features'' provision as supporting separate products/equipment classes for condensing and non-condensing appliances, the concerns of commenters regarding the affordability of manufactured housing are largely resolved. For other consumers, DOE will account for them as part of the standard-setting process and develop energy conservation standards that meet the seven criteria for economic justification, are technologically feasible, and produce significant energy savings, as required by EPCA. DOE would note that for consumers who rent (including low-income consumers), energy savings from mandatory energy conservation standards set at condensing levels are likely to be offset, at least in part, by higher rents to cover the landlord/owner's first cost of the more expensive appliance.

E. Other Issues

Comments from the State Attorneys General and certain efficiency advocacy organizations commented that other nations such as Canada and the United Kingdom have successfully adopted and implemented regulations requiring condensing technology. (CEC, No. 56 at p. 3; Multi-State AGs Joint Comment, No. 49 at p. 8; ASAP *et al.* Joint Comment, No. 61 at p. 4) In response, DOE acknowledges both the energy savings potential of condensing appliances and the adoption of related regulatory requirements by other nations such as Canada and the U.K. However, DOE must act in accordance with domestic law (*i.e.,* EPCA) in formulating energy conservation standards, complying with all relevant requirements, including the features provision.

Additionally, the State Attorneys General argued that granting the Gas Industry Petition would impermissibly further delay DOE's publication of final rule for the products/equipment in question, rules which EPCA requires DOE to publish within two years after a proposal. The commenters pointed out that DOE's statutory deadlines for promulgating final furnace and water heater standards expired in March 2017 and May 2018, respectively. (Multi-State AGs Joint Comment, No. 49 at pp. 4–6) In response, DOE remains cognizant of its legal deadlines and plans to act expeditiously to comply with its mandates pursuant to EPCA. At the

same time, the Gas Industry Petitioners have the right to petition for rulemaking under the Administrative Procedure Act, which provides that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' 5 U.S.C. 553(e). DOE is not at liberty to pick and choose among its legal obligations, but instead it must comply with all applicable legal requirements. In this case, DOE must evaluate and respond to the Gas Industry Petition and then implement any revised interpretation in the context of its ongoing rulemaking obligations.

IV. DOE's Proposed Revised Interpretation

In consideration of public comments and other information received on the Gas Industry Petition, DOE proposes to revise its interpretation of EPCA's ''features'' provision in the context of condensing and non-condensing technology used in furnaces, water heating equipment, and similarly-situated appliances (where permitted by EPCA). Based on those comments, DOE prospectively interprets the statute to provide that adoption of energy conservation standards that would limit the market to natural gas and/or propane gas furnaces, water heaters, or similarly situated products/equipment (where permitted by EPCA) that use condensing combustion technology would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) and 42 U.S.C. 6316(a).

The statute accords the Secretary of Energy considerable discretion in terms of determining whether a performance characteristic of a covered product/equipment amounts to a performance-related feature which cannot be eliminated through adoption of an energy conservation standard. DOE has taken the opportunity presented by the Gas Industry Petition to reconsider its historical interpretation of EPCA's ''features'' provision in the context of condensing and non-condensing technologies used by certain gas appliances. Contrary to the petitioners' assessment, DOE found this to be a close case, with persuasive arguments on both sides of the issue. However, a number of factors have convinced DOE to revise its interpretation.

First, DOE acknowledges that it has, in the past, taken space constraints and similar limitations into account when setting product classes (*e.g.,* PTACs, ventless clothes dryers). For example, DOE was sensitive to the costs associated with requiring expensive building modifications when it decided to set separate equipment classes for standard size PTACs and non-standard size PTACs. 73 FR 58772 (Oct. 7, 2008). DOE expects that similar expenses would occur here, if DOE were to hold to its historical interpretation, at least for some subset of installations. Although limited data were provided to address the actual costs that consumers and commercial customers would face to modify their existing category I venting, there is little doubt that some number of such installations would be quite costly. These more complicated/costly installations are documented as part of DOE's analysis of the venting costs for residential furnaces, which considered potential venting modifications that could be required when replacing an existing category I furnace with a condensing (category IV) furnace (*see* appendix 8D of the 2016 SNOPR TSD for further details).

Second, DOE has in the past focused on the consumer's interaction with the product/equipment in deciding whether a performance feature is at issue. In the context of residential furnaces and commercial water heaters, DOE has focused on the primary function of the appliance (*e.g.,* providing heat to a home or potable hot water) in establishing the nexus to the consumer. In the past, DOE opined that consumers were only interested in obtaining heat or hot water from the appliance, so they would not care about the mechanism for generating that end product. However, commenters have made clear that in at least some cases, the physical changes associated with a condensing appliance may change a home's aesthetics (*e.g.,* by adding new venting into the living space or decreasing closet or other storage space), thereby impacting consumer utility even under DOE's prior approach.

Third, DOE notes that it has been its policy to remain neutral regarding competing energy sources in the marketplace. As certain commenters have pointed out and as DOE's own analyses have shown, some enhanced level of fuel switching is likely to accompany standard setting using DOE's prior interpretation. Many consumers who are currently gas customers may show a proclivity for that fuel type and would be negatively impacted by a standard that requires the purchase of a condensing unit to the extent they feel compelled to change to a different fuel type. DOE seeks neither to determine winners and losers in the marketplace nor to limit consumer choice.

Finally, DOE is very concerned about ensuring energy affordability, particularly for persons with low incomes. Although energy efficiency improvements may pay for themselves over time, there is a significant increase in first-cost associated with furnaces and water heaters using condensing technology. For consumers with difficult installation situations (*e.g.,* inner-city row houses), there would be the added cost of potentially extensive venting modifications. In certain cases, commenters have argued that accommodating condensing products may not even be possible. Although DOE continues to believe that costs are properly addressed in the economic analysis portion of its rulemakings, it remains cognizant of such issues. DOE has tentatively concluded that the other reasons discussed immediately above are sufficient in and of themselves to justify the Department's proposed change in interpretation, but it acknowledges these cost impacts in order to be fully transparent in terms of the agency's thinking.

Creating separate product classes for condensing and non-condensing furnaces, water heaters, and similarly situated products/equipment (where permitted by EPCA) would prevent many of these potential problems. Although DOE's proposed revised approach may have some impact on overall energy saving potential as a result of establishing separate product/equipment classes, that is not the touchstone of EPCA's ''features'' provision; through that provision, Congress expressed its will that certain product utilities will take priority over additional energy savings measures. (For example, DOE did not eliminate the oven window which consumers found useful, despite the potential for further energy savings.) With that said, DOE believes that any potentially negative programmatic impacts of its revised interpretation are likely to be limited. This interpretation is likely to impact only a limited set of appliances, and DOE notes that market trends have favored the growing reach of condensing furnaces, even as non-condensing alternatives have remained available. DOE has every reason to believe that such trends will continue.

DOE would clarify the limitations of its proposed revised interpretation, based upon the existing statutory provisions. As discussed previously, DOE can effect this change for all relevant consumer products, all non-ASHRAE commercial and industrial equipment, and ASHRAE equipment in those instances where DOE has clear and convincing evidence to adopt levels higher than the levels in ASHRAE Standard 90.1.

As noted, additional, subsequent DOE action is required before the interpretation in this proposed interpretive rule can be implemented. This proposed interpretive rule, therefore, does not alter the Department's current regulations. This interpretation does not and will not be used to abrogate DOE's responsibilities under existing laws or regulations, nor does it change DOE's existing statutory authorities or those of its regulators at the Federal, State, or local level. DOE anticipates continued engagement and productive involvement of members of the public and the regulated community in subsequent activities that may follow this interpretation.

V. Conclusion

As discussed immediately above, DOE is granting the Gas Industry Petition to the extent that it prospectively interprets the statute to provide that adoption of energy conservation standards that would limit the market of natural gas and/or propane gas furnaces, water heaters, or similarly situated products/equipment (where permitted by EPCA) that use condensing combustion technology would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) and 42 U.S.C. 6316(a). Such interpretation would apply to all applicable residential products, non-ASHRAE commercial equipment, and ASHRAE equipment where DOE adopts a level more stringent than the ASHRAE level.

DOE is denying the Gas Industry Petition as it pertains to those rulemakings where ASHRAE sets standard levels that trigger DOE to consider and adopt those level (unless DOE finds clear and convincing evidence to adopt more-stringent levels), due to lack of authority. DOE is also denying the Gas Industry Petition's request for DOE to withdraw the proposed rules for residential furnaces and commercial water heaters as unnecessary. If this interpretive rule is finalized, DOE anticipates developing supplemental notices of proposed rulemaking (SNOPRs) that would implement the new legal interpretation for those two rulemakings.

Through this interpretive rule, DOE states its understanding of the best interpretation of the statutory text in light of the language and purposes of EPCA, so as to be consistent with Congress's direction. In light of further consideration and the information presented with and in response to the Gas Industry Petition, DOE's position has evolved, and it has tentatively concluded that this revised interpretation is the best reading of EPCA's ''features'' provision. This interpretation does not, by itself, change existing applicable DOE regulations or policies regarding individual appliance standards rulemakings. Implementation of this interpretation in the context of energy conservation standards for particular products or equipment, and any changes to existing policies that may be appropriate in light of this interpretation will be the subject of subsequent actions.

DOE wishes to make clear that an interpretative rule is a type of rule or regulation within the meaning of those terms in the Administrative Procedure Act (APA), 5 U.S.C. 551(4). It is well established under the APA that agencies have the authority to issue interpretative rules, and that these rules are a valuable tool for an agency to use to advise the public prospectively and in a clear and transparent manner of the agency's construction of a statute it administers. As such, an interpretative rule does not have force and effect on its own. It is not until the agency takes an action in which the interpretation is applied that the interpretation can have an effect and, even then, only through that subsequent action.

When DOE considers this statutory interpretation in the context of taking any action in the future with regard to energy conservation standards rulemakings, it will evaluate its policies to determine if any require revision to accommodate this interpretation, and if so, DOE will follow applicable procedures to make any necessary changes. However, DOE's legal interpretations do not themselves constitute agency action.

DOE's interpretation does not have legal effect on its own. As appropriate, the public will be notified and have an opportunity to comment on any such proposals implementing the interpretation. Furthermore, the many substantive comments received, including comments that led to revisions of DOE's interpretation of the ''features'' provision,'' as reflected in this proposed interpretive rule, indicate that the public had a meaningful opportunity to comment on DOE's general interpretation. As DOE has indicated, there will be additional processes after the interpretation has been issued but before any rulemaking decisions are implemented.

VI. Public Participation

Submission of Comments

DOE invites all interested parties to submit in writing by the date listed in the **DATES** section of this document, comments and information regarding this proposed interpretive rule.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information prior to submitting comments. Your contact information will be viewable to DOE Building Technologies 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 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. 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. 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.

Submitting comments via email, hand delivery, or postal mail. Comments and documents via email, hand delivery, or postal mail will also 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 on 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 in your cover letter each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

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

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.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked ''Confidential'' including all the information believed to be confidential, and one copy of the document marked ''Non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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).

DOE considers public participation to be a very important part of its process for considering regulatory actions. DOE actively encourages the participation and interaction of the public during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in determining how to proceed with a regulatory action. Anyone who wishes to be added to DOE mailing list to receive future document and information about this matter should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this document granting in part and denying in part the relevant petition for rulemaking and issuing a proposed interpretive rule.

Signed in Washington, DC, on June 28, 2019.

Daniel R. Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–14553 Filed 7–10–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0502; Airspace Docket No. 19–ASO–13]

RIN 2120–AA66

Proposed Amendment of the Class E Airspace; Haleyville, AL, and Hamilton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Posey Field Airport, Haleyville, AL, and Marion County-Rankin Fite Airport, Hamilton, AL. The FAA is proposing this action as the result of the decommissioning of the Hamilton VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The name and geographic coordinates of Marion County-Rankin Fite Airport would also be updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Comments must be received on or before August 26, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0502; Airspace Docket No. 19–ASO–13, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation

Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Posey Field Airport, Haleyville, AL, and Marion County-Rankin Fite Airport, Hamilton, AL, to support IFR operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0502/Airspace Docket No. 19–ASO–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at http://www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at http://*www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (increased from a 6.4-mile radius) at Posey Field Airport, Haleyville, AL; removing the city associated with the airport in the airspace legal description to comply with a change in FAA Order 7400.2M, Procedures for Handling Airspace Matters; removing the Hamilton VORTAC and associated extension from the airspace legal description; and adding an extension 2 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11 miles north of the airport;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (reduced from a 6.6-mile radius) of Marion County-Rankin Fite Airport, Hamilton, AL; removing the city associated with the airport in the airspace legal description to comply with a change in FAA Order 7400.2M; removing the Hamilton VORTAC and associated extension from the airspace legal description; adding an extension 4 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11.8 miles north of the airport; adding an extension 4 miles each side of the 182° bearing from the airport extending from the 6.5-mile radius to 11.4 miles south of the airport; and would update the name and geographic coordinates of the Marion County-Rankin Fite Airport (formerly Marion County Airport) to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Hamilton VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASO AL E5 Haleyville, AL [Amended]

Posey Field Airport, AL
(Lat. 34°16′49″ N, long. 87°36′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Posey Field Airport, and within 2 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11 miles north of the airport.

ASO AL E5 Hamilton, AL [Amended]

Marion County-Rankin Fite Airport, AL
(Lat. 34°07′01″ N, long. 87°59′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marion County-Rankin Fite Airport, and within 4 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11.8 miles north of the airport, and within 4 miles each side of the 182° bearing from the airport extending from the 6.5-mile radius to 11.4 miles south of the airport.

Issued in Fort Worth, Texas, on July 1, 2019.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–14633 Filed 7–10–19; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–10660; 34–86302; 39–2527; IA–5284; IC–33543; File No. S7–10–19]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: List of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

DATES: Comments should be submitted by August 12, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–10–19 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. S7–10–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/other.shtml*). Comments also are 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 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.

FOR FURTHER INFORMATION CONTACT: Leila Bham, Office of the General Counsel, 202–551–5532.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (''RFA''), codified at 5 U.S.C. 601–612, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is ''to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. When the Commission implemented the RFA in 1981, it stated that it ''intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.'' Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981). The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities (but excludes such rules that are minor amendments to previously adopted rules or rules that are ministerial, procedural, or technical in nature). Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules

listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission.

Title: Risk Management Controls for Brokers or Dealers with Market Access.

Citation: 17 CFR 240.15c3–5.

Authority: 15 U.S.C. 78b, 78c(b), 78k–1, 78o, 78q(a) and (b), and 78w(a).

Description: The Commission adopted a new rule under the Securities Exchange Act of 1934 (''Exchange Act'') to require broker-dealers with market access to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage financial, regulatory, and other risks of this business activity. These risk management controls and supervisory procedures are required to be under the direct and exclusive control of the broker-dealer subject to the obligations (subject to certain limited exceptions). In addition, these risk management controls and supervisory procedures must be reviewed for effectiveness on at least an annual basis, and the broker-dealer's Chief Executive Officer (or equivalent officer) must certify, on an annual basis, that the broker-dealer's controls and procedures comply with the requirements of the rule.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34–63241 (November 3, 2010). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34–61379 (January 19, 2010).

* * * * *

Title: Facilitating Shareholder Director Nominations.

Citation: 17 CFR 200.82a, 17 CFR 232.13, 17 CFR 240.13a–11, 17 CFR 240.13d–1, 17 CFR 240.13d–102, 17 CFR 240.14a–2, 17 CFR 240.14a–4, 17 CFR 240.14a–5, 17 CFR 240.14a–6, 17 CFR 240.14a–8, 17 CFR 240.14a–9, 17 CFR 240.14a–11, 17 CFR 240.14a–12, 17 CFR 240.14a–18, 17 CFR 240.14a–101, 17 CFR 240.14n–1 through 14n–3, 17 CFR 240.14n–101, 17 CFR 240.15d–11, and 17 CFR 249.308.

Authority: 15 U.S.C. 78c(b), 78m, 78n, 78o, 78w(a), 78mm, 80a–10, 80a–20(a), and 80a–37, and sections 971(a) and (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Description: The Commission adopted changes to the federal proxy rules to facilitate the effective exercise of shareholders' traditional state law rights to nominate and elect directors to company boards of directors. The rules require that specified disclosures be made concerning nominating shareholders or groups and their nominees. In addition, the rules provide that companies must include in their proxy materials, under certain circumstances, shareholder proposals that seek to establish a procedure in the company's governing documents for the inclusion of one or more shareholder director nominees in the company's proxy materials. The Commission also adopted related changes to certain of its other rules and regulations, including the existing solicitation exemptions from its proxy rules and the beneficial ownership reporting requirements.[1]

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–9136 (Aug. 25, 2010). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 33–9046 (June 10, 2009), but received no comments on that analysis. However, the adopting release considered other comments received that addressed aspects of the proposed rule that could potentially affect small entities.

* * * * *

Title: Amendments to Form ADV.

Citation: 17 CFR 275.203–1, 17 CFR 275.204–1, 17 CFR 275.204–2, 17 CFR 275.204–3, and 17 CFR 279.1.

Authority: 15 U.S.C. 80b–3(c)(1), 80b–4, 80b–6(4), 80b–11(a), 77s(a), 78w(a), 78bb(e)(2), 77sss(a), and 78a–37(a).

Description: The Commission adopted amendments to Part 2 of Form ADV, and related rules under the Investment Advisers Act of 1940 (''Investment Advisers Act''), to require investment advisers registered with the Commission to provide new and prospective clients with a brochure and brochure supplements written in plain English. These amendments were designed to provide new and prospective advisory clients with clearly written, meaningful, current disclosure of the business practices, conflicts of interest, and background of the investment adviser and its advisory personnel. Advisers must file their brochures with the Commission electronically and the brochures are made available to the public through the Commission's website. The Commission also withdrew the Advisers Act rule requiring advisers to disclose certain disciplinary and financial information.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IA–3060 (July 28, 2010). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IA–2711 (Mar. 3, 2008), but received no comments on that analysis. However, the adopting release considered other comments received that addressed aspects of the proposed rule that could potentially affect small entities.

* * * * *

Title: Political Contributions by Certain Investment Advisers.

Citation: 17 CFR 275.204–2, 17 CFR 275.206(4)–3, and 17 CFR 275.206(4)–5.

Authority: 15 U.S.C. 80b–4, 80b–6(4), and 80b–11(a).

Description: The Commission adopted a new rule under the Investment Advisers Act that prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees make a contribution to certain elected officials or candidates. The rule also prohibits an adviser from providing or agreeing to provide, directly or indirectly, payment to any third party for a solicitation of advisory business from any government entity on behalf of such adviser, unless such third parties are registered broker-dealers or registered investment advisers, in each case themselves subject to pay to play restrictions. Additionally, the rule prevents an adviser from soliciting from others, or coordinating, contributions to certain elected officials or candidates or payments to political parties where the adviser is providing or seeking government business. The amendments require a registered adviser to maintain certain records of the political contributions made by the adviser or certain of its executives or employees. The rule and rule amendments address ''pay to play'' practices by investment advisers.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was

[1] 17 CFR.240.14a–11 (''Rule 14a–11'') was also adopted in this release. It would have required, under certain circumstances, a company's proxy materials to provide shareholders with information about, and the ability to vote for, a shareholder's, or group of shareholders', nominees for director. On July 22, 2011, the United States Court of Appeals for the D.C. Circuit issued an order vacating Rule 14a–11 and on September 14, 2011, the Court issued its mandate. The Court's order did not affect the amendment to Rule 14a–8, which was not challenged in the litigation, or the related rules and amendments adopted concurrently with Rule 14a–11 and the amendment to Rule 14a–8.

prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IA–3043 (July 1, 2010). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IA–2910 (Aug. 3, 2009).

* * * * *

Title: Amendment to Municipal Securities Disclosure.

Citation: 17 CFR 240.15c2–12.

Authority: 15 U.S.C. 78b, 78c(b), 78j, 78*o*(c), 78*o*–4, and 78w(a)(1).

Description: The Commission adopted amendments to Rule 15c2–12 under the Exchange Act relating to municipal securities disclosure. The amendments revised certain requirements regarding the information that the broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide to the Municipal Securities Rulemaking Board (''MSRB''). Specifically, the amendments require a broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has agreed to provide notice of specified events in a timely manner not in excess of ten business days after the event's occurrence; amend the list of events for which is notice is to be provided; and modify the events that are subject to a materiality determination before triggering a requirement to provide notice to the MSRB. In addition, the amendments revised an exemption from the Rule for certain offerings of municipal securities with put features. The release also provides interpretive guidance intended to assist municipal securities brokers, dealers, and municipal securities dealers in meeting their obligations under the antifraud provisions of the federal securities laws.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34–62184A (May 27, 2010). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34–60332 (July 24, 2009).

* * * * *

Title: Amendments to Regulation SHO.

Citation: 17 CFR 242.200(g) and 17 CFR 242.201.

Authority: 15 U.S.C. 78b, 78c(b), 78(f), 78i(h), 78j, 78k–1, 78o, 78o–3, 78q, 78s, 78w(a), and 78mm.

Description: The Commission adopted amendments to Regulation SHO under the Exchange Act, in particular a short sale-related circuit breaker that, if triggered, imposes a restriction on the prices at which securities may be sold short (''short sale price test'' or ''short sale price test restriction''). Specifically, the Rule requires that a trading center establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. In addition, the Rule requires that the trading center establish, maintain, and enforce written policies and procedures reasonably designed to impose this short sale price test restriction for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. In addition, the Commission amended Regulation SHO to provide that a broker-dealer may mark certain qualifying sell orders ''short exempt.'' In particular, if the broker-dealer chooses to rely on its own determination that it is submitting the short sale order to the trading center at a price that is above the current national best bid at the time of submission or to rely on an exception specified in the Rule, it must mark the order as ''short exempt.'' This ''short exempt'' marking requirement aids surveillance by self-regulatory organizations and the Commission for compliance with the provisions of Rule 201 of Regulation SHO.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34–61595 (Feb. 26, 2010). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34–59748 (April 10, 2009).

* * * * *

Title: Money Market Fund Reform.

Citation: 17 CFR 270.2a–7, 17 CFR 270.17a–9, 17 CFR 270.22e–3, 17 CFR 270.30b1–6T, 17 CFR 270.30b1–7, and 17 CFR 274.201.

Authority: 15 U.S.C. 80a–6(c), 80a–8(b), 80a–22(c), 80a–22(e), 80a–29(b), 80a–30(a), and 80a–37(a).

Description: The Commission adopted amendments to certain rules that govern money market funds under the Investment Company Act of 1940. The amendments tightened the risk-limiting conditions of rule 2a–7 by, among other things, requiring funds to maintain a portion of their portfolios in instruments that can be readily converted to cash, reducing the maximum weighted average maturity of portfolio holdings, and improving the quality of portfolio securities; requiring money market funds to report their portfolio holdings monthly to the Commission; and permitting a money market fund that has ''broken the buck'' (*i.e.,* re-priced its securities below $1.00 per share), or is at imminent risk of breaking the buck, to suspend redemptions to allow for the orderly liquidation of fund assets. The amendments were designed to make money market funds more resilient to certain short-term market risks, and to provide greater protections for investors in a money market fund that is unable to maintain a stable net asset value per share.

Prior RFA Analysis: Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. IC–28807 (June 30, 2009). As stated in the adopting release, Release No. IC–29132 (Feb. 23, 2010), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

* * * * *

Title: Amendments to Rules Requiring Internet Availability of Proxy Materials.

Citation: 17 CFR 240.14a–16 and 17 CFR 230.498.

Authority: 15 U.S.C. 77f, 77g, 77j, 77s, 78c(b), 78m, 78n, 78o, 78w(a), 80a–8, 80a–20(a), 80a–24(a), 80a–29, and 80a–37.

Description: The Commission adopted amendments to rules under the Exchange Act and the Securities Act of 1933 to clarify and provide additional flexibility regarding the format of the Notice of Internet Availability of Proxy Materials that is sent to shareholders and to permit issuers and other soliciting persons to better communicate

with shareholders by including explanatory materials regarding the reasons for the use of the notice and access proxy rules and the process of receiving and reviewing proxy materials and voting pursuant to the notice and access proxy rules. The amendments also revised the timeframe for delivering a notice to shareholders when a soliciting person other than the issuer relies on the notice and access proxy rules and permit mutual funds to accompany the Notice with a summary prospectus.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 603 in conjunction with the Commission's adoption of Release No. 33–9108 (Feb. 22, 2010). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 33–9073 (Oct. 14, 2009), but, as stated in the adopting release, received no comments on that analysis.

* * * * *

Title: Shareholder Approval of Executive Compensation of TARP Recipients.

Citation: 17 CFR 240.14a–6, 17 CFR 240.14a–20, and 17 CFR 240.14a–101.

Authority: 12 U.S.C. 5221(e), and 15 U.S.C. 78n(a) and 78w(a).

Description: The Commission adopted amendments to the proxy rules under the Exchange Act to set forth certain requirements for U.S. registrants subject to Section 111(e) of the Emergency Economic Stabilization Act of 2008 (''EESA''). Section 111(e) of EESA requires companies that have received financial assistance under the Troubled Asset Relief Program (''TARP'') to permit a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission, during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. The amendments were intended to help implement this requirement by specifying and clarifying it in the context of the federal proxy rules.

Prior RFA Analysis: Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Commission certified that the proposed amendment to the federal proxy rules would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34–60218 (July 1, 2009). As stated in the adopting release, Release No. 34–61335 (January 12, 2010), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

* * * * *

By the Commission.

Dated: July 3, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–14616 Filed 7–10–19; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0813; FRL–9996–23–Region 4]

Air Plan Approval; Georgia; 2008 8-Hour Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Georgia's August 15, 2018, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is proposing to determine that Georgia will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state. Therefore, EPA is proposing to approve the August 15, 2018, SIP revision as meeting the requirements of the good neighbor provision for the 2008 8-hour ozone NAAQS.

DATES: Comments must be received on or before August 12, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0813 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can also be reached via telephone at (404) 562–9009 and via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm.[1] *See* 73 FR 16436 (March 27, 2008). Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions.

One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four sub-elements, or ''prongs,'' within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor'' provision, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with

[1] 0.075 ppm equates to 75 parts per billion (ppb).

maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). This proposed action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i). All other infrastructure SIP elements for Georgia for the 2008 8-hour ozone NAAQS were addressed in separate rulemakings.[2]

A. State Submittal

On August 15, 2018, the Georgia Environmental Protection Division (GA EPD) provided a SIP submittal to EPA to address the interstate transport requirements of sections 110(a)(2)(D)(i)(I) for the Georgia SIP.[3] Georgia made this submission to certify that its SIP contains adequate provisions to prohibit emissions activities within the State which will contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state, and therefore, adequately addresses the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS.[4] Georgia's certification is based on EPA's air quality modeling and monitoring data, SIP-approved and state provisions regulating emissions of ozone precursors (volatile organic compounds (VOCs) and nitrogen oxides (NO_X)) within the State, and an analysis of recent trends in emissions of ozone precursors (VOCs and NO_X) from Georgia sources.

B. EPA's Analysis Related to 110(a)(2)(D)(i)(I) for the 2008 8-Hour Ozone NAAQS

EPA developed technical information and related analyses to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 8-hour ozone NAAQS through SIPs and, as appropriate, to provide backstop federal implementation plans (FIPs) in the event that states failed to submit approvable SIPs.[5] On October 26, 2016, EPA took steps to effectuate this backstop role with respect to eastern states [6] by finalizing an update to the 2011 Cross-State Air Pollution Rule (2011 CSAPR) ozone season program that addresses good neighbor obligations for the 2008 8-hour ozone NAAQS (CSAPR Update).[7] The CSAPR Update establishes statewide NO_X budgets for certain affected electricity generating units in 22 eastern states for the May through September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and thereby help downwind states and communities meet and maintain the 2008 8-hour ozone NAAQS. *See* 81 FR 74506. The rule also determined that emissions from 14 states (including Georgia) will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. Accordingly, EPA determined that it need not require further emission reductions from sources in those states to address the good neighbor provision as to the 2008 ozone NAAQS. *Id.*

The CSAPR Update used the same framework that EPA used when developing the original 2011 CSAPR, EPA's interstate transport rule addressing the 1997 8-hour ozone NAAQS as well as the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS. This framework established the following four-step process to address the requirements of the good neighbor provision: (1) Identify downwind areas, referred to as receptors, that are expected to have problems attaining or maintaining the NAAQS; (2) determine which upwind states impact these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems; (3) for states linked to downwind air quality problems, identify upwind emissions, if any, that will significantly contribute to nonattainment or interfere with maintenance of a NAAQS; and (4) reduce the identified upwind emissions for states that are found to have emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind by adopting permanent and enforceable measures in a FIP or SIP. In the CSAPR Update, EPA used this four-step framework to determine whether states in the east will significantly contribute to nonattainment or interfere with maintenance of downwind air quality. As explained below, the CSAPR Update's four-step analysis supports the conclusions provided in GA EPD's August 15, 2018, interstate transport SIP submittal for the 2008 8-hour ozone NAAQS that the state will not significantly contribute to nonattainment or interfere with maintenance of the standard in other states.

In the technical analysis supporting the CSAPR Update, EPA used detailed air quality analyses to determine where projected nonattainment or maintenance receptors would be, at step 1 of the four-step framework, and whether emissions from an eastern state contribute to downwind air quality problems at those projected nonattainment or maintenance receptors, at step 2 of the framework. Specifically, EPA determined whether each state's contributing emissions were at or above a specific threshold. EPA determined that one percent was an appropriate threshold to use in this analysis because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states at that threshold.[8] *See* 81

[2] *See* 83 FR 19637 (May 4,2018); 80 FR 61109 (October 9, 2015); and 80 FR 14019 (March 18, 2015).

[3] On March 6, 2012, Georgia submitted a SIP revision to address the 110(a)(1) and (2) requirements of the CAA including section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On October 3, 2013, the State withdrew its good neighbor SIP submission. *See* August 29, 2016, Memorandum from Gobeail McKinley re ''Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0500-0509.*

[4] On July 13, 2015, EPA published a final rulemaking that finalized findings of failure to submit with regard to the requirements of CAA section 110(a)(2)(D)(i)(I) for 24 states, including Georgia, with respect to the 2008 ozone NAAQS. *See* 80 FR 39961. The findings of failure to submit established a two-year deadline for EPA to promulgate a FIP to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance unless, prior to EPA promulgating a FIP, the state submits, and EPA approves, a SIP that meets these requirements. Additional background on the findings of failure to submit—including EPA's findings related to Georgia—can be found in the preamble to the final rule. *See* 80 FR 39961.

[5] The EPA issued a Notice of Data Availability on August 4, 2015, requesting comment on the modeling platform and air quality modeling results that were used for the proposed Cross-State Air Pollution Rule (CSAPR) Update. *See* 80 FR 46271.

[6] For purposes of the CSAPR Update, ''eastern'' states refer to all contiguous states fully east of the Rocky Mountains (thus not including the mountain states of Montana, Wyoming, Colorado, or New Mexico).

[7] *See* Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, Final Rule (2011 CSAPR), 76 FR 48208 (August 8, 2011); Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), 81 FR 74504 (October 26, 2016).

[8] EPA's analysis showed that the one-percent threshold generally captured a high percentage of the total pollution transport affecting downwind states. EPA's analysis further showed that the application of a lower threshold would result in relatively modest increases in the overall percentage of ozone transport pollution captured, while the use of higher thresholds would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the levels captured at one percent at the majority of the receptors. *See* 81 FR 74504 (October 26, 2016) and ''Air Quality Modeling Final Rule Technical

FR 74504. For the CSAPR Update, EPA applied an air quality screening threshold of 0.75 ppb (equivalent to one percent of the 2008 8-hour ozone NAAQS of 75 ppb) to identify linkages between upwind states and the downwind nonattainment and maintenance receptors. States with impacts below the one-percent threshold were considered not to contribute to identified downwind nonattainment and maintenance receptors and therefore would not contribute significantly to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state's impact was equal to or exceeded the one-percent threshold, that state was considered linked to the downwind nonattainment or maintenance receptor(s) and the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine whether any emissions reductions might be necessary to address the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

As discussed in the final rulemaking for the CSAPR Update, the air quality modeling contained in EPA's technical analysis: (1) Identified locations in the U.S. where EPA anticipated nonattainment or maintenance issues in 2017 for the 2008 8-hour ozone NAAQS (these were identified as nonattainment or maintenance receptors, respectively), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the receptors in 2017. *See* 81 FR 74504 (October 26, 2016). This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 8-hour ozone NAAQS in 2017. EPA used nationwide state-level ozone source apportionment modeling (the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_X and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States, the District of Columbia, and adjacent portions of Canada and Mexico. The updated modeling data released to support the final CSAPR Update inform the Agency's analysis of upwind state linkages to downwind air quality problems for the 2008 8-hour ozone NAAQS for Georgia. *See* CSAPR Update Modeling TSD.

EPA's air quality modeling for the final CSAPR Update indicated that Georgia's largest impact on any projected downwind nonattainment receptor in 2017 was 0.60 ppb and Georgia's largest contribution to any projected downwind maintenance-only site in 2017 was 0.62 ppb.[9] These values are below the one percent screening threshold of 0.75 ppb, and therefore there are no identified linkages between Georgia and 2017 downwind projected nonattainment and maintenance sites.[10]

II. What is EPA's analysis of the Georgia's submittal?

As mentioned in section I, Georgia's August 15, 2018, submittal certifies that emission activities from the State will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state for the following reasons: (1) Modeling conducted by EPA in support of the CSAPR Update indicates that Georgia's impact on any downwind receptor is less than 1 percent of the standard; (2) NO_X and VOC precursor emissions in Georgia have decreased since 1990; and (3) Georgia has in place both SIP-approved and state provisions that regulate ozone precursors in the State. Based on an assessment of this information, EPA proposes to approve Georgia's SIP submission because the State will not significantly contribute to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 8-hour ozone NAAQS.

Georgia's submittal assessed EPA's CSAPR Update modeling. Georgia cites EPA's August 2016 CSAPR Update Modeling TSD where the modeling indicated that Georgia's largest impact on any projected downwind nonattainment receptor in 2017 was 0.60 ppb and the largest impact on any projected downwind maintenance-only site was 0.62 ppb, both of which are below 0.75 ppb, the one percent threshold for the 2008 ozone NAAQS. EPA concluded that Georgia's emissions will not contribute to downwind nonattainment and maintenance receptors and therefore, did not promulgate a FIP that required additional emission reductions from Georgia. Accordingly, in the CSAPR Update, EPA made a final determination that Georgia emissions will not significantly contribute to nonattainment in, or interfere with maintenance by, any other state for the 2008 ozone NAAQS and that sources in the State are not required to further reduce emissions pursuant to the good neighbor provision with respect to this standard.[11]

Georgia's submittal also notes that total annual NO_X emissions and total annual VOC emissions in the state have decreased by 58 percent and 49 percent, respectively, between 1990 and 2017. EPA notes that ozone precursor emissions nationally continue to decline from 1990 levels and are largely driven by federal and state implementation of stationary and mobile source regulations.[12] Additionally, nationwide ozone concentrations have also decreased since 1990. *Id.*

GA EPD identified regulations that have been approved into the Georgia SIP to provide for the control of NO_X and VOCs, which are precursors that contribute to ambient ozone concentrations. These regulations include Regulations 391–3–1–.02—*Provisions Amended* and 391–3–1–.03—*Permits,* which provide for the implementation of a permitting program for New Source Review and Prevention of Significant Deterioration requirements required under Title I, Parts C and D of the CAA for sources of NO_X and VOCs. The permitting requirements help ensure that NO_X and VOC emissions from new and modified sources are controlled.

Specifically for the control of NO_X, GA EPD identified SIP-approved regulations that establish emission standards and compliance (testing and monitoring) requirements for stationary sources of air pollution: 391–3–1–.02(2)(yy)—*Emissions of Nitrogen Oxides from Major Sources,* 391–3–1–

Support Document for the Final CSAPR Update'' (CSAPR Update Modeling TSD), available at *https://www.epa.gov/sites/production/files/2017-05/documents/aq_modeling_tsd_final_csapr_update.pdf.* This approach is consistent with the use of a one-percent threshold to identify those states ''linked'' to air quality problems with respect to the 1997 8-hour ozone NAAQS in the original CSAPR rulemaking, wherein EPA noted that there are adverse health impacts associated with ambient ozone even at low levels. *See* 76 FR 48208 (August 8, 2011); *see also* ''Air Quality Modeling Final Rule Technical Support Document'' for the 2011 CSAPR, located at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0491-4140.*

[9] *See* CSAPR Update Modeling TSD at Table 4–2, section 4.4 and Appendix D.

[10] Georgia continues to have CSAPR NO_X ozone season requirements (including emission budget) related to the 1997 ozone NAAQS. *See* 81 FR 74504, 74524 n 92.

[11] *See* 81 FR 74506. EPA is not reopening for comment final determinations made in the CSAPR Update or the modeling conducted to support that rulemaking.

[12] *See* EPA's annual report on the nation's air quality status and trends through 2017, *available at https://gispub.epa.gov/air/trendsreport/2018/documentation/AirTrends_Flyer.pdf.*

.02(2)(jjj)—*NO_X* Emissions from Electric Utility Steam Generating Units, 391–3–1–.02(2)(lll)—*NO_X* Emissions From Fuel-Burning Equipment, and Regulation 391–3–1–.02(2)(rrr)—*NO_X* from Small Fuel-Burning Equipment. Georgia also identified Regulation 391–3–20—*Vehicle Emissions Inspection and Maintenance (I/M) Program* which regulates vehicle emissions in the state.[13]

Georgia further identified the following SIP-approved regulations that provide for the implementation of VOC emissions controls by fulfilling RACT requirements for specific source categories: Regulation 391–3–1–.02(2)(t) through (ff), (hh) through (nn), (pp) through (ss), (vv), (ccc) through (eee), (hhh), (kkk), (vvv), and (yyy) through (aaaa). GA EPD further identified Regulation 391–3–1–.02(2)(tt)—*VOC Emissions from Major Sources,* which outlines the case-by-case RACT regulations in the State.

EPA proposes to approve Georgia's August 15, 2018, SIP submission on grounds that it addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2008 8-hour ozone NAAQS because EPA has found that the State will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state.

III. Proposed Action

EPA is proposing to determine that Georgia will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state. Therefore, EPA is proposing to approve Georgia's August 15, 2018, SIP submission as meeting the CAA requirements of prongs 1 and 2 under section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. EPA requests comment on this proposed approval of Georgia's SIP.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 26, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–14729 Filed 7–10–19; 8:45 am]

BILLING CODE 6560–50–P

[13] Although not relied upon for purposes of approval, GA EPD also identified state-only provisions of the Georgia Rules for Air Quality Control 391–3–1–.02(2)(sss)—*Multipollutant Control for Electric Utility Steam Generating Units* as a regulations that the State is implementing which provides for the control of NO_X emissions.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0165; FRL–9996–17–Region 9]

Air Quality Implementation Plan; California; Yolo-Solano Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a revision to the Yolo-Solano Air Quality Management District (YSAQMD or ''the District'') portion of the California State Implementation Plan (SIP). We are proposing to approve a rule governing issuance of permits for stationary sources, including review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''the Act''). Specifically, the revision pertains to YSAQMD Rule 3.25, ''Federal New Source Review for New and Modified Major $PM_{2.5}$ Sources.'' We are taking comments on this proposal and a final action will follow.

DATES: Written comments must be received on or before August 12, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0165 at *https://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Maggie Waldon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3987 or by email at *waldon.margaret@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date it was adopted by YSAQMD and submitted by the California Air Resources Board (CARB), the governor's designee for California SIP submittals. Rule 3.25 contains the District's Nonattainment New Source Review (NNSR) permit requirements applicable to new and modified major sources emitting fine particulate matter ($PM_{2.5}$) and $PM_{2.5}$ precursors.

TABLE 1 SUBMITTED RULE

Rule #	Rule title	Adopted	Submitted
3.25	Federal New Source Review for New and Modified Major $PM_{2.5}$ Sources	05/15/19	06/04/19

On June 10, 2019, the EPA notified CARB that its June 4, 2019 submittal of Rule 3.25 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. The submittal includes evidence of public notice and adoption of the regulation.

B. What is the purpose of the submitted rule?

For areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the SIP must include preconstruction permit requirements for new or modified major stationary sources of such nonattainment pollutant(s), commonly referred to as Nonattainment New Source Review (NNSR). YSAQMD Rule 3.25 addresses statutory and regulatory requirements for NNSR permits for major sources of $PM_{2.5}$ and $PM_{2.5}$ precursors.

II. The EPA's Evaluation

A. What is the background for today's proposal?

On November 13, 2009, the EPA designated the Sacramento Valley Air Basin, including the eastern portions of Yolo and Solano counties, as nonattainment for the 2006 $PM_{2.5}$ NAAQS (the Sacramento $PM_{2.5}$ nonattainment area).[1] Because the Sacramento $PM_{2.5}$ nonattainment area includes areas under YSAQMD's jurisdiction, the District was required to submit, by December 31, 2014, a SIP revision to address NNSR requirements for major sources of $PM_{2.5}$ and $PM_{2.5}$ precursors. On June 8, 2016, the EPA published in the **Federal Register** a finding of failure to submit the required SIP revision.[2] On August 16, 2017, YSAQMD submitted Rule 3.25 ''New Source Review for New and Modified Major $PM_{2.5}$ Sources,'' as adopted on July 12, 2017, and on May 16, 2018, the EPA notified the state that its August 16, 2017 submittal of Rule 3.25 addressed the EPA's finding of failure to submit.[3] As noted in Table 1, today's action involves a newly revised version of Rule 3.25, adopted on May 15, 2019 and submitted on June 5, 2019.

B. How is the EPA evaluating the rule?

The EPA reviewed YSAQMD Rule 3.25 for compliance with CAA requirements for: (1) SIPs in general as set forth in CAA section 110(a)(2); (2) SIP revisions as set forth in CAA section 110(l);[4] (3) stationary source preconstruction permitting programs in CAA Part D, including section 172 and 173(a) through (c) of subpart 1, and subpart 4; and (4) requirements related to the review and modification of major sources in 40 CFR 51.160—51.165 including requirements set forth in the EPA's rule ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' (''2016 Implementation Rule'').[5] The 2016 Implementation Rule requires areas classified as nonattainment for any $PM_{2.5}$ NAAQS to comply with CAA section 189(e) requirements for control of major stationary sources of PM_{10} and $PM_{2.5}$ precursors.[6] To implement requirements applicable to major sources of $PM_{2.5}$, the 2016 Implementation Rule also amended 40 CFR 51.165 definitions of the terms (1) Regulated NSR Pollutant; (2) Major Stationary Source; and (3) Significant. Rule 3.25 must be consistent with these recent regulatory requirements.

C. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. Based on our review of the public process documentation included in the August 16, 2017 submittal, we find that YSAQMD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to substantive requirements found in CAA sections 172, 173 and 189(e) and 40 CFR 51.160–51.165, we have evaluated YSAQMD Rule 3.25 in accordance with the CAA and regulatory requirements that apply

[1] 7 FR 65346, October 26, 2012.

[2] 81 FR 36803, June 8, 2016.

[3] Letter from Elizabeth J. Adams, U.S. EPA Region 9, to Richard Corey, CARB, dated May 16, 2018.

[4] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

[5] 81 FR 58010, (August 24, 2016).

[6] 40 CFR 51.165(a)(13); 81 FR 58106–58116 (August 24, 2016).

to NNSR permit programs under part D of title I of the Act. We find that Rule 3.25 satisfies the requirements for a $PM_{2.5}$ NNSR permit program.

Our Technical Support Document, which can be found in the docket for this rule, contains a more detailed discussion of our evaluation of Rule 3.25.

III. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted rule because it fulfills all relevant requirements. We have concluded that our approval of the submitted rule would comply with CAA sections 110(a)(2), 172, 173 and 189(e), and 40 CFR 51.160–51.165.

In support of this proposed action, we have concluded that our action would comply with section 110(l) of the Act because approval of Rule 3.25 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220 (Identification of Plan-in part).

We will accept comments from the public on this proposal until August 12, 2019.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the YSAQMD rule listed in Table 1 of this preamble. The EPA has made, and will continue to make, this document available electronically through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 25, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–14629 Filed 7–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0184; FRL–9996–27–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology State Implementation Plan for Volatile Organic Compounds Under the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the District of Columbia (the District). The District's SIP revision satisfies the volatile organic compound (VOC) reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (NAAQS). The District will address RACT for nitrogen oxides (NO_X) in a separate SIP submission. The District's RACT submittal for the 2008 ozone NAAQS includes certification that for certain major sources, previously adopted VOC RACT controls in the District's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; a listing of the Control Techniques Guidelines (CTGs) already adopted into the District's SIP, and a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA. The District's SIP submittal also includes an update to the 2002 Mobile Equipment Repair and Refinishing (MERR) rule to incorporate the Ozone Transport Commission's (OTC) 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations (MVMERR) rule adopted by the District in 2016. EPA is addressing

the 2009 MVMERR rule in a separate rulemaking action as it is not related to the 2008 VOC RACT SIP revision and does not impact EPA's proposed approval. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 12, 2019.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2019–0184 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, Planning & Implementation Branch (3AD30) Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2036. Mr. Gregory A. Becoat can also be reached via electronic mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 29, 2018, the District of Columbia Department of Energy and Environment (DOEE) submitted a SIP revision to address all the RACT requirements for VOCs set forth by the CAA under the 2008 8-hour ozone NAAQS (the 2018 RACT Submission). The DOEE also submitted as an amendment to the SIP-approved 2002 MERR rule the updated 2009 MVMERR rule. As previously mentioned, the 2009 MVMERR rule will be addressed in a separate rulemaking notice.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO_X in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO_X emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] Section 172 of the CAA sets forth general requirements for SIPs in nonattainment areas, including a requirement that SIPs must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. CAA section 172(c)(1). Part D, subpart 2 of the CAA sets forth additional provisions for ozone nonattainment areas. CAA sections 181–185B. Sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate (or worse) ozone nonattainment areas to implement RACT controls on all stationary sources and source categories covered by a CTG document issued by EPA, and on all major sources of VOC and NO_X emissions located in the area. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. See ''major stationary source'' in CAA sections 182(c), (d), (e), 184(b) and 302. EPA's CTGs establish presumptive RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs) primarily for NO_X source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. Section 183(c) of the CAA requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. EPA issued 11 new CTGs from 2006 through 2008 for a total of 44 CTGs issued since November 1990. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District.[2] The District is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tons per year (tpy) or more of VOCs shall be considered a major source and subject to the requirements which would be applicable to major stationary sources as if the area was classified as a moderate nonattainment area. A major source in a moderate nonattainment area is defined by section 302(j) as any stationary source that emits or has the potential to emit 100 tpy or more of any air pollutant, including NO_X or VOC. Section 182(f) extends the SIP requirements for major sources of VOCs to major sources of NO_X, as defined in sections 302 and 182(c), (d), and (e).

B. The District of Columbia's History

The District has been subject to the CAA RACT requirements because of previous ozone designations. The District was designated as a Serious 1-hour ozone nonattainment area. On January 24, 2003, the District's nonattainment classification was ''bumped up'' from Serious to Severe for the 1-hour NAAQS and the District was required to submit RACT evaluations on point sources with a potential to emit (PTE) 25 tpy for either VOCs or NO_X (68 FR 3410). Revisions to the District's VOC RACT provisions to redefine major source thresholds were adopted into the SIP on December 28, 2004 (69 FR 77647) and the final attainment demonstration for the 1-hour NAAQS was approved on March 13, 2005 (70 FR 25688). Under the 1997 8-hour ozone NAAQS, the District was designated as a Moderate nonattainment area. As a result, the District continued to be subject to the CAA RACT requirements. 69 FR 23858, 23931 (April 30, 2004). The District

[1] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.'' *see also* 44 FR 53761, 53762 (September 17, 1979).

[2] Only a portion of the Commonwealth of Virginia is included in the OTR.

promulgated its RACT regulations, certifying that the previously adapted RACT controls approved under the 1-hour ozone NAAQS continued to represent RACT under the 1997 8-hour ozone standard, and that no facilities existed in the District for several remaining CTG categories. EPA approved the SIP revision on June 16, 2009 (74 FR 28447).

Under the 2008 8-hour ozone standard, EPA designated the District as a marginal nonattainment area. As part of the OTR, the District must, at a minimum, implement more stringent moderate area RACT requirements for: (1) All categories of VOC or NO_X sources covered by a CTG; (2) all other major stationary sources of VOC or NO_X located in the area. Section 182(b)(2). For the District's 2008 VOC RACT analysis, despite classification as a marginal nonattainment area, the OTR major source thresholds of 50 tpy for VOCs and 100 tpy for NO_X apply. Sections 184(b)(2), 182(f)(1).

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). 80 FR 12264, codified at 40 CFR part 51, subpart AA. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In the preamble of the proposed rule, EPA stated that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category. 78 FR 34178, 34192. Stated differently, states can meet the RACT requirements either through (1) a certification that previously adopted RACT controls in their SIP revisions approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS; (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels; or (3) a negative declaration if there are no source categories subject to certain CTGs within the nonattainment area in lieu of, or in addition to, a certification. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level.

II. Summary of SIP Revision

On August 29, 2018, the DOEE submitted a SIP revision to address all the VOC RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS. Specifically, the District's 2018 RACT Submission includes: (1) A certification that for certain major sources, previously adopted VOC RACT controls in the District's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) a listing of the CTGs already adopted into the District's SIP, and (3) a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA.

The District's Regulations and Statutes, under DMCR Subtitle A (Air Quality), Chapter 7—Volatile Organic Compounds, contain the VOC RACT controls that were implemented and approved into the District's SIP under the 1-hour and 1997 8-hour ozone NAAQS. The District is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources of VOCs and CTG-covered sources of VOCs. The District also submitted negative declarations for those sources covered by CTGs and ACT guidelines that have not been adopted due to no affected facilities in the District in their review of applicable 2008 8-hour ozone RACT requirements. Additionally, the District conducted a RACT analysis for each major non-CTG stationary source of VOC. For the 2008 8-hour ozone NAAQS, the District determined that there were three major stationary sources with a PTE of 50 tpy or more of VOCs. The District evaluated the equipment at these sources to determine whether there was any equipment emitting VOCs that were not covered by RACT level controls or a CTG. For equipment at these sources not covered by RACT controls or CTGs, the District determined that the actual emissions of VOCs from this equipment were so small that it would not be cost-effective (economically feasible) to apply controls.

More detailed information on the District's 2018 VOC RACT submission; as well as a detailed summary of EPA's review of the submission, can be found in the Technical Support Document (TSD) for this action, which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2019–0184.

III. Proposed Action

EPA has reviewed the District's 2018 RACT submission and is proposing to approve it as a SIP revision. The District has met the RACT requirements for the 2008 8-hour ozone NAAQS as set forth by sections 182(b) and 184(b)(2) of the CAA. The District's SIP revision satisfies the 2008 8-hour ozone NAAQS RACT requirements through (1) certification that previously adopted RACT controls in the District's SIP for major, non-CTG VOC sources that were approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and that they continue to represent RACT; (2) a listing identifying those CTGs which the District has already adopted into its SIP, and (3) a listing of the negative declarations previously submitted by the District for those source categories covered by CTGs that do not exist in the District. EPA finds that the District's 2018 RACT Submission demonstrates that the District has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of VOC, it implements RACT with respect to all sources of VOCs covered by a CTG issued prior to July 20, 2014, and has submitted or previously submitted negative declarations for those VOC sources covered by CTGs and ACTs that are not found in the District. EPA is soliciting public comments on the issues discussed in this document relevant to VOC RACT requirements for the District for the 2008 ozone NAAQS. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source-specific RACT determinations under the 2008 8-hour ozone NAAQS for certain major sources of VOC emissions. EPA has made, and will

continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, the District's 2008 8-hour ozone RACT SIP revision does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the District, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 26, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2019–14628 Filed 7–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0365; FRL–9996–40–Region 9]

Air Plan Approval; Nevada; Revisions to Clark County Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve a revision to the State of Nevada's State Implementation Plan (SIP) for Clark County. The revision consists of an update to certain elements of the maintenance plan for the Clark County air quality planning area for the 1997 8-hour ozone national ambient air quality standards (NAAQS or ''standards''), including the emissions inventories, maintenance demonstration, and motor vehicle emissions budgets. The EPA is proposing to conditionally approve the SIP revision because the Clark County ozone SIP, as revised, continues to provide for maintenance of the 1997 ozone NAAQS and, upon fulfillment of certain commitments, will not interfere with attainment or reasonable further progress of the other NAAQS, and the budgets meet the applicable transportation conformity requirements. The proposed approval is conditional because it is based on commitments to submit a SIP revision to reduce the safety margin allocations for the budgets within one year of final conditional approval.

DATES: Comments must be received on or before August 12, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0365, at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; By phone: (775) 434–8176 or by email at *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary information section is arranged as follows:

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I. What action is the EPA proposing?

Under section 110(k) of the Clean Air Act (''Act'' or CAA), the EPA is required to take action by approving, disapproving, or conditionally approving, in whole or in part, SIPs and SIP revisions submitted by the states. In today's action, the EPA is proposing to conditionally approve a SIP revision titled ''Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan: Clark County, Nevada'' (October 2018) (herein, referred to as the ''2018 Ozone Maintenance Plan Revision''), submitted by the Nevada Division of Environmental Protection (NDEP) on October 31, 2018. The 2018 Ozone Maintenance Plan Revision updates certain elements of the maintenance plan for Clark County for the 1997 ozone NAAQS, including the attainment inventory, the maintenance plan, and the motor vehicle emissions budgets (''budgets'' or MVEBs). The budgets were updated using the EPA's MOtor Vehicle Emission Simulator emission model released in 2014 (MOVES2014a). If the EPA takes final action to conditionally approve the SIP revision, the updated budgets will replace Clark County's existing budgets for the 1997 ozone NAAQS. At that time, the previously-approved budgets would no longer be applicable for transportation conformity purposes, and the revised budgets would need to be used beginning on the publication date of the EPA's final conditional approval in the **Federal Register.**[1] The proposed conditional approval is based on commitments from NDEP and the Clark County Department of Air Quality (DAQ) to submit a SIP revision within one year of final conditional approval.[2] The purpose of the future SIP revision is to reduce the safety margin allocations to the budgets to ensure that the 2018 Ozone Maintenance Plan Revision, as revised to reduce the safety margin allocations, will not interfere with reasonable further progress or attainment of the 2008 and 2015 ozone NAAQS.

II. Background

A. NAAQS, SIPs, Designations, and Transportation Conformity

Under section 109 of the CAA, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The NAAQS are concentration levels that, the attainment and maintenance of which, the EPA has determined to be requisite to protect public health and welfare. Once the EPA has established a NAAQS or revised a NAAQS, section 110 of the CAA requires states to adopt and submit to the EPA a plan, referred to as the SIP, that provides for the implementation, maintenance, and enforcement of such NAAQS. As noted previously, the EPA is required to take action to approve, disapprove, or conditionally approve SIPs and SIP revisions under CAA section 110(k).

Under CAA section 107(d), the EPA must designate all areas of the country as attainment, nonattainment or unclassifiable for new or revised NAAQS. States with areas designated as nonattainment must develop, adopt and submit SIP revisions to provide for, among other things, attainment as expeditiously as practicable but no later than certain dates and for reasonable further progress (RFP) towards attainment.[3] Once a nonattainment area has attained the NAAQS, the state may request redesignation of the area from nonattainment to attainment, and the EPA grants such requests if the criteria in CAA section 107(d)(3)(E) are met, including the approval of a maintenance plan (under CAA section 175A) that demonstrates how the area will maintain the NAAQS for at least 10 years after the redesignation. Such former nonattainment areas that have been redesignated to attainment are referred to as ''maintenance areas.''

In the State of Nevada, NDEP is the Governor's designee for adoption and submittal of SIPs and SIP revisions to the EPA. NDEP is also responsible for regulation of stationary sources and development of local air quality plans throughout much of the State of Nevada. In Clark County, the Clark County DAQ is responsible under state law for regulation of most types of stationary sources within the county and for development of local air quality plans. Once adopted by the Clark County Board of County Commissioners, such county plans are forwarded to NDEP for adoption and submittal to the EPA as revisions to the Nevada SIP.

The emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The budgets are the portions of the total allowable emissions that are allocated to on-road vehicle use that, together with emissions from other sources in the area, will provide for RFP, attainment or maintenance. The budgets serve as a ceiling on emissions from an area's planned transportation system.[4]

The CAA recognizes the connection between air quality planning and transportation planning in nonattainment and maintenance areas and includes specific provisions related to adoption and approval of transportation programs, plans, and projects by Metropolitan Planning Organizations (MPOs) and the U.S Department of Transportation's (DOT's) Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). More specifically, under section 176(c) of the CAA, transportation plans, Transportation Improvement Programs (TIPs), and transportation projects must ''conform'' to (*i.e.,* be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or delay an interim milestone. The EPA's transportation conformity rule at 40 CFR part 93, subpart A establishes the criteria and procedures that MPOs and DOT must use to determine whether transportation activities conform to the SIP. Transportation conformity applies to areas that are designated nonattainment and those former nonattainment areas that have been redesignated to attainment and have a CAA section 175A maintenance plan (''maintenance areas''), but does not apply to areas designated as attainment or unclassifiable.[5]

Under certain circumstances, MPOs and DOT must determine conformity based, in part, on a ''budget test'' that involves a comparison between estimates of regional on-road mobile source emissions under a given transportation plan or program with the budgets.[6] Before budgets can be used in

[1] 40 CFR 93.118(f)(2)(v).

[2] Letter from Jodi Bechtel, Assistant Director, Clark County DAQ, to Greg Lovato, Administrator, NDEP, dated June 14, 2019; and letter from Greg Lovato, Administrator, NDEP, to Elizabeth Adams, Director, Air Division, EPA Region IX, dated June 21, 2019.

[3] See, generally, part D (''Plan Requirements for Nonattainment Areas'') of Title I of the CAA.

[4] For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

[5] CAA section 176(c)(5).

[6] CAA section 176(c)(1) and 40 CFR 93.109 and 93.118.

conformity determinations, however, the EPA must affirmatively find the budgets adequate.[7] However, adequate budgets do not supersede approved budgets for the same CAA purpose. If the submitted SIP budgets are meant to replace budgets for the same purpose, the EPA must approve the budgets, and can affirm that they are adequate at the same time. Once the EPA approves the submitted budgets, they must be used by state and federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. The EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

In Clark County, the area's MPO, the Regional Transportation Commission of Southern Nevada (RTC) and DOT are the relevant transportation agencies that must use approved or adequate budgets in determining the conformity of transportation plans and TIPs within Clark County.

B. 1997 Ozone NAAQS and Clark County

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[8]

As noted previously, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone, under CAA section 109. In 1997, the EPA revised the ozone NAAQS to set the acceptable level of ozone in the ambient air at 0.08 parts per million (ppm), averaged over an 8-hour period (herein referred to as the ''1997 ozone NAAQS'').[9] In 2004, the EPA designated and classified all areas with respect to the 1997 ozone NAAQS, and designated Clark County as a ''Subpart 1'' nonattainment area for the 1997 ozone NAAQS.[10] Later that year, the EPA reduced the geographic extent of the ozone nonattainment area to a portion of Clark County.[11] In 2005, we published a final rule that we would treat the effective date of the partial-county nonattainment area designation the same as the designations for the rest of the country, *i.e.,* June 15, 2004.[12]

As a ''Subpart 1'' area, the Clark County ozone nonattainment area was subject to a number of requirements including the requirement to demonstrate attainment of the 1997 ozone NAAQS as expeditiously as practicable, but no later than five years from the date that the area was designated nonattainment.[13] In 2011, the EPA determined that the Clark County 8-hour ozone nonattainment area had attained the 1997 8-hour ozone NAAQS, based on complete, quality-assured, and certified ambient air monitoring data that showed the area monitored attainment of the 1997 ozone NAAQS for the 2007–2009 monitoring period.[14]

In 2011, in light of ambient monitoring data showing that the Clark County ozone nonattainment had attained the 1997 ozone NAAQS, NDEP submitted the ''Ozone Redesignation Request and Maintenance Plan, Clark County, Nevada (March 2011)'' (herein, the ''2011 Ozone Maintenance Plan'') to the EPA for approval as a revision to the Clark County portion of the Nevada SIP. Prepared by the Clark County DAQ, the 2011 Ozone Maintenance Plan includes the various elements found in most maintenance plans, including an attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, contingency plan, and motor vehicle emissions budgets.

For the 2011 Ozone Maintenance Plan, Clark County DAQ selected 2008 as the year for the attainment inventory of ozone precursors (*i.e.,* VOC and NO_X), and demonstrated maintenance of the 1997 ozone NAAQS through year 2022 by reference to emissions inventories developed for future years 2015 and 2022 that showed that future emissions of VOC and NO_X would not exceed the level of the corresponding emissions of the attainment inventory. The 2011 Ozone Maintenance Plan established budgets for NO_X and VOC for years 2008, 2015 and 2022. The budgets were derived from the on-road motor vehicle emissions estimates prepared using the EPA's then-current on-road vehicle emissions model, MOBILE6.2, and the most recent vehicle mix and activity data then available from the RTC. In 2013, the EPA approved the 2011 Ozone Maintenance Plan and redesignated the Clark County ozone nonattainment area to attainment for the 1997 ozone NAAQS.[15] The subject of today's proposed action is a revision to the attainment inventory, the maintenance demonstration and budgets of the 2011 Ozone Maintenance Plan to reflect updated emissions models, vehicle mix and speed data, and transportation activity projections. The other elements of the 2011 Ozone Maintenance Plan (monitoring network, verification of continued attainment, contingency plan) are not affected by this action.

Through adoption of the 2011 Ozone Maintenance Plan, Clark County DAQ committed to maintaining an ambient air quality monitoring network to verify the continued attainment of the 1997 ozone NAAQS in the Clark County ozone maintenance area.[16] At the present time, monitors operating at 10 monitoring sites continuously monitor ambient concentrations of ozone within the maintenance area. Since 2008, *i.e.,* the year used for the attainment inventory in the 2011 Ozone Maintenance Plan, Clark County has experienced a decrease in ambient ozone concentrations. As shown in Table 1, 8-hour ozone design values have decreased from 0.082 ppm in 2008

[7] The ''adequacy'' process is established in the EPA's transportation conformity rule to provide a mechanism whereby budgets in a submitted SIP revision that has undergone preliminary review by the EPA can be used for transportation planning purposes prior to final approval of the SIP revision.

[8] ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[9] 62 FR 38856 (July 18, 1997) and 40 CFR 50.10. Due to the number of significant figures in the level of the standard, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm. 40 CFR part 51, appendix I.

[10] 69 FR 23858 (April 30, 2004). The ''Subpart 1'' classification meant that the area was subject solely to the general nonattainment area requirements under subpart 1 of part D (of title I) of the CAA rather than to the requirements under both subparts 1 and the ozone-specific requirements under subpart 2. Several years later, in response to litigation over the designations for the 1997 ozone NAAQS, the EPA revised the classification of the Clark County ozone nonattainment area from ''Subpart 1'' to ''Subpart 2/Marginal.'' 77 FR 28424 (May 14, 2012).

[11] 69 FR 55956 (September 17, 2004). The boundaries of the Clark County ozone nonattainment (now maintenance) area for the 1997 ozone NAAQS are defined in 40 CFR 81.329. Specifically, the area is defined as: ''That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218, but excluding the Moapa River Indian Reservation and the Fort Mojave Indian Reservation.'' The area includes a significant portion of the unincorporated portions of central and southern Clark County, as well as the cities of Las Vegas, Henderson, North Las Vegas and Boulder City. The hydrographic areas are illustrated in Figure 1–1 of the Clark County Ozone Maintenance Plan (March 2011).

[12] 70 FR 71612 (November 29, 2005).

[13] CAA section 172(a)(2).

[14] 76 FR 17343 (March 29, 2011).

[15] 78 FR 1149 (January 8, 2013).

[16] 2011 Ozone Maintenance Plan, page 6–11.

to 0.074 ppm in 2017.[17] In more recent years, the design value has remained relatively steady, varying little from year to year. Table 1 shows that Clark County has maintained the 1997 ozone NAAQS through the first 5 years (2013 through 2017) of the first maintenance period.

TABLE 1—EIGHT-HOUR OZONE DESIGN VALUES FOR THE CLARK COUNTY OZONE MAINTENANCE AREA, 2008–2017

Year	Design value (ppm)
2008	0.082
2009	0.078
2010	0.076
2011	0.075
2012	0.076
2013	0.077
2014	0.078
2015	0.075
2016	0.075
2017	0.074

Source: 2017 Ozone Design Values Report at *https://www.epa.gov/air-trends/air-quality-design-values#report.* Note that design values reported for a given year reflect data from that year and the two previous years, *e.g.,* the design value for 2008 reflects data from 2006–2008.

C. 2008 Ozone NAAQS and Clark County

Meanwhile, in 2008, the EPA lowered the ozone NAAQS to a level of 0.075 ppm, 8-hour average (herein, the ''2008 ozone NAAQS''),[18] and in 2012, the EPA designated all of the hydrographic areas within the State of Nevada as ''Unclassifiable/Attainment'' for the 2008 ozone NAAQS.[19] Because all the hydrographic areas located entirely, or partially, within Clark County were designated as Unclassifiable/Attainment for the 2008 ozone NAAQS, no RFP or attainment SIP revision was required for any portion of the county, and the transportation conformity requirements did not apply for that ozone NAAQS.

In 2015, the EPA issued a SIP Requirements Rule (SRR) for the 2008 ozone NAAQS (''2008 Ozone SRR'') that addressed implementation of the 2008 standards, including attainment dates, requirements for emissions inventories, attainment and reasonable further progress (RFP) demonstrations, among other SIP elements, as well as the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS and associated anti-backsliding requirements.[20] The 2008 Ozone SRR revoked the 1997 ozone NAAQS effective April 6, 2015.

The EPA's 2008 Ozone SRR was challenged, and on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit (''D.C. Circuit'') published its decision in *South Coast Air Quality Management District* v. *EPA* (''*South Coast II*'') vacating certain portions of the 2008 Ozone SRR, but upholding the EPA's revocation of the 1997 ozone NAAQS.[21] The only aspect of the *South Coast II* decision that affects this proposed action is the vacatur of the elimination of transportation conformity in areas that were maintenance areas for the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS and were designated as attainment for the 2008 ozone NAAQS, which the court referred to as ''orphan maintenance areas.'' The Clark County 1997 ozone maintenance area is an orphan maintenance area. The 2008 ozone SRR had provided that such areas are no longer required to determine transportation conformity for the 1997 ozone NAAQS after the 1997 ozone NAAQS is revoked.[22] The court, however, held that transportation conformity continues to apply for the 1997 ozone NAAQS in orphan maintenance areas notwithstanding revocation of the 1997 ozone NAAQS.

Following the *South Coast II* decision, the EPA issued guidance that addresses how transportation conformity determinations can be made for the 1997 ozone NAAQS in orphan maintenance areas, such as the Clark County ozone maintenance area.[23] In the guidance document, the EPA explains that transportation conformity for transportation plans and TIPs for the 1997 ozone NAAQS can be demonstrated without a regional emissions analysis pursuant to 40 CFR 93.109(c).[24] In the case of the Clark County ozone maintenance area, while the transportation conformity requirement continues to apply for the revoked 1997 ozone NAAQS, RTC and DOT do not need to use the approved MOBILE6.2-based budgets from the 2011 Ozone Maintenance Plan in a conformity determination for the revoked 1997 ozone NAAQS because a regional emissions analysis is not required for that determination.

D. 2015 Ozone NAAQS and Clark County

In 2015, the EPA further lowered the ozone NAAQS to 0.070 ppm, eight-hour average (herein the ''2015 ozone NAAQS'').[25] In 2018, the EPA designated the Las Vegas Valley portion of Clark County as a ''Marginal'' nonattainment area for the 2015 ozone NAAQS, effective August 3, 2018.[26] The Clark County nonattainment area for the 2015 ozone NAAQS is about half the size of the Clark County maintenance area for the 1997 ozone NAAQS and includes only hydrographic area 212 (''Las Vegas Valley'').

The nonattainment area designation for Las Vegas Valley for the 2015 ozone NAAQS triggers the requirement for certain SIP revisions, but, under CAA section 176(c)(6) and 40 CFR 93.102(d), transportation conformity does not apply for the 2015 ozone NAAQS for one year following the effective date of the nonattainment area designation (referred to as the ''grace period''), or, in this case, does not apply until August 3, 2019. However, to avoid a conformity ''lapse,'' a MPO and DOT must make a conformity determination for the 2015 ozone NAAQS for the applicable transportation plan and program before the end of the 1-year grace period.[27]

Under our Transportation Conformity Rule, the latest approved or adequate emission budgets for a previous ozone

[17] Under EPA regulations at 40 CFR 50.10 and appendix I, the 1997 ozone NAAQS is attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, appendix I) at each monitoring site within the area, then the area is meeting the 1997 ozone NAAQS. The highest design value among the various ozone monitoring sites represents the design value for the area.

[18] 73 FR 16436 (March 27, 2008) and 40 CFR 50.15.

[19] 77 FR 30088 (May 21, 2012). Hydrographic areas are those that are shown on the State of Nevada Division of Water Resources' map titled ''Water Resources and Inter-basin Flows'' (September 1971).

[20] 80 FR 12264 (March 6, 2015) and 40 CFR part 51, subpart AA.

[21] *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018) (''*South Coast II*''). The term ''*South Coast II*'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as ''*South Coast.*'' The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone NAAQS. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[22] 80 FR 12264, 12284 (March 6, 2015).

[23] EPA, Office of Transportation and Air Quality, ''Transportation Conformity Guidance for the South Coast II Court Decision,'' November 2018, EPA–420–B–18–050.

[24] Id., section 2.4.

[25] 80 FR 65292 (October 26, 2015) and 40 CFR 50.19.

[26] 83 FR 25776 (June 4, 2018).

[27] EPA, Office of Air Quality Planning and Standards, ''Transportation Conformity Guidance for 2015 Ozone NAAQS Nonattainment Areas,'' June 2018, EPA–420–B–18–023. During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed (*i.e.,* exempt projects, project phases that were approved before the lapse, and transportation control measures (TCMs) in approved SIPs) until the area has both a conforming transportation plan and TIP.

NAAQS (*i.e.,* the 2008 or the 1997 ozone NAAQS) must be used in conformity determinations for the 2015 ozone NAAQS until emission budgets are established and found adequate or are approved for the 2015 ozone NAAQS.[28] Since the latest approved or adequate emission budgets for a previous ozone NAAQS for Clark County are the approved MOBILE6.2-based budgets for the 1997 8-hour ozone NAAQS, the RTC and DOT must use these budgets for conformity determinations for the 2015 ozone NAAQS until they are replaced by updated budgets.

E. The MOVES Emission Model

The MOVES model is the EPA's tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in the EPA's previous motor vehicle emission factor model, MOBILE6.2.

The EPA announced the release of MOVES2010 on March 2, 2010 (75 FR 9411) and approved the use of MOVES2010 in states other than California for official SIP submissions to the EPA and for regional emissions analyses for transportation conformity purposes. The EPA released MOVES2014 on October 7, 2014 (79 FR 60343). MOVES2014 was a major revision to MOVES2010 and incorporated new emissions and fleet data, emission standards and functional improvements and features to the model. The October 7, 2014 notice approved the use of MOVES2014 in states outside of California for official SIP submissions to the EPA and for regional emissions analyses for transportation conformity purposes. In addition, the notice started a two-year grace period before MOVES2014 was required to be used in new regional emissions analyses for transportation conformity determinations outside of California. Since October 7, 2016, MOVES2014 was required to be used for new transportation conformity analyses outside California. In November 2015, the EPA released MOVES2014a, a minor update to MOVES2014.[29]

III. What did the State submit?

On October 31, 2018, NDEP submitted the 2018 Ozone Maintenance Plan Revision (for the 1997 ozone NAAQS) to the EPA as a revision to the Clark County portion of the Nevada SIP.[30] Earlier that month, on October 16, 2018, the Clark County Board of County Commissioners adopted the 2018 Ozone Maintenance Plan Revision and forwarded the plan to NDEP for adoption and submittal to the EPA.[31] The 2018 Ozone Maintenance Plan Revision updates certain elements of the 2011 Ozone Maintenance Plan for the 1997 ozone NAAQS, including the emissions inventories, the maintenance demonstration, and the MOBILE6.2-derived budgets. The 2018 Ozone Maintenance Plan Revision also includes a technical support document (appendix A of the plan revision) and documentation of the public review process (appendix B of the plan revision). These updated inventories and budgets in the 2018 Ozone Maintenance Plan Revision are based on MOVES2014a. The budgets for the 1997 ozone NAAQS were developed so that the RTC would have updated budgets available to use for transportation conformity determinations with respect to the 2015 ozone NAAQS until budgets developed specifically for the 2015 ozone NAAQS are adopted and found to be adequate or approved.

IV. Procedural Requirements for Adoption and Submittal of SIP Revisions

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

The Clark County Board of County Commissioners and NDEP have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2018 Ozone Maintenance Plan Revision. In the documentation included as part of the October 31, 2018 SIP revision submittal,[32] Clark County DAQ provided evidence of the required public notice and opportunity for public comment prior to the October 16, 2018 public hearing and adoption of the 2018 Ozone Maintenance Plan Revision. We find, therefore, that the submittal of the 2018 Ozone Maintenance Plan Revision meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan submittal that the EPA has not affirmatively determined to be complete or incomplete will be deemed complete by operation of law six months after the date of submittal. The EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. The 2018 Ozone Maintenance Plan Revision submission, dated October 31, 2018, became complete by operation of law on April 30, 2019.

V. The EPA's Evaluation of the 2018 Ozone Maintenance Plan Revision

The 2018 Ozone Maintenance Plan Revision is not a required submittal but has been submitted to establish revised budgets reflecting the most recent emissions models and planning estimates and to thereby provide the basis for RTC and DOT to make future transportation conformity determinations for transportation plans, TIPs and projects with respect to the 2015 ozone NAAQS. We have reviewed the 2018 Ozone Maintenance Plan Revision for compliance with the relevant requirements for maintenance plans under CAA section 175A and for noninterference under CAA section 110(l), and we have evaluated the budgets in the 2018 Ozone Maintenance Plan Revision for compliance with the budget adequacy criteria in 40 CFR 93.118(e).

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: Attainment inventory, maintenance demonstration, monitoring network, verification of continued

[28] 40 CFR 93.109(c)(2).

[29] In August 2018, the EPA released MOVES2014b to improve estimates of emissions from nonroad mobile sources. MOBILE2014b does not significantly change the on-road criteria pollutant emissions results of MOVES2014 and is not considered a new model for SIP and transportation conformity purposes.

[30] Letter, Greg Lovato, Administrator, NDEP to Mike Stoker, Regional Administrator, EPA Region IX, October 31, 2018 with enclosures.

[31] Clark County Board of County Commissioners Meeting, Meeting Summary, pages 14 and 15 (of 19), October 16, 2018.

[32] Appendix B provides evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption. Specifically, notice of the availability of, and opening of a 30-day comment period on, the draft ozone maintenance plan revision was published on August 17, 2018 on the County's web page. No comments were submitted.

attainment, and contingency plan.[33] The 2018 Ozone Maintenance Plan Revision updates two of the core elements of the approved 2011 Ozone Maintenance Plan for the 1997 ozone NAAQS, the attainment inventory and maintenance demonstration, and it also updates the budgets.

CAA section 110(l) applies to all SIP revisions, and under that section, the EPA shall not approve any SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

A. Revised Attainment Inventory

A maintenance plan for the 1997 ozone NAAQS must include an inventory of emissions of ozone precursors (VOC and NO_X) in the area to identify a level of emissions that are sufficient to attain the 1997 ozone NAAQS. This inventory must be consistent with the EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary point sources, area sources, nonroad mobile sources, and on-road mobile sources, and must be based on actual ''ozone season data'' (*i.e.,* summertime) emissions.

Clark County DAQ selected 2008 as the year for the attainment inventory in the 2011 Ozone Maintenance Plan. The attainment year inventory in the 2011 Ozone Maintenance Plan is comprehensive in that it includes estimates of summertime average weekday VOC and NO_X emissions from all of the relevant source categories, which the plan divides among point sources,[34] nonpoint sources,[35] commercial aviation, federal aviation (*i.e.,* Nellis Air Force Base), on-road mobile, nonroad mobile, and biogenic [36] sources.[37] The 2018 Ozone Maintenance Plan Revision includes a comprehensive update to the 2008 attainment inventory but, to the extent that the original estimates (*i.e.,* from 2011 Ozone Maintenance Plan) are based on actual reported emissions or activity levels for year 2008, there is little change in the related emissions estimate. Appendix A to the 2018 Ozone Maintenance Plan Revision contains source-specific descriptions of emission calculation procedures and sources of input data used for the update.

Table 2 below compares the attainment inventory from the 2011 Ozone Maintenance Plan with the corresponding inventory from the 2018 Ozone Maintenance Plan Revision. As shown in Table 2, the change in the attainment inventory in the 2018 Ozone Maintenance Revision is primarily due to the update to the on-road mobile source category and the nonpoint source category.

TABLE 2—2008 ATTAINMENT INVENTORY

[Average summer weekday, tons/day]

Source category	NO_X emissions		VOC emissions	
	2011 Ozone Maintenance Plan	2018 Ozone Maintenance Plan Revision	2011 Ozone Maintenance Plan	2018 Ozone Maintenance Plan Revision
Point source	28.73	28.97	1.32	1.50
Nonpoint source	5.41	6.6	57.07	67.56
Commercial aviation	11.41	11.41	2.60	2.60
Federal aviation	1.27	1.27	0.79	0.79
On-road mobile	68.46	89.50	65.08	42.46
Nonroad mobile	43.28	40.63	42.91	42.07
Biogenic	5.00	5.00	132.00	132.00
Total	163.56	183.38	301.77	288.98

Sources: 2011 Ozone Maintenance Plan, tables 6–2 and 6–3; 2018 Ozone Maintenance Plan Revision, table 2–1.

With respect to on-road mobile source emissions, Clark County DAQ updated the emissions estimates using the SMOKE–MOVES approach, which incorporates MOVES2014a model emission rates, Sparse Matrix Operator Kernel Emissions (SMOKE) modeling,[38] RTC travel demand modeling, and Highway Performance Monitoring System (HPMS) data from the Nevada Department of Transportation.[39] Clark County DAQ selected the SMOKE–MOVES approach to be consistent with the EPA's approach in developing the National Emissions Inventory (NEI), as well as with the EPA's modeling platform. This approach is also consistent with the one used in Clark County's photochemical modeling applications. In contrast, the 2011 Ozone Maintenance Plan's on-road mobile source emissions were estimated using the CONCEPT MV emissions model [40] and EPA's MOBILE6.2 emissions factors. Generally, on-road mobile source emissions estimates made using MOVES2014a are higher for NO_X

[33] John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, memo titled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992.

[34] The 2018 Ozone Maintenance Plan Revision uses the term, ''point sources,'' to refer to those stationary source facilities that are required to report their emissions to Clark County DAQ or NDEP.

[35] The 2018 Ozone Maintenance Plan Revision uses the term, ''nonpoint sources,'' to refer to those stationary and area sources that fall below point source reporting levels and that are too numerous or small to identify individually.

[36] For the 2018 Ozone Maintenance Plan Revision, ''biogenic sources'' include agricultural crops; lawn grass; forests that produce isoprene, monoterpene, alpha-pinene, and other VOC emissions; and soils that generate trace amounts of NO_X.

[37] See Table 2–1 in the 2018 Ozone Maintenance Plan Revision.

[38] SMOKE is an emission-generating and processing model used in developing hourly gridded emissions for photochemical modeling. The EPA has integrated the MOVES model with the SMOKE model with a set of integration software tools that allows the MOVES emission rate model to automatically run numerous iterations to generate the most accurate modeling results. The SMOKE–MOVES integrated approach takes advantage of gridded hourly temperature and humidity information from the Weather Research and Forecasting (WRF) meteorology model used for air quality modeling.

[39] 2018 Ozone Maintenance Plan Revision, Appendix A, page A–2.

[40] ''CONCEPT'' refers to the CONsolidated Community Emissions Processor Tool (CONCEPT) and ''MV'' refers to the motor vehicle module of the CONCEPT model.

and lower for VOC relative to those made using MOBILE6.2. With respect to nonpoint emissions sources, the change in the 2008 emissions inventory is largely due to the use of the SMOKE model.

Based on our review of the emissions inventories (and related documentation) from the 2018 Ozone Maintenance Plan Revision, we find that the inventories for 2008 are comprehensive, that the methods and assumptions used by Clark County DAQ to update the 2008 emission inventory are reasonable, and that the inventories reasonably estimate actual ozone season emissions in the 2008 attainment year. Moreover, we find that the 2008 emissions inventories in the Ozone Maintenance Plan reflect the latest planning assumptions and emissions models available at the time the 2018 Ozone Maintenance Plan Revision was developed.

B. Revised Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the ozone NAAQS by either showing that future emissions will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS.

The 2018 Ozone Maintenance Plan Revision uses the same method as the 2011 Ozone Maintenance Plan to demonstrate continued maintenance of the 1997 ozone NAAQS. The 2018 Ozone Maintenance Plan Revision demonstrates maintenance through the initial 10-year period after redesignation by showing that emissions in 2015 and 2022 would be less than those in the 2008 attainment year.

To provide the basis for the comparison of future emissions with the updated attainment year (2008) emissions, Clark County DAQ updated the 2015 and 2022 emissions inventories using the SMOKE–MOVES approach for the on-road mobile sources as described above for the update to the 2008 attainment year emissions inventory and by incorporating more recent emissions and travel demand data. Tables 3 and 4 below compare the NO_X and VOC emissions inventories, respectively, for 2015 and 2022 from the 2018 Ozone Maintenance Plan Revision with the corresponding values from the 2011 Ozone Maintenance Plan.

TABLE 3—COMPARISON OF NO_X INVENTORIES ASSOCIATED WITH APPROVED AND REVISED MAINTENANCE PLAN FOR THE 1997 OZONE NAAQS

[Tons per average summer weekday]

Source category	2011 Ozone Maintenance Plan [a]		2018 Ozone Maintenance Plan Revision		Net change [b]	
	2015	2022	2015	2022	2015	2022
Stationary and Area (point and nonpoint)	37	38	18	17	−19	−21
On-road	35	23	64	27	+29	+4
Nonroad (including aviation)	47	51	41	37	−6	−14
Biogenic	5	5	5	5	0	0
Emission Reduction Credits	22	22	22	22	0	0
Totals [c]	146	139	150	109	+4	−30

[a] The emissions shown for the approved ozone plan are from Table 6–3 of Clark County's 2011 Ozone Maintenance Plan.
[b] For the net change, a negative number indicates a reduction in emissions, and a positive number indicates an increase in emissions relative to the corresponding figure in the 2011 Ozone Maintenance Plan.
[c] Because of rounding conventions, totals may not reflect individual subcategories.

TABLE 4—COMPARISON OF VOC INVENTORIES ASSOCIATED WITH APPROVED AND REVISED MAINTENANCE PLAN FOR THE 1997 OZONE NAAQS

[Tons per average summer weekday]

Source category	2011 Ozone Maintenance Plan [a]		2018 Ozone Maintenance Plan Revision		Net change [b]	
	2015	2022	2015	2022	2015	2022
Stationary and Area (point and nonpoint)	68	78	63	62	−5	−16
On-road	45	37	33	17	−12	−20
Nonroad (including aviation)	36	35	35	32	−1	−3
Biogenic	132	132	132	132	0	0
Emission Reduction Credits	<1	<1	<1	<1	0	0
Totals [c]	282	282	263	244	−19	−38

[a] The emissions shown for the approved ozone plan are from Table 6–3 of Clark County's 2011 Ozone Maintenance Plan.
[b] For the net change, a negative number indicates a reduction in emissions, and a positive number indicates an increase in emissions relative to the corresponding figure in the 2011 Ozone Maintenance Plan.
[c] Because of rounding conventions, totals may not reflect individual subcategories.

As shown in tables 3 and 4, total emissions for 2015 and 2022 in the 2018 Ozone Maintenance Plan Revision are lower than the corresponding emissions in the 2011 Ozone Maintenance Plan with the exception of a 4 tpd higher estimate in 2015 for NO_X. With respect to the on-road mobile sources, the update results in higher NO_X emissions but lower VOC emissions and reflects primarily the differences in the emissions rates calculated using MOVES2014a relative to those calculated using MOBILE6.2. The on-road mobile source emission estimates in the 2018 Ozone Maintenance Plan Revision reflect the most recent published data concerning vehicle registration data, vehicle miles traveled (VMT) temporal distribution, VMT mix profiles, vehicle speeds and travel demand forecasts from RTC.[41] The higher estimates for NO_X from on-road mobile sources are offset by decreases in the actual reported emissions for point source emissions compared to their projected emissions in the 2011 Ozone Maintenance Plan (which includes the shutdown of the Reid Gardner coal-fired power plant). Other significant differences include: (1) A reduction in commercial aviation emissions because the Sloan Regional Heliport and South County Ivanpah Airport projects, which had been assumed for the 2011 Ozone Maintenance Plan, have not been constructed and (2) reductions in nonpoint source emission projection factors.[42]

Based on our review of the methods, assumptions, and data sources, as described in Appendix A to the 2018 Ozone Maintenance Plan Revision, and briefly summarized above, we find that Clark County DAQ's estimates for 2015 and 2022 for the various source categories to be based on the best available emissions models and data sources, and thus to provide a reasonable basis upon which to evaluate whether the area will maintain the 1997 ozone NAAQS through 2022.

A state may choose to allocate all or a portion of the safety margin[43] under our transportation conformity rule so long as such margins are explicitly quantified in the applicable plan and are shown to be consistent with attainment or maintenance of the NAAQS (whichever is relevant to the particular plan).[44] For the 2018 Ozone Maintenance Plan Revision, Clark County DAQ allocated 80 percent of the safety margin for NO_X and VOC in 2015 and 2022 to the projected on-road emissions estimates for NO_X and VOC.

Table 5 below summarizes the revised maintenance demonstration (including the safety margins) for the 1997 ozone NAAQS. As shown in Table 5, the revised emission estimates for NO_X and VOC in 2015 and 2022 (including the safety margins) would remain below the corresponding 2008 attainment levels throughout the 10-year maintenance period and thereby adequately demonstrate maintenance through that period.

TABLE 5—REVISED MAINTENANCE DEMONSTRATION FOR 1997 OZONE NAAQS

Source description	Emissions (average summer weekday, tpd)					
	Attainment (2008)		2015		2022	
	NO_X	VOC	NO_X	VOC	NO_X	VOC
Projected Emissions—Excluding On-Road Mobile Sources	93.88	246.52	85.81	229.82	81.71	227.06
Projected On-Road Mobile Source Emissions	89.50	42.46	64.30	33.04	27.02	17.12
Allocation of Portion of Safety Margin to On-Road	0	0	26.62	20.90	59.72	35.84
Total Emissions (with Safety Margins)	183.38	288.98	176.73	283.76	168.45	280.02
Maintenance Demonstrated?	.....	.....	Yes	Yes	Yes	Yes
Motor Vehicle Emissions Budget (Projected On-Road Plus Safety Margin)	89.50	42.46	90.92	53.94	86.74	52.96

Source: 2018 Ozone Maintenance Plan Revision, Tables 2–1, 2–2 and 3–1. Note: Maintenance is demonstrated where future emissions (with the safety margins) are less than the corresponding attainment inventory emissions.

C. Revised Motor Vehicle Emissions Budgets

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving timely attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Under the transportation conformity rule, MPOs in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans and TIPs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the budgets contained in all control strategy or maintenance SIPs. Budgets are generally established for specific years and specific pollutants or precursors. Maintenance ozone plans should identify budgets for on-road emissions of ozone precursors (NO_X and VOC) in the area for the last year of the maintenance period. Budgets may also be specified for additional years during the maintenance period.

For budgets to be approvable, they must meet the EPA's adequacy criteria (40 CFR 93.118(e)(4) and (5)) and comply with all pertinent SIP requirements. With respect to maintenance plans, to meet these requirements, the budgets must be consistent with the maintenance plan and reflect all the motor vehicle control measures contained in the maintenance

[41] Key references used by Clark County DAQ include Eastern Research Group, Inc.'s ''Clark County On-Road Vehicle Classification Study,'' final report, June 29, 2018 and the Coordinating Research Council, Inc.'s ''Improvement of Default Inputs for MOVES and SMOKE–MOVES,'' final report, February 2017.

[42] Clark County projected emissions from 2014 NEI data with factors derived from the 2011–2023 annual rate of change for all nonpoint sectors from EPA's 2011 Version 6 Air Emissions Modeling Platform. Nonpoint source emissions in the 2011 Ozone Maintenance Plan were based on the 2008 NEI and higher growth correlated to population and economic growth factors.

[43] In this context, ''safety margin'' means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirements for reasonable further progress, attainment or maintenance. With respect to the 2018 Ozone Maintenance Plan Revision, the safety margin is the difference between the projected emissions in 2015 and 2022 of NO_X and VOC and the actual emissions of NO_X and VOC in the 2008 attainment year.

[44] See 40 CFR 93.124(a).

demonstration.[45] The EPA's process for determining adequacy of a budget consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the budget during a public comment period; and, (3) making a finding of adequacy or inadequacy.[46] We will complete the adequacy review of the budgets in the 2018 Ozone Maintenance Plan Revision concurrent with our final action on the 2018 Ozone Maintenance Plan Revision. The EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing approval of them.[47]

The 2018 Ozone Maintenance Plan Revision includes revised budgets for VOC and NO_X for years 2008, 2015 and the last year of the initial maintenance period, *i.e.,* 2022. The revised budgets from the 2018 Ozone Maintenance Plan Revision are shown in Table 6 below and compared with the corresponding budgets from the approved 2011 Ozone Maintenance Plan. As noted previously, Clark County DAQ developed the revised budgets using the latest emissions model (MOVES2014a) available at the time the 2018 Ozone Maintenance Plan Revision was being developed, and the most recent travel activity projections provided by the NDOT and RTC. As such, we find that the revised budgets reflect the most recent planning forecasts and are based on the most recent emission factor data and approved calculation methods. Clark County DAQ included 80% of the safety margin in the budgets. In this context, the term ''safety margin'' refers to the difference between the updated emissions inventories in the 2018 Ozone Maintenance Plan Revision for years 2015 and 2022 and the updated attainment (2008) emissions inventory in the plan revision.

TABLE 6—OZONE MOTOR VEHICLE EMISSION BUDGETS

[Average summer weekday, tons/day]

Year	2011 Ozone Maintenance Plan		2018 Ozone Maintenance Plan Revision	
	NO_X	VOC	NO_X	VOC
2008	68.46	65.08	89.50	42.46
2015	34.69	45.32	90.92	53.94
2022	23.15	36.71	86.74	52.96

Sources: 2011 Ozone Maintenance Plan, Table 7–1; 2018 Ozone Maintenance Plan Revision, Table 3–1.

As documented in a May 22, 2019 memorandum to the docket for this rulemaking, we find that the budgets in the 2018 Ozone Maintenance Plan Revision meet each adequacy criterion.[48] We have completed our detailed review of the 2018 Ozone Maintenance Plan Revision and find them acceptable. We have also reviewed the budgets in the 2018 Ozone Maintenance Plan Revision and found that they are consistent with the revised maintenance demonstration; are based on control measures that have already been adopted and implemented; and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.1118(e)(4) and (5). Therefore, we are proposing to find adequate and conditionally approve the 2008, 2015 and 2022 budgets in the 2018 Ozone Maintenance Plan Revision. If we finalize our adequacy determination and conditional approval of the revised budgets in the 2018 Ozone Maintenance Plan Revision, as proposed, they will replace the budgets for the 1997 ozone NAAQS from the 2011 Ozone Maintenance Plan that we previously found adequate and approved for use in transportation conformity determinations. The proposed approval of the budgets is conditional because it is based on commitments by NDEP and Clark County DAQ to submit a SIP revision within one year of final conditional approval to reduce the safety margin allocations to avoid interference with reasonable further progress or attainment of the 2008 and 2015 ozone NAAQS. For more information on why the reduction of the safety margin is needed, see the following section of this notice.

D. CAA Section 110(l) Evaluation

In relevant part, CAA section 110(l) provides that the EPA shall not approve a SIP revision that would interfere with any applicable requirement concerning attainment or RFP of any of the NAAQS or any other applicable requirement of the CAA. The 2018 Ozone Maintenance Plan Revision would establish budgets that are larger than those that are currently approved from the 2011 Ozone Maintenance Plan. Thus, approval of the 2018 Ozone Maintenance Plan Revision would accommodate a higher level of VOC and NO_X emissions from on-road mobile source emissions than would otherwise be allowed under the existing budgets. In the following paragraphs, we evaluate the higher level of VOC and NO_X emissions with respect to the potential for interference with RFP and attainment of the NAAQS for which VOC and NO_X are precursors, namely, the 2008 and 2015 ozone NAAQS and the 2006 and 2012 $PM_{2.5}$ NAAQS.[49]

2008 Ozone NAAQS. In 2012, the EPA designated all the hydrographic areas within the State of Nevada as unclassifiable/attainment for the 0.075 ppm 2008 ozone NAAQS based on ambient ozone concentration data for

[45] 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on budgets, please visit our transportation conformity website at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[46] 40 CFR 93.118(f)(2).

[47] Under the transportation conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

[48] Memorandum from Karina O'Connor, Air Planning Office, EPA Region IX, to Air Plan Approval; Revisions to the Clark County Ozone Maintenance Plan, dated May 22, 2019.

[49] As a general matter, NO_X is also considered a precursor for PM_{10}. However, in approving the Las Vegas Valley Serious Area PM_{10} Plan, the EPA determined that major stationary sources of PM_{10} precursors do not contribute significantly to elevated ambient PM_{10} concentrations in Las Vegas Valley. 69 FR 32273 (June 9, 2004). Moreover, the approved Las Vegas Valley PM_{10} Maintenance Plan relies on direct PM_{10} control measures (rather than PM_{10} precursor controls) to demonstrate maintenance of the PM_{10} NAAQS within Las Vegas Valley. 79 FR 42258 (July 21, 2014) (proposed PM_{10} redesignation and approval of related maintenance plan) and 79 FR 60078 (October 6, 2014) (final PM_{10} redesignation and approval of related maintenance plan).

years 2009–2011.[50] After the original designation, the 8-hour ozone design values within Clark County exceeded the 2008 ozone NAAQS for a few years but, since 2015, the design values have returned to attainment levels for the 2008 ozone NAAQS. See Table 1 above. Thus, emissions of VOC and NO_X in 2015 represent conditions under which Clark County meets the 2008 ozone NAAQS. As updated in the 2018 Ozone Maintenance Plan Revision, summertime weekday average emissions in 2015 were approximately 262 tpd of VOC and 128 tpd of NO_X.[51] Including the safety margin allocations to the on-road emissions estimates, the 2018 Ozone Maintenance Plan Revision allows for 280 tpd of VOC and 168 tpd of NO_X emissions in 2022, *i.e.,* a higher level of VOC and NO_X emissions than is consistent with continued attainment of the 2008 ozone NAAQS.

However, in recognition of the need to avoid interference with attainment of the 2008 ozone NAAQS and progress toward attainment of the 2015 ozone NAAQS, NDEP and Clark County DAQ have committed to submit a SIP revision to remove the safety margin allocations to the 2015 budgets and to reduce the safety margin allocations to the 2022 budgets such that total estimated emission in 2022 (with the allocations) would not exceed actual emissions in year 2017. As shown in Table 1 above, the design value in year 2017 was 0.074 ppm, which is consistent with attainment of the 0.075 ppm 2008 ozone NAAQS.

Based on the commitments by NDEP and Clark County DAQ, the total projected emissions (with the reduced safety margin allocations) in year 2022 would be less than the actual emissions estimated for year 2017, a year in which the 2008 ozone NAAQS was attained in Clark County. Therefore, the 2018 Ozone Maintenance Plan, as revised consistent with NDEP's and Clark County DAQ's commitments, would not interfere with attainment of the 2008 ozone NAAQS in Clark County.

2015 Ozone NAAQS. In 2018, the EPA designated the Las Vegas Valley (*i.e.,* hydrographic area #212) as a Marginal nonattainment area for the 0.070 ppm 2015 ozone NAAQS based on ambient ozone concentration data for years 2015–2017.[52] The 2017 ozone design value is 0.074 ppm, and VOC and NO_X emissions in 2017 are estimated (based on interpolating the 2015 and 2022 updated inventories in the 2018 Ozone Maintenance Plan Revision) to be approximately 257 tpd and 116 tpd, respectively.[53] To attain the 0.070 ppm 2015 ozone NAAQS by the applicable Marginal area attainment date, *i.e.,* by August 3, 2021, VOC and NO_X emissions must decrease relative to those in 2017. With the allocation of the safety margin to the on-road emissions estimates, the 2018 Ozone Maintenance Plan Revision would allow for VOC and NO_X emissions that are greater than those in 2017.

However, based on the commitments by NDEP and Clark County DAQ described above for the 2008 ozone NAAQS, the total projected emissions (with the reduced safety margin allocations) in year 2022 would be less than the actual emissions estimated for year 2017, the base year for implementation of the 2015 ozone NAAQS. Therefore, the 2018 Ozone Maintenance Plan, as revised consistent with NDEP's and Clark County DAQ's commitments, would not interfere with RFP towards attainment of the 2015 ozone NAAQS.

2006 and 2012 $PM_{2.5}$ NAAQS. The EPA has designated the State of Nevada, on a hydrographic area basis, as unclassifiable/attainment for both the 35 $\mu g/m^3$, 24-hour average, 2006 $PM_{2.5}$ NAAQS and the 12.0 $\mu g/m^3$, annual average, 2012 $PM_{2.5}$ NAAQS.[54] The design values for 24-hour average $PM_{2.5}$ concentrations have ranged from 19 to 26 $\mu g/m^3$ over the 2008–2017 period, well below the corresponding NAAQS of 35 $\mu g/m^3$.[55] With respect to annual average $PM_{2.5}$ concentrations, the design values have ranged from 7.7 to 10.3 $\mu g/m^3$ over that same period, *i.e.,* well below the corresponding NAAQS of 12.0 $\mu g/m^3$.[56] Thus, since at least 2008, ambient $PM_{2.5}$ concentrations have been well within the applicable NAAQS, and given that the VOC and NO_X emissions that would be allowed under the 2018 Ozone Maintenance Plan Revision (including the safety margin allocations to on-road emissions) would be less than those that occurred in 2008, approval of the 2018 Ozone Maintenance Plan Revision would not interfere with attainment of the 2006 or 2012 $PM_{2.5}$ NAAQS in Clark County.

VI. Proposed Action and Request for Public Comment

For the reasons discussed above, under CAA section 110(k)(4), the EPA is proposing to conditionally approve the 2018 Ozone Maintenance Plan Revision submitted by NDEP on October 31, 2018 as a revision for the Clark County portion of the Nevada SIP. In so proposing, we find that the 2011 Ozone Maintenance Plan, as revised by the updated attainment inventory and maintenance demonstration in the 2018 Ozone Maintenance Plan Revision, continues to provide for maintenance of the 1997 ozone NAAQS and, upon fulfillment of the commitments made by NDEP and Clark County DAQ to reduce the safety margin allocations to the budgets, will not interfere with RFP or attainment of the other NAAQS in Clark County. In proposing conditional approval of the 2018 Ozone Maintenance Plan Revision, the EPA is also proposing to find adequate and conditionally approve the updated budgets for 2008, 2015 and 2022 for the 1997 ozone NAAQS (shown in Table 6 of this document) based on our conclusion that the updated budgets meet the applicable transportation conformity requirements.

The proposed approval of the 2018 Ozone Maintenance Plan Revision is conditional because it is based on commitments from NDEP and the Clark County DAQ to submit a SIP revision within one year of final conditional approval.[57] The purpose of the future SIP revision is to reduce the safety margin allocations to the budgets to ensure that the 2018 Ozone Maintenance Plan Revision, as revised to reduce the safety margin allocations, will not interfere with reasonable further progress or attainment of the 2008 and 2015 ozone NAAQS.

Lastly, if the EPA takes final action to approve conditionally the 2018 Ozone Maintenance Plan Revision as proposed, the revised budgets will replace the existing approved budgets from the 2011 Ozone Maintenance Plan, and RTC and DOT must use the revised budgets for future transportation conformity determinations.

[50] Letter from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Brian Sandoval, Governor, State of Nevada, dated December 9, 2011.

[51] Assumes that no emission reduction credits (ERCs) were used in 2015.

[52] EPA, ''Nevada, Las Vegas Nonattainment Area, Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards, Technical Support Document (TSD).''

[53] Assumes that no ERCs were used in 2017.

[54] 40 CFR 81.329.

[55] 2017 $PM_{2.5}$ Design Values Report at *https://www.epa.gov/air-trends/air-quality-design-values#report.* The 24-hour $PM_{2.5}$ NAAQS design value is the 3-year average of annual 98th percentile 24-hour average values recorded at each monitoring site, and the 24-hour $PM_{2.5}$ design value for the area is the highest design value among the monitoring sites.

[56] Id. The annual $PM_{2.5}$ NAAQS design value is the 3-year average of annual mean concentrations recorded at each monitoring site, and the annual $PM_{2.5}$ design value for the area is the highest design value among the monitoring sites.

[57] Letter from Jodi Bechtel, Assistant Director, Clark County DAQ, to Greg Lovato, Administrator, NDEP, dated June 14, 2019; and letter from Greg Lovato, Administrator, NDEP, to Elizabeth Adams, Director, Air Division, EPA Region IX, dated June 21, 2019.

The EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

VII. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 27, 2019.

Deborah Jordan,

Acting Regional Administrator, EPA Region IX.

[FR Doc. 2019–14630 Filed 7–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations: Perchlorate; Proposed Rule

Correction

In proposed rule document 2019–12773 beginning on page 30524 in the issue of Wednesday, June 26, 2019, make the following correction:

On page 30558, in the third column, in the third paragraph, ''[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**]'' should read ''July 26, 2019''.

[FR Doc. C1–2019–12773 Filed 7–10–19; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[FRL–9996–39–Region 3]

Public Water System Supervision Program Revisions for the State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notification is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act, as amended, and the requirements governing the National Primary Drinking Water Regulations Implementation that the State of Delaware is revising its approved Public Water System Supervision Program. The State has adopted several regulations which will provide for better public health protection by reducing exposure to potential contaminants in drinking water. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. EPA is taking action to tentatively approve these program revisions.

DATES: Comments or a request for a public hearing must be submitted by August 12, 2019.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to *Rizzo.George@epa.gov.* All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Section (3WD21), Water Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Office of Drinking Water, Delaware Division of Public Health, 43 South DuPont Highway, Dover, DE 19901–7430.

FOR FURTHER INFORMATION CONTACT: George Rizzo at the Philadelphia address given above, telephone (215) 814–5781, fax (215) 814–2302, or email *Rizzo.George@epa.gov.*

SUPPLEMENTARY INFORMATION: The State regulations which EPA has determined are no less stringent than the corresponding Federal regulations are:

Lead and Copper Rule Minor Revisions;

Lead and Copper Rule Short Term Revisions;
Interim Enhanced Surface Water Treatment Rule;
Long Term 1 Enhanced Surface Water Treatment Rule;
Long Term 2 Enhanced Surface Water Treatment Rule;
Stage 2 Disinfectant/Disinfection By-Products Rule;
Ground Water Rule; and
Revised Total Coliform Rule.

All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered; if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 12, 2019, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: June 20, 2019.

Cosmo Servidio,

Regional Administrator, EPA Region III.

[FR Doc. 2019–14632 Filed 7–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–9996–25–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Electro-Coatings, Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 is issuing a Notice of Intent to Delete the Electro-Coatings, Inc. Superfund Site (Site) located at 911 Shaver, Cedar Rapids, Iowa, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Iowa, through the Iowa Department of Natural Resources (IDNR), have determined that all required and appropriate response actions at the Electro-Coatings under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 12, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0011, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, 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.*
- *Email: safadi.amer@epa.gov*.
- *Mail:* U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219. Attention: Amer Safadi, SEMD Divison.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219. Such deliveries are only accepted between 8:00 a.m. and 4:00 p.m. Monday through Friday, except federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1989–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at:

The EPA Region 7 Records Center, 11201 Renner Boulevard, Lenexa, KS 66219 between 8 a.m. to 4 p.m. Monday through Friday, excluding Federal holidays; and the Cedar Rapids Downtown Public Library, 450 Fifth Avenue SE, Cedar Rapids, Iowa 52401. Telephone number (319) 261–7323. Open Monday through Thursday 9 a.m. to 8 p.m.; Friday through Saturday 9 a.m. to 5 p.m.; and Sunday 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Amer Safadi, Remedial Project Manager, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard,

Lenexa, Kansas 66219, email: *safadi.amer@epa.gov* and phone number: (913) 551–7825.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The EPA Region 7 announces its intent to delete the Electro-Coatings, Inc. Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

The EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Electro-Coatings, Inc. Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such five-year reviews even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion of the Site:

(1) The EPA consulted with the State before developing this Notice of Intent for Deletion.

(2) The EPA has provided the state thirty working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, the EPA in consultation with the state, has determined that no further response is appropriate.

(4) The State of Iowa, through the Iowa Department of Natural Resources, has concurred with the deletion of the Electro-Coatings, Inc. Superfund Site from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Deletion in the **Federal Register**, a notice is being published in The Gazette, a major local newspaper in Cedar Rapids, Iowa. The newspaper announces the thirty-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the thirty-day comment period on this document, the EPA will evaluate and respond accordingly to the comments before making a final decision to delete the Electro-Coatings Site. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if the EPA determines, in consultation with the State, it is still appropriate to delete the Electro-Coatings Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist the EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Intended Site Deletion

The following information provides the EPA's rationale for deleting the Electro-Coatings, Inc. Superfund Site from the NPL:

Site Background and History

Site Location

The Electro-Coatings, Inc. Site is located at 911 Shaver Road, along the north shoreline of Cedar Lake in the City of Cedar Rapids in Linn County, Iowa. The Site occupies approximately 1.5 acres. Cedar Lake is 150 acres in size and is privately owned by a utility company. A recreational trail is located along Cedar Lake and adjacent to the Site. The Cedar River is located about 0.5 miles to the west of the Site. The immediate area surrounding the Electro-Coatings Site is zoned as industrial. Industrial uses in the vicinity have included rubber manufacturing, scrap metal operations, paper manufacturing, cereal processing, grain alcohol production, and operation of an electric utility. The nearest residential area is approximately 0.25 miles to the east of the Site. Interstate Highway 380 separates the residential area from the Site. The Cedar Rapids Water Department has wells located to the west and north of the Site. The closest city wells are about 2,000 feet to the west of the Site.

Historic Activities

Electro-Coatings, Inc. (Electro-Coatings) has operated a facility that performs chromium, cadmium, nickel and zinc plating since 1947.

Groundwater flow at the Site is generally to the west-southwest towards

the Cedar River. Groundwater flow in the alluvial deposits is towards the west-southwest, while groundwater flow in the bedrock is towards the southwest. The water level in Cedar Lake is higher than the water levels in all of the alluvial wells except monitoring well (MW) -8, which is located approximately 450 feet to the north of the lake (Remedial Investigation Report, Shive-Hattery 1992). These water levels suggest that the sandy to silty aquifer is not discharging into the lake. A small dam located on the northwest corner of Cedar Lake partially controls the lake level.

In March of 1976, a yellow tinge was noted in the cooling water being discharged to Cedar Lake from the Hawkeye Rubber Manufacturing Company (Hawkeye Rubber), which was located immediately to the west of the Site. This water was found to contain a high concentration of chromium coming from the Hawkeye Rubber production well (PW) -1. The source of chromium was tracked to a leaking concrete tank containing chromic acid at the Electro-Coatings facility. The chromium contamination of groundwater from Electro-Coatings was predominantly in the hexavalent form.

Shortly after the discovery of the chromium release, Electro-Coatings took actions to prevent further releases in response to requirements by the State of Iowa. Electro-Coatings replaced the leaky tank and injected ferrous sulfate and sulfuric acid into the groundwater in an attempt to reduce hexavalent chromium to the less soluble trivalent chromium. Electro-Coatings also implemented a program to upgrade leak prevention facilities throughout their plant and, under order from the State, installed monitoring wells and conducted groundwater monitoring. In addition, Hawkeye Rubber moved its cooling-water discharge from Cedar Lake to the Cedar Rapids sanitary sewer.

National Priorities List (NPL) Designation

On June 24, 1988, the Site was proposed to the NPL (53 FR 23978) and on October 4,1989, the Site was placed on the NPL (54 FR 41015) due to concerns that chromium contamination had the potential to affect the municipal water-supply wells of the City of Cedar Rapids, the closest of which is about 2,000 feet to the west of the Site. No impacts to the city wells from the Site, however, have ever been found. The CERCLIS ID is IAD005279039. The Iowa Department of Natural Resources (IDNR) has served as the lead oversight agency for the CERCLA remedial actions.

Remedial Investigation and Feasibility Study (RI/FS)

In 1991, remedial investigations by Electro-Coatings revealed volatile organic compound (VOC) contamination in groundwater that appeared to be from an off-site source. In October of 1992, the IDNR completed a supplemental investigation of the VOC contamination and concluded that Hawkeye Rubber was the primary source of VOCs. The VOC contamination was attributed to Hawkeye Rubber's vapor degreasing operation which utilized tetrachloroethylene, also known as perchloroethylene (PCE). During the 1991 remedial investigation (RI), and the subsequent 1992 supplemental investigation, it was concluded that the primary source of VOC contamination was attributed to the adjacent Hawkeye Rubber, which used PCE for vapor degreasing (TCE and *cis*-1,2-DCE are known breakdown products of PCE under certain geochemical and microbiological conditions). Hawkeye Rubber discontinued use of PCE for degreasing upon its discovery as a groundwater contaminant in 1992. Also, soil sampling during the RI revealed significant VOC contamination in the vicinity of Hawkeye Rubber. Only very low concentrations of VOCs were identified in soils adjacent to the Electro-Coatings facility. Electro-Coatings was determined to be a much smaller source of VOC contamination from previous use of trichloroethylene (TCE) and 1,1,1-trichloroethane (1,1,1-TCA).

In the spring of 1992, Electro-Coatings discovered soil contamination as a chromium dipping tank was being taken out of service. Approximately seventy cubic yards of soil and two-and one-half cubic yards of concrete were removed and disposed of at an off-site hazardous waste facility.

A Baseline Risk Assessment (BLRA) conducted by the IDNR in 1993 identified potentially unacceptable short- and long-term risks to site workers from the use of water from PW–1 for drinking and showering due to hexavalent chromium. Very low levels of chromium (less than 10 percent of the Safe Drinking Water Act Maximum Contaminant Levels(MCLs) were detected in some municipal water-supply wells. It is not known whether these low-level detections were attributed to the Electro-Coatings Site. Although the IDNR initially expressed concern that chromium contamination had the potential to affect municipal water-supply wells, the closest being approximately 2,000 feet west of the Site, the BLRA found no unacceptable risks based on the scenario used. The BLRA scenario found that if all groundwater contamination from the Site was drawn into one city well, the resulting contaminant levels in that well—representing only about 4 percent of the total water supply—would not exceed the Maximum Contaminant Levels (MCLs).

Record of Decision/Selected Remedy

The Record of Decision (ROD) for the Electro-Coatings Superfund Site was signed on September 29, 1994. The ROD addressed potential threats from use of water from the Hawkeye Rubber production well and potential off-site migration of contaminants. The ROD included only one operable unit which addressed groundwater contamination. The remedy selected in the ROD was monitoring with a contingency for groundwater pump and discharge to the publicly-owned treatment works (POTW). Major Components of the selected remedy included:

1. A contingency action if PW–1 ceases pumping or is found to not prevent off-site migration of contaminants. (Note: The remedy contains no requirements for continued operation of PW–1.)

2. If water quality monitoring reveals off-site migration of contaminants above drinking water standards, contingency actions will be required, which would involve installation of a new recovery well or wells to provide adequate containment of groundwater contamination. Treatment of the contaminated groundwater to reduce hexavalent chromium to trivalent chromium by chemical addition would be provided, if necessary, prior to discharge to the sanitary sewer under a pretreatment agreement with the POTW.

3. Testing to determine the effectiveness of PW–1 for containment of groundwater contamination from Electro-Coatings.

4. An evaluation of the adequacy of the existing monitoring well network to identify potential offsite migration of contaminants, other than to PW–1. Additional monitoring wells will be installed if the monitoring well network is found to be inadequate.

5. Develop and implement a monitoring plan to include monitoring procedures, locations of monitoring wells, frequency of sampling, sampling parameters, criteria for termination, and provisions for modification of the plan.

The response action selected in the ROD addressed all principal threats posed by the Site and the potential for direct ingestion of water containing contaminants above health-based levels. The objectives of the response action

were to contain the contaminated groundwater and to ensure that groundwater not meeting health-based criteria was not ingested. The remedy prescribed in the ROD addressed this through groundwater monitoring, with a contingency for groundwater pump and discharge to the POTW. The remedy also acknowledged the contribution of PW–1 in providing hydraulic containment and preventing further migration of contaminated groundwater.

In October of 1999, Electro-Coatings and Shaver Road Investments, owner of the property, entered into a consent order with the State for implementation of the ROD. In February 2000, Hawkeye Rubber entered into a similar agreement with the State, and in 2001, Alliant Energy Company assumed Hawkeye Rubber's responsibilities after purchasing the property from Hawkeye Rubber. A joint effort by Electro-Coatings and Hawkeye Rubber, involving continued pumping from PW–1 and groundwater monitoring, was initiated in the spring of 2000.

Operation of the Hawkeye Rubber production well PW–1 continued until August 2006, except for a few months in 2003 due to a fire. Pumping to address the Hawkeye Rubber contamination was reinstated in July of 2008 and terminated again in September of 2009. There have been no detections in water from PW–1 of contaminants associated with the Site since September 2003. The last contaminant detected above an MCL in a Site monitoring well was in October 2005, and that contaminant was associated with Hawkeye Rubber, not Electro-Coatings. As a result of these findings, all active remedial measures ceased with the discontinuation of pumping from PW–1 in August 2006.

Starting in 2007, operation and maintenance activities were limited to semi-annual sampling of on-site monitoring wells MW–7 and MW–9 and this monitoring continued until November 2009 when both wells achieved the State consent order requirements of three consecutive semi-annual sampling events with no exceedance of MCLs.

Cleanup Levels

PCE, TCE, 1,1-DCE, cis-1,2-DCE, Cadmium, and Nickel

For the contaminantes listed above, the consent order implementing the remedial measures prescribed in the ROD stated that its requirements would be satisfied when there were no exceedances of the MCLs in at least three consecutive semi-annual sampling events and, if necessary, an appropriate institutional control is in place. All monitoring and production wells had achieved this goal by 2008 except MW–5 and MW–9, which both showed exceedances of TCE and cis-1,2-DCE within the last three sampling events. IDNR determined, however, that this contamination was from the neighboring Hawkeye Rubber site, as indicated below, which is being addressed under a separate action and not the Electro-Coatings, Inc. Site CERCLA response. Therefore, IDNR determined that all monitoring and production wells at the Site had satisfied the MCL requirements in November 2009 (IDNR, 2012). All active remedial measures ceased with the discontinuation of pumping from PW–1 in August 2006.

Chromium Contamination in Groundwater Analysis

The RI noted that hexavalent chromium was used at the Electro-Coatings plant, which had a leaking concrete tank determined to be the source of groundwater contamination. However, groundwater monitoring data conducted at the Site from 2000 through 2009 demonstrates that all wells have reached the ROD cleanup level of 100 ug/L, which was selected for total chromium, based on the Federal MCL. As a current drinking water aquifer and in light of new hexavalent chromium toxicity, the EPA evaluated site specific information to determine that groundwater is protective for current and future drinking water purposes. Below is a summary of this analysis.

Most wells were sampled until the pumping well operation ceased in 2006, with the exception of one downgradient well (MW–1) and two wells immediately downgradient of the source area (MW–7 and MW–9), which were sampled beyond 2006. PW–1 as well as MW–2, MW–3, MW–4, MW–5, MW–5D, and MW–10D, had multiple samples collected in FY 2006, with all wells showing total chromium being below the MCL. To provide additional data and a more conservative analysis, a duplicate sample was collected from these wells and results showed that total chromium is at or below 20 ug/L for these locations. For the remaining wells, downgradient well MW–1 was sampled once more in 2007 showing a concentration of total chromium less than 30 ug/L. This data, when compared to previous sampling results, showed that the groundwater continued to attenuate and meet the MCLs after the active treatment was terminated. The two remaining source wells, MW–7 and MW–9, upgradient of the pumping well, required sampling until 2009 to demonstrate compliance with MCLs. For MW–7, quarterly samples collected between 2008 and 2009 showed concentrations ranging from less than 20 ug/L to 100 ug/L, with the last two sampling events being below 20 ug/L, thus demonstrating that the cleanup level had been met. For MW–9, the last two years of sampling showed a decreasing trend, with the last sample collected being less than 20 ug/L.

In summary, the groundwater sample results for all wells sampled showed final total chromium concentrations less than 100 ug/L, and in most cases concentrations less than 20 ug/L or 10 ug/L. The residual levels of total chromium concentrations, specifically the data results from the duplicate samples and the recent source area well analysis conducted at Hawkeye Rubber in 2018 provide the EPA assurance that the impacted groundwater is suitable for drinking water and is protective of human health and the environment for total chromium and hexavalent chromium.

Five Year Reviews

Per EPA policy, if a remedial action is selected that does not result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, but will take more than five years to complete, the lead agency shall review such action no less often than every five years after the completion of construction. The EPA Region 7 has conducted the third and most recent FYR of the remedial actions implemented at the Electro-Coatings Site from June 2015 through September 2016. The triggering action for this review was the signature date of the previous FYR Report.

The third FYR was completed on September 22, 2016 and found the remedy to be protective of human health and the environment in the short-term. There was one issue and recommendation, to collect and evaluate additional surface water samples from Cedar Lake to determine if potential ecological threats exist. The EPA Region 7 subsequently collected and analyzed surface water sample for hexavalent chromium. All sample results were below ambient water quality criteria. The EPA subsequently performed a screening level environmental risk assessment and determined that there was no risk to ecological receptors. The one issue and recommendation from the 2016 FYR was resolved. The EPA is completing a memorandum to the file documenting these results and other data associated with the Site to justify discontinuing five-year reviews, as the site has reached UU/UE.

Community Involvement

Throughout the CERCLA process from development of the Consent Order to completion of remedial activities, all phases of the remediation have had input from Federal and State regulators and members of the public. Over the life of the project, there have been numerous opportunities for public input to express their opinions.

Public involvement has been sought by IDNR, and EPA on many remediation and operation documents, including Proposed Plans, Decision Documents, and EPA Five-Year Reviews. The last public notice was placed in the Cedar Rapids' newspaper, The Gazette, on July 19, 2015, notifying the public of the start of the third Five-Year Review (FYR) process. The completed FYR report was made available during the public comment period at the EPA Region 7 Records Center, located at 11201 Renner Boulevard, Lenexa, Kansas 66219, and the Cedar Rapids Downtown Public Library, located at 450 Fifth Avenue SE, Cedar Rapids, Iowa 52401.

Determination That the Criteria for Deletion Have Been Met

In accordance with 40 CFR 300.425(e), the EPA Region 7 determined that the response at the Site (the subject of this deletion) meets the substantive criteria for deletion from the NPL. All responsible parties or other persons have implemented all appropriate response actions required, and no further response action by responsible parties is appropriate. The implemented remedies have achieved the degree of cleanup specified in the remedy decisions for all pathways of exposure. All selected remedial action objectives and associated cleanup levels are consistent with agency policy and guidance. No further Superfund response is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 3, 2019

James Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2019–14759 Filed 7–10–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 133
Thursday, July 11, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 8, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 12, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Multiple Peril Crop Insurance.

OMB Control Number: 0563–0053.

Summary of Collection: Previous amendments to the Federal Crop Insurance Act expanded the role of the crop insurance program to be the principal tool for risk management by producers of farm products and provided that crop insurance program operate on an actuarially sound basis, provided for independent review of crop insurance products by person experienced as actuaries and in underwriting, and required that the crop insurance program operate on an actuarially sound basis. The Agricultural Act of 2014 (2014 Farm Bill) strengthens crop insurance by providing more risk management options for farmers and ranchers and by making crop insurance more affordable for beginning farmers. It continues the growth of the crop insurance program, new crop products developed, provides avenues to expand farm safety net options for organic producers and specialty crop producers, and new insurance concepts studied for possible implementation. Federal Crop Insurance Corporation (FCIC) offers a Standard Reinsurance Agreement to eligible crop insurance companies under which FCIC will use data elements instead of standards forms.

Need and Use of the Information: FCIC requires crop acreage information to be submitted to the insurance agent by each producer on or before a specific date. The basic provision covers information such as the name of the crop, the number of timely planted acres, person sharing in the crop, location of the acreage, etc. This information is used to determine liability, premium and subsidy. Federal agencies, Risk Management Agency, crop insurance companies that are reinsured by FCIC, and other agencies that require such information in the performance of their duties may use this information. If the information were not collected by specified dates, the producers may not have insurance coverage or the amount of insurance may be reduced and the crop insurance program would not be administered in an actuarially sound manner.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 547,385.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Weekly; Semi-annually; Monthly; Annually.

Total Burden Hours: 7,884,471.

Kimble Brown,

Departmental Information Clearance Officer.

[FR Doc. 2019–14750 Filed 7–10–19; 8:45 am]

BILLING CODE 3410–08–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Utah Advisory Committee (Committee) to the Commission will be held at 1 p.m. (Mountain Time) Thursday, July 25, 2019. The purpose of this meeting is for the Committee to begin planning for their briefing on the gender wage gap.

DATES: The meeting will be held on Thursday, July 25, 2019 at 1:00 p.m. MT.

Public Call Information: Dial: 800–353–6461; Conference ID: 1339923.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 1339923. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and

providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzltAAA.* Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Approval of June 14, 2019 Meeting Minutes
III. Discussion on Planning for Briefing on the Gender Wage Gap
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: July 8, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–14777 Filed 7–10–19; 8:45 am]

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, July 19, 2019, 10:00 a.m. EDT.

ADDRESSES: Place: National Place Building, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425. (Entrance on F Street NW.)

FOR FURTHER INFORMATION CONTACT: Brian Walch: (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public. There will also be a call-in line for individuals who desire to listen to the meeting and presentations: 866–556–2429, Conference ID 801–6366. The meeting will also live-stream: *https://www.youtube.com/user/USCCR/videos.* (Subject to change.) Persons with disabilities who need accommodation should contact Pamela Dunston at (202) 376–8105 or at *access@usccr.gov* at least seven business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda
II. Business Meeting
- A. Presentation by Montana Advisory Committee Chair on the Committee's report, *Bordertown Discrimination in Montana*
- B. Presentation by Massachusetts Advisory Committee Chair on the Committee's Advisory Memorandum, *Hate Crimes in Massachusetts*
- C. Discussion and vote on State Advisory Committee appointments
  - Illinois
  - Massachusetts
  - South Dakota
  - Washington
  - Wisconsin
- D. Discussion and vote on 2020 and 2021 project proposals
- E. Management and Operations
  - Staff Director's Report
- F. [11:30 a.m. EDT] Speaker Series Presentation by Charles Kamasaki on his book, *Immigration Reform: The Corpse That Will Not Die*

III. Adjourn Meeting

Dated: July 8, 2019.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2019–14803 Filed 7–9–19; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Stainless Steel Butt-Weld Pipe Fittings From Italy: Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy for the period February 1, 2018, through January 31, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable July 11, 2019.

FOR FURTHER INFORMATION CONTACT: John K. Drury, 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) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy for the period of review covering February 1, 2018, through January 31, 2019.[1] On February 28, 2019, Core Pipe Products, Inc., Shaw Alloy Piping Products, LLC, and Taylor Forge Stainless Inc., the petitioners, filed a timely request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Pursuant to this request and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of Filmag Italia, SpA.[3] On June 5, 2019, the petitioners filed a timely withdrawal of request for the administrative review.[4]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816 (February 8, 2019).

[2] *See* Letter from petitioners, ''Stainless Steel Butt-Weld Pipe Fittings from Italy: Petitioners' Request for 2018/2019 Administrative Review,'' dated February 28, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019).

[4] *See* Letter from petitioners, ''Stainless Steel Butt-Weld Pipe Fittings from Italy: Petitioners' Withdrawal of Review Request for Filmag,'' dated June 5, 2019.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioners, the only party to file a request for review, withdrew this request by the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy covering February 1, 2018, through January 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of stainless steel butt-weld pipe fittings from Italy. 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, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all 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 the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 5, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–14762 Filed 7–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–084, C–570–085]

Certain Quartz Surface Products From the People's Republic of China: Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing the antidumping duty (AD) and countervailing duty (CVD) orders on certain quartz surface products (quartz surface products) from the People's Republic of China (China).

DATES: Applicable July 11, 2019.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon at (202) 482–6274 (AD) and Joshua Tucker at (202) 482–2044 (CVD), AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on May 23, 2019, Commerce published its affirmative final determination of sales at less-than-fair-value (LTFV) [1] and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of quartz surface products from China.[2]

On June 28, 2019, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of quartz surface products from China, within the meaning of section 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[3] On July 5, 2019, the ITC published its final determination in the **Federal Register**.[4] Further, the ITC determined that critical circumstances do not exist with respect to LTFV imports and subsidized imports of quartz surface products from China.[5]

Scope of the Orders

The products covered by these orders are quartz surface products from China. For a complete description of the scope of the orders, *see* Appendix I to this notice.

AD Order

On June 28, 2019, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of quartz surface products from China that are sold in the United States at LTFV.[6] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this AD order. Because the ITC determined that imports of quartz surface products from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties, as described below.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the subject merchandise, for all relevant entries of quartz surface products from China. Antidumping duties will be assessed on unliquidated entries of quartz surface products from China entered, or withdrawn from warehouse, for consumption on or after November 20, 2018, the date of publication of the *LTFV Preliminary*

[1] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances,* 84 FR 23767 (May 23, 2019) (*LTFV Final Determination*).

[2] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances,* 84 FR 23760 (May 23, 2019) (*CVD Final Determination*).

[3] *See* ITC June 28, 2019 letter regarding notification of final determination (ITC Notification).

[4] *See Certain Quartz Surface Products from China; Determinations,* 84 FR 32216 (July 5, 2019) (*ITC Final Determination*).

[5] *See ITC Final Determination* at footnote 2 and USITC Publication 4913 (June 2019).

[6] *See* ITC Notification.

Determination,[7] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination as further described below.

Suspension of Liquidation—AD

In accordance with section 736 of the Act, we will instruct CBP to reinstitute suspension of liquidation on all relevant entries of quartz surface products from China, effective on the date of publication of the *ITC Final Determination* in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount that normal value exceeds export price or constructed export price for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. For each producer and exporter combination, Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the cash deposit rates listed below.

Accordingly, effective on the date of publication of the *ITC Final Determination,* CBP will require, at the same time as an importer of record would normally deposit estimated duties on the subject merchandise, a cash deposit based on the rates listed below.[8] As stated in the *LTFV Final Determination,* Commerce made certain adjustments for export subsidies from the *CVD Final Determination* to the estimated weighted-average dumping margin to determine each of the cash deposit rates.

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent)
Foshan Yixin Stone Co., Ltd	Foshan Yixin Stone Co., Ltd	333.09	295.02
Foshan Yixin Stone Co., Ltd	QingYuan Yue Feng Decoration Material Co., Ltd	333.09	295.02
Suzhou Colorquartzstone New Material Co., Ltd., Shanghai Meiyang Stone Co., Ltd., CQ International Limited.	Suzhou Colorquartzstone New Material Co., Ltd. and Shanghai Meiyang Stone Co., Ltd.	265.81	255.27
Non-Individually Examined Exporters Receiving Separate Rates (*see* Appendix II).	Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates (*see* Appendix II).	297.40	259.33
China-Wide Entity[9]	China-Wide Entity	336.69	326.15

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of Hercules and Hero Stone, exporters that account for a significant proportion of quartz surface products from China, we extended the four-month period to six months.[10] Commerce published its *LTFV Preliminary Determination* on November 20, 2018. Therefore, the extended period, beginning on the date of publication of the *LTFV Preliminary Determination,* ended on May 18, 2019. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rate listed above will begin on July 5, 2019, the date of publication of the *ITC Final Determination.*

Therefore, in accordance with section 733(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of quartz surface products from China entered, or withdrawn from warehouse, for consumption after May 18, 2019, the date on which the provisional measures expired, through July 4, 2019, the day preceding the date of publication of the *ITC Final Determinations* in the **Federal Register**. Suspension of liquidation will resume on July 5, 2019, the date of publication of the *ITC Final Determination* in the **Federal Register**.

Critical Circumstances—AD

With regard to the ITC's negative critical circumstances determination on LTFV imports of quartz surface products from China, we will instruct CBP to lift suspension and to refund all cash deposits made to secure the payment of estimated antidumping duties with respect to entries of quartz surface products from China entered, or withdrawn from warehouse, for consumption on or after August 22, 2018 (*i.e.,* 90 days prior to the date of publication of the *LTFV Preliminary Determination*), but before November 20, 2018 (*i.e.,* the date of publication of the *LTFV Preliminary Determination*).

CVD Order

On June 28, 2019, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of quartz surface products from China.[11] Therefore, in accordance with section 705(c)(2) of the Act, we are issuing this CVD order. Because the ITC determined that imports of quartz surface products from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of countervailing duties, as described below.

As a result of the ITC's final determination, in accordance with section 706(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce,

[7] *See Certain Quartz Surface Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 83 FR 58540 (November 20, 2018) (*LTFV Preliminary Determination*).

[8] *See* section 736(a)(3) of the Act.

[9] The following companies are part of the China-wide entity: Foshan Hero Stone Co., Ltd., Foshan Quartz Stone Imp & Exp Co., Ltd., and Hero Stone Co., Ltd. (collectively, Hero Stone); Guangzhou Hercules Quartz Stone Co., Ltd. (Hercules); and Vemy Quartz Surface Co., Ltd.

[10] *See LTFV Preliminary Determination,* 84 FR at 58542.

[11] *See* ITC Notification.

countervailing duties on all relevant entries of quartz surface products from China. Countervailing duties will be assessed on unliquidated entries of quartz surface products from China entered, or withdrawn from warehouse, for consumption on or after September 21, 2018, the date of publication of the *CVD Preliminary Determination*,[12] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination as further described below.

Suspension of Liquidation—CVD

In accordance with section 706 of the Act, we will instruct CBP to reinstitute suspension of liquidation on all relevant entries of quartz surface products from China, effective on the date of publication of the ITC's notice of final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.[13] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Company	Subsidy rate (percent)
Foshan Hero Stone Co., Ltd[14]	190.99
Fasa Industrial Corporation Limited	190.99
Foshan Yixin Stone Co., Ltd	45.32
Foshan Nanhai Julang Quartz Co	190.99
Qinguan Yuefeng Decoration Material Co	190.99
All Others	45.32

[12] *See Certain Quartz Surface Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 47881 (September 21, 2018) (*CVD Preliminary Determination*).

[13] *See* section 706(a)(3) of the Act.

[14] Commerce has found the following companies to be cross-owned with Foshan Hero Stone Co., Ltd.: Mingwei Quartz New Environmental Protection Materials Co., Ltd.; and Foshan Quartz Stone Imp & Exp Co., Ltd.

Provisional Measures—CVD

Section 703(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its *CVD Preliminary Determination* on September 21, 2018. Therefore, the provisional measures period, beginning on the date of publication of the *CVD Preliminary Determination,* ended on January 18, 2019. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rate listed above will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of quartz surface products from China entered, or withdrawn from warehouse, for consumption after January 18, 2019, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances—CVD

With regard to the ITC's negative critical circumstances determination on imports of quartz surface products from China, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of quartz surface products from China entered, or withdrawn from warehouse, for consumption on or after June 23, 2018 (*i.e.,* 90 days prior to the date of publication of the *CVD Preliminary Determination*), but before September 21, 2018 (*i.e.,* the date of publication of the *CVD Preliminary Determination*).

Notifications to Interested Parties

This notice constitutes the AD and CVD orders with respect to quartz surface products from China pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find a list of orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 8, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Orders

The scope of the orders covers certain quartz surface products.[15] Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the orders. However, the scope of the orders only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the orders includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the orders includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the orders whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the orders whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the quartz surface products.

The scope of the orders does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the orders are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by

[15] Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.

actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than one centimeter wide as measured at their widest cross-section (glass pieces); and (4) the distance between any single glass piece and the closest separate glass piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.10. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.

Appendix II

SEPARATE RATES COMPANIES

Exporter	Producer
Non-individually examined exporters receiving separate rates	**Producers supplying the non-individually-examined exporters receiving separate rates**
Anhui Youlisi Quartz Building Materials Co., Ltd d.b.a Anhui Uviistone Quartz Building Material Co., Ltd.	Anhui Youlisi Quartz Building Materials Co., Ltd d.b.a Anhui Uviistone Quartz Building Material Co., Ltd.
Ansen Investment And Development Co., Limited	Yunfu Honghai Stone Co., Ltd.
Ansen Investment And Development Co., Limited	Foshan Adamant Science & Technology Co., Ltd.
Ansen Investment And Development Co., Limited	Heshan City Nande Stone Co., Ltd.
Ansen Investment And Development Co., Limited	Dongguan Lafite Quartz-Stone Co., Ltd.
Ansen Investment And Development Co., Limited	Foshan Shunde O'Riordan Building Materials Manufacture Co., Ltd.
Aurea Stone Solutions Inc	Jiangxi Fasa Industrial Corporation Limited.
Best Bath & Kitchen Co., Limited	Fujian Province Kaisida Quartz Co., Ltd.
Best Cheer (Xiamen) Stone Works Co., Ltd	Best Cheer (Xiamen) Stone Works Co., Ltd.
Best Cheer (Xiamen) Stone Works Co., Ltd	Quanzhou Best Cheer Industry Co., Ltd.
Bestone High Tech Materials Co., Limited	Bestone High Tech Materials Co., Limited.
Bestone High Tech Materials Co., Limited	GuangDong Bosun Quartz Stone Co., Ltd.
Bestone High Tech Materials Co., Limited	Heshan Biyu Stone Co., Ltd.
Bestview (Fuzhou) Import & Export Co. Ltd	Dongguan Lafite Quartz Stone Co., Ltd.
Bestview (Fuzhou) Import & Export Co. Ltd	Nanan Fute Stone Co., Ltd.
Bestview (Fuzhou) Import & Export Co. Ltd	Foshan City Lewistone New Material Co., Limited.
Bestview (Fuzhou) Import & Export Co. Ltd	Yifeng Industries Corporation Co., Ltd.
Deyuan Panmin International Limited	Fujian Panmin Co., Ltd.
DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited	DH Group Co., Limited.
DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited	Nan An Zheng Shun Building Material Co., Ltd.
DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited	Nan An Ju Jiu Building Materials Co., Ltd.
DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited	Whitley New Material Co., Ltd.
East Asia Limited	Heshan City Nande Co Ltd.
East Asia Limited	Vemy Quartz Surface Co Ltd.
East Asia Limited	Lanling Jinzhao New Material Co Ltd.
East Asia Limited	Rong Hua Fu Quartz Co Ltd.
East Asia Limited	Runtai Stone Co Ltd.
Elite Industry International Group Limited	Heshan Biyu Stone Industry Co., Ltd.
Enming Art Stone Co., Ltd	Thinking Industries Corporation Limited.
Ersten Surfaces Limited	Huizhou Zhongbo Engineering Stone Co., Ltd.
Ersten Surfaces Limited	Guangdong Xiongjie Building Materials Co., LTD.
Farfield Trade Co., Ltd	Ronghuafu Yunfu Stone Co., Ltd.
Farfield Trade Co., Ltd	Yunfu Meiao Stone Co., Ltd.
Foshan Adamant Science & Technology Co., Ltd	Foshan Adamant Science & Technology Co., Ltd.
Foshan Biyu Stone Co., Limited	Foshan City Gaoming Biyustone Co., Ltd.
Foshan Biyu Stone Co., Limited	Foshan City Gaoming Biyu New Materials Co., Ltd.
Foshan Bluesea Quartz Stone Co., Ltd	Foshan Bluesea Quartz Stone Co., Ltd.
Heshan Nande Stone Industry Co., Ltd	Heshan Nande Stone Industry Co., Ltd.
Foshan Evergreen Import and Export Co., Ltd	Foshan Yixin Stone Co., Ltd.
Foshan Leda Building Materials Co., Ltd	Foshan Leda Building Materials Co., Ltd.
Foshan Leda Building Materials Co., Ltd	Hengyang Athena Quartz Stone Co., Ltd.
Foshan Monica Quartz Stone Co., Ltd	Foshan Monica Quartz Stone Co., Ltd.
Foshan Nanhai Cuipo Artificial Quartz Co., Ltd	Yunfu Stone Solutions Co., Ltd.
Foshan Nanhai Cuipo Artificial Quartz Co., Ltd	Qingyuan Yuefeng Decoration Materials Co., Ltd.
Foshan Nanhai Cuipo Artificial Quartz Co., Ltd	Yunfu Xiangyun Stone Co., Ltd.
Foshan Nanhai Cuipo Artificial Quartz Co., Ltd	Yunfu Ronghuafu Stone Co., Ltd.
Foshan Nanhai Cuipo Artificial Quartz Co., Ltd	Heshan City Nande Stone Co., Ltd.
Foshan Nanhai Cuipo Artificial Quartz Co., Ltd	Yunfu Wayon Stone Co., Ltd.
Foshan Opalus Stone Co., Ltd	Foshan Oubo Stone Co., Ltd.
Foshan Opaly Composite Materials Co., Ltd	Foshan Opaly Composite Materials Co., Ltd.
Foshan Rongguan Glass Material For Building Co., Ltd	Foshan Rongguan Glass Material For Building Co., Ltd.
Foshan Sanshui Queen Ceramic Inc	Foshan Sanshui Queen Ceramic Inc.
Foshan Shunde O'Riordan Building Materials Manufacture Co., Ltd	Foshan Shunde O'Riordan Building Materials Manufacture Co., Ltd.
Free Trans International Trading Limited	Foshan Xianghai Quartz Stone Co., Ltd.
Free Trans International Trading Limited	Foshan Tianci Quartz Stone Co., Ltd.
Fujian Nan'an Zuci Building Material Co., Ltd	Fujian Nan'an Zuci Building Material Co., Ltd.
Fujian Nan'an Zuci Building Material Co., Ltd	Shanghai Yijin Decorating Materials Co., Ltd.
Fujian Pengxiang Industrial Co., Ltd	Fujian Pengxiang Industrial Co., Ltd.
Fujian Putian Wangzhong New Type Building Materials Co., Ltd	Fujian Putian Wangzhong New Type Building Materials Co., Ltd.

SEPARATE RATES COMPANIES—Continued

Exporter	Producer
Fujian Quanzhou Risheng Stone Co., Ltd	Fujian Quanzhou Risheng Stone Co., Ltd.
Fuzhou CBM Imp. And Exp. Co., Ltd	Fujian Nan'an Zuci Building Material Co., Ltd.
Fuzhou CBM Imp. And Exp. Co., Ltd	Dongguan Lafite Quartz-Stone Co., Ltd.
Golden Dragon Stone Co., Limited	Foshan Rongguan Glass Material For Building Co., Ltd.
Golden Dragon Stone Co., Limited	One Stone Quartz Co., Ltd.
Guangdong Bitto New Material Technologies Co., Ltd	Guangdong Bitto New Material Technologies Co., Ltd.
Guangdong Bosun Quartz Stone Co., Ltd	Guangdong Bosun Quartz Stone Co., Ltd.
Guangdong Overland Ceramics Co., Ltd	Guangdong Overland Ceramics Co., Ltd.
Guangdong Zhongxun New Material Co., Ltd	Guangdong Zhongxun New Material Co., Ltd.
Guangzhou Gelandy New Material Co., Ltd	Guangzhou Gelandy New Material Co., Ltd.
Guangzhou Wei Sheng Stone Building Materials Co., Ltd	Huizhou Zhongbo Engineering Stone Co., Ltd.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	J W Quartz Co., Ltd.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	He Shan Biyu Stone Co., LTD.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	Dongguan kaisa stone Co., Ltd.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	Vemy Quartz Surfaces Co., Ltd.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	Heng Jia Stone.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	Hubei Guantai Building Materials Co., Ltd.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	Dongguan Huaxiang Stone Co., Ltd.
HCH Industrial Co Ltd d.b.a., Shenzhen Hengchang hao Industrial co., LTD.	Guangzhou Hercules Quartz Stone Co., Ltd.
Heshan Biyu Stone Company	Heshan Biyu Stone Company.
Hirsch Glass (Dalian) Co., Ltd	Hirsch Glass (Dalian) Co., Ltd.
Hirsch Glass (Dalian) Co., Ltd	Foshan Yixin Stone Co., Ltd.
HongKong FS Development Limited	Yunfu Chuangyun New Meterail Co., Ltd.
HongKong FS Development Limited	RONGHUAFU Yunfu Stone Co., Ltd.
Huahe Stone (Yunfu) Co., Ltd	Huahe Stone (Yunfu) Co., Ltd.
Huidong Hexingtai Industry Co., Ltd	Huidong Hexingtai Industry Co., Ltd.
Intec Stone (Xiamen) Ltd	Intec Stone (Xiamen) Ltd.
Jiangxi Jingwei Stone Co., Ltd, d.b.a. Jiangxi Jingwei Stone Material Ltd.	Jiangxi Jingwei Stone Co., Ltd, d.b.a. Jiangxi Jingwei Stone Material Ltd.
Kaistar (Xiamen) Co., Ltd	Fujian Best Matrix Quartz Co., Ltd.
Kaistar (Xiamen) Co., Ltd	Kinstone (Jieyang) Stone Co., Ltd.
Kaistar (Xiamen) Co., Ltd	Jieyang Bai Sheng Stone Limited.
KBI Construction Materials Ltd	YUNFU HongHai Stone Co., Ltd.
KBI Construction Materials Ltd	Guangdong Si Hui YuLong Stone Co., Ltd.
KBI Construction Materials Ltd	Foshan Vemy Building Material Co., Ltd.
KBI Construction Materials Ltd	Foshan Adamant Science & Technology Co., Ltd.
KBI Construction Materials Ltd	Yun Fu Xiang Yun Stone Co., Ltd.
Landmark Surface Company Limited	Guangdong Lai Ma Ke Environmental Building Materials Company Limited.
Landmark Surface Company Limited	Foshan Gaoming Dexing Quartz Stone Co., Ltd.
Lanling Jinzhao New Material Co., Ltd	Lanling Jinzhao New Material Co., Ltd.
Lindberg Stone Co., Limited	Dongguan City Lafite Quartz-Stone Co., Ltd.
Lixin Stone Co., Limited	Heshan City Nande Stone Co., Ltd.
Lixin Stone Co., Limited	Guangdong Dexing Quartz Stone Co., Ltd.
Lixin Stone Co., Limited	Guangzhou Hercules Quartz Stone Co., Ltd.
Lixin Stone Co., Limited	Foshan Adamant Science & Technology Co., Ltd.
Lixin Stone Co., Limited	Vemy Building Materials Co., Ltd.
Lixin Stone Co., Limited	Yunfu Honghai Stone Co., Ltd.
Lixin Stone Co., Limited	Dongguan Lefei New Stone Materials Co., Ltd.
Lixin Stone Co., Limited	Dongguan Lafite Quartz-stone Co., Ltd.
Lixin Stone Co., Limited	Huahe Stone (Yunfu) Co., Ltd.
Lixin Stone Co., Limited	Guangdong BOSUN Quartz Stone Co., Ltd.
Lixin Stone Co., Limited	Foshan Nanhai Yachang Building Materials Products Co., Ltd.
Loyalty Enterprise Development (Xinyang) Co., Ltd	Loyalty Enterprise Development (Xinyang) Co., Ltd.
Lulong Ruitong Trading Co., Ltd	Lulong Ruitong Trading Co., Ltd.
Macostone International Industry Co., Limited	Qingyuan Yuefeng Decoration Materials Co., Ltd.
Macostone International Industry Co., Limited	Lanling Modern Materials Co. Ltd.
Monica Surfaces Company Limited	Foshan Monica Quartz Stone Co., Ltd.
Nan'an Guangtaixiang Stone Co., Ltd	Nan'an Guangtaixiang Stone Co., Ltd.
Nanchang Montary Industrial Co., Ltd	Yunfu Kimria Quarts Stone Co., Ltd.
Nanchang Montary Industrial Co., Ltd	Yunfu Montary Stone Co., Ltd.
New Powerstone Industry Co., Limited	Qing Yuan Yuefeng Quartz Stone Co., Ltd.
New Powerstone Industry Co., Limited	Shandong Whitley New Materials Co., Ltd.
New Powerstone Industry Co., Limited	Foshan Devialef New Materials Co., Ltd.

SEPARATE RATES COMPANIES—Continued

Exporter	Producer
New Powerstone Industry Co., Limited	Yunan Guanglai Stone Co., Ltd.
New Powerstone Industry Co., Limited	Nanan Guangtaixiang Stone Co., Ltd.
Newstar (Quanzhou) Industrial Co., Ltd	Quanzhou Yifeng Industries Corporation.
One Stone Quartz Co., Ltd	Wuzhou Yuanhong Building Materials Product Co., Ltd.
Penglai Huasheng Electronic Co., Ltd	Shandong Sunfull Industrial Co., Ltd.
Po Nice International Trading Limited	Xinyun Stone (Yunfu) Co., Ltd.
Po Nice International Trading Limited	Guangzhou Hercules Quartz Stone Co., Ltd.
Po Nice International Trading Limited	Ronghuafu Yunfu Stone Co., Ltd.
Po Nice International Trading Limited	Henan Namei Quartz Stone Technology Co., Ltd.
Po Nice International Trading Limited	Lanling Jinzhao New Material Co., Ltd.
Po Nice International Trading Limited	Foshan Opalus Quartz Stone Co., Ltd.
Po Nice International Trading Limited	Zhejiang Tiancheng Stone Enterprise Co., Ltd.
Po Nice International Trading Limited	Zhejiang Sanxing Cheng Yuan Energy Science and Technology Co., Ltd.
Po Nice International Trading Limited	LESSO Technology Industry (Chengdu) Co., Ltd.
Qinhuangdao Jingwei Stone Co., Ltd	Qinhuangdao Jingwei Stone Co., Ltd.
Quanzhou Franco Trade Co., Ltd	Fujian Pengxiang Industrial Co., Ltd.
Quanzhou Xinxing Stone Technics Co., Ltd	Quanzhou Xinxing Stone Technics Co., Ltd.
Quanzhou Yifeng Co., Ltd. (AKA Quanzhou Yifeng Industries Corporation).	Quanzhou Yifeng Co., Ltd. (AKA Quanzhou Yifeng Industries Corporation).
Ronghuafu Yunfu Stone Co., Ltd	Ronghuafu Yunfu Stone Co., Ltd.
Shanghai Rightime International Trading Co., Ltd	Fujian Quanzhou Risheng Stone Co., Ltd.
Shunsen Industries Corporation	Shunsen Industries Corporation.
Shunsen Industries Corporation	Thinking Industries Corporation.
Sinostone (Guangdong) Co., Ltd	Sinostone (Guangdong) Co., Ltd.
Stone Solutions Co., Ltd	Stone Solutions Co., Ltd.
Sunjoin Imp. & Exp. (Xiamen) Co., Limited	Henan Namei Quartz Stone Technology Co., Ltd.
Sunjoin Imp. & Exp. (Xiamen) Co., Limited	Thinking Industries Cooperation Limited.
Sunjoin Imp. & Exp. (Xiamen) Co., Limited	Nan'an Hanwa New Building Material Co. Ltd.
Sunjoin Imp. & Exp. (Xiamen) Co., Limited	Quanzhou Yifeng Industries Corporation.
Teltos Quartz Stone Co., Ltd	Teltos Quartz Stone Co., Ltd.
Vquartz Stone Limited	Vquartz Stone Limited.
Wanfeng Compound Stone Technology Co., Ltd	Wanfeng Compound Stone Technology Co., Ltd.
Wanfu Building Materials Products Co., Ltd. Nanan Fujian	Wanfu Building Materials Products Co., Ltd. Nanan Fujian.
Wuxi Yushea Furniture Co., Ltd	Yunfu Zhengfang Stone Company.
Xiamen Ally Group Co., Ltd	Thinking Industries Corporation Limited.
Xiamen Ally Group Co., Ltd	Nanan Fute Stone Co., Ltd.
Xiamen Avanti Stone Industrial Co., Ltd	Foshan Xinyixin Stone Industry Co., Ltd.
Xiamen Best Cheer Industry Co., Ltd	Xiamen Best Cheer Industry Co., Ltd.
Xiamen Best Cheer Industry Co., Ltd	Quanzhou Best Cheer Industry Co., Ltd.
Xiamen City Yadilong Imp & Exp. Co., Ltd	Quanzhou Yifeng Co., Ltd.
Xiamen City Yadilong Imp & Exp. Co., Ltd	Xiamen Orienti New Building Materials Ltd.
Xiamen Deyuan Panmin Trading Co., Ltd	Fujian Panmin Co., Ltd.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	Foshan Yixin Stone Co., Ltd.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	Foshan Blue Sea Quartz Stone Co., Ltd.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	Foshan Ronguan Glass Material For Building Co., Ltd.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	One Stone Quartz Co., Ltd.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	Quanzhou Yifeng Co., Ltd.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	Xiamen Orienti New Building Materials Ltd.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	Fujian Panmin Xincai Ltd. Co.
Xiamen Duojia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd.	Fujian Nan'an Zuci Building Material Co., Ltd.
Xiamen Enrich Co., Ltd	Dongguan Lafite Quartz-Stone Co., Ltd.
Xiamen Enrich Co., Ltd	Quanzhou Yifeng Industries Corporation.
Xiamen Fortua (Hong Kong) Industry Co., Limited	Xiamen Fortua Industry & Trade Co., Ltd.
Xiamen Further Star Imp and Exp Co., Ltd	Quanzhou Yifeng Industries Corporation.
Xiamen Gofor Stone Co., Ltd	Huayao Stone Slab Factory.
Xiamen Good Time Stone Co., Ltd	One Stone Quartz Co., Ltd.
Xiamen Good Time Stone Co., Ltd	Lanling Jinzhao New Material Co., Ltd.
Xiamen Good Time Stone Co., Ltd	Thinking Industries Corporation Limited.
Xiamen Good Time Stone Co., Ltd	Xiamen Deyuan Panmin Trading Co., Ltd.
Xiamen Good Time Stone Co., Ltd	Quanzhou Yifeng Industries Corporation.
Xiamen Got Cheer Trading Co., Ltd. d.b.a. Xiamen Got Cheer Co., Ltd	Quanzhou Best Cheer Industry Co., Ltd.
Xiamen Got Cheer Trading Co., Ltd. d.b.a. Xiamen Got Cheer Co., Ltd	Xiamen Best Cheer Industry Co., Ltd.
Xiamen Got Cheer Trading Co., Ltd. d.b.a. Xiamen Got Cheer Co., Ltd	Best Cheer (Xiamen) Stone Works Co., Ltd.

SEPARATE RATES COMPANIES—Continued

Exporter	Producer
Xiamen Honglei Imp. &. Exp. Co., Ltd. d.b.a. Honglei (Xiamen) Stone Co., Ltd.	Xiamen Honglei Imp. &. Exp. Co., Ltd. d.b.a. Honglei (Xiamen) Stone Co., Ltd.
Xiamen Injoy Import & Export Co., Ltd	Thinking Industries Corporation.
Xiamen Interock Stone Co., Ltd	Loyalty Enterprise Development (XinYang) Co., Ltd.
Xiamen Interock Stone Co., Ltd	Fujian Nan'an Zuci Building Material Co. Ltd.
Xiamen Jianming Rising Import & Export Co., Ltd	Thinking Industries Corporation.
Xiamen Jianming Rising Import & Export Co., Ltd	Nan'an Hanhua New Building Materials Co., Ltd.
Xiamen Luck Stone Co., Ltd	Foshan Opaly Composites Co., Ltd.
Xiamen Luck Stone Co., Ltd	Foshan Yixin Stone Co., Ltd.
Xiamen Luck Stone Co., Ltd	Heshan Biyu Stone Co., Ltd.
Xiamen Luck Stone Co., Ltd	Shandong Whitley New Materials Co., Ltd.
Xiamen Luck Stone Co., Ltd	Vemy Building Materials Co., Ltd.
Xiamen Maoshuang Stone Industry Co., Ltd	Fujian Panmin Quartz Co., Ltd.
Xiamen Northern Mining Stone Co., Ltd	Fujian Nanan Xietai Stone Co., Ltd.
Xiamen Northern Mining Stone Co., Ltd	Fujian Nanan Mao Tong Yuan Stone Co., Ltd.
Xiamen Northern Mining Stone Co., Ltd	Fujian Nanan Run Ze Stone Co., Ltd.
Xiamen Northern Mining Stone Co., Ltd	Shandong Horizon Group Co., Ltd.
Xiamen Northern Mining Stone Co., Ltd	Lanling Jinzhao New Material Co., Ltd.
Xiamen Northern Mining Stone Co., Ltd	Fujian Panmin Quartz Co., Ltd.
Xiamen Ogrand Stone Imp. & Exp. Co., Ltd	Quanzhou Yifeng Co., Ltd Nanan Branch.
Xiamen Oriental Stone Products Co., Ltd	Nanan City Shijing Town Stone Products Factory.
Xiamen Oriental Stone Products Co., Ltd	Fujian Nanan Lianhui Stone Products Co., Ltd.
Xiamen Orienti New Building Materials Ltd	Xiamen Orienti New Building Materials Ltd.
Xiamen Qinhui Import & Export Co., Ltd	Zhangzhou Qinhui Quartz Stone Co., Ltd.
Xiamen Qinhui Import & Export Co., Ltd	Fujian Quanzhou Qinhui Stone Co., Ltd.
Xiamen Realho Stone Co., Ltd	Thinking Industries Corporation.
Xiamen Realho Stone Co., Ltd	Shandong Whitley New Materials Co., Ltd.
Xiamen Realho Stone Co., Ltd	Quanzhou Yifeng Co., Ltd.
Xiamen Realho Stone Co., Ltd	Nan'an Fute Building Material Co., Ltd.
Xiamen Shihui Stone Product Co., Ltd	Guangdong Baoxin New Stone Products Co., Ltd.
Xiamen Shihui Stone Product Co., Ltd	Yunfu Honghai Investment Co., Ltd.
Xiamen Sinocau Import & Export Co., Ltd	Jinjiang Huabao Stone Co., Ltd.
Xiamen Smarter Stone Co., Ltd	Heshan Nande Quartz Stone Co., Ltd.
Xiamen Smarter Stone Co., Ltd	Fujian Quanzhou Runze Stone Co., Ltd.
Xiamen Smarter Stone Co., Ltd	Hongsheng Stone Co., Ltd.
Xiamen Stone Forest Co., Ltd	Quanzhou Yifeng Industries Corporation.
Xiamen Stone Forest Co., Ltd	Foshan Vemy Stone Building Material Co., Ltd.
Xiamen Stone Forest Co., Ltd	Foshan Rongguan Glass Material For Building Co., Ltd.
Xiamen Stone Forest Co., Ltd	Qingyuan Yuefeng Decoration Materials Co., Ltd.
Xiamen Stone Forest Co., Ltd	Lanling Jinzhao New Material Co., Ltd.
Xiamen Stone Forest Co., Ltd	Foshan Yixin Stone Co., Ltd.
Xiamen Stone Forest Co., Ltd	Xiamen Orienti New Building Materials Ltd.
Xiamen Stone Forest Co., Ltd	Dongguan Lafite Quartz-Stone Co., Ltd.
Xiamen Stone Forest Co., Ltd	Dongguan City Hongke Quartz Stone Co., Ltd.
Xiamen Stone Harbour Co., Ltd	Fujian PengXiang Industrial Co., Ltd.
Xiamen Stone Harbour Co., Ltd	Zhangzhou QinHui Quartz Co., Ltd.
Xiamen Stonelink Imp & Exp Co., Ltd	Fujian PengXiang Industrial Co., Ltd.
Xiamen Stonelink Imp & Exp Co., Ltd	Heshan Biyu Stone Co., Ltd.
Xiamen Stonevic Co., Ltd	Heshan Biyu Stone Co., Ltd.
Xiamen Stonevic Co., Ltd	Quanzhou Yifeng Industries Co., Ltd.
Xiamen Sun Young Corporation	Yifeng Industries Corporation.
Xiamen Sun Young Corporation	Heshan City Nande Stone Co., Ltd.
Xiamen Sun Young Corporation	Benyi New Materials Co., Ltd.
Xiamen Sun Young Corporation	Fujian Quanzhou Risheng Stone Co., Ltd.
Xiamen Sun Young Corporation	Nanan Chunjia Stone Co., Ltd.
Xiamen Terry Stone Co., Ltd	Heshan Biyu Stone Co., Ltd.
Xiamen Touch Stone Co., Ltd	One Stone Quartz Co., Ltd.
Xiamen Vatro Stone Imp. & Exp. Co., Ltd	Xiamen Vatro Stone Imp. & Exp. Co., Ltd.
Xiamen Vatro Stone Imp. & Exp. Co., Ltd	Shandong Whitley New Materials Co., Ltd.
Xiamen Vesen Imp. & Exp. Trade Co., Ltd	Nanan Xingli Stone Co, Ltd.
Xiamen Wanfu Trade Co., Ltd	Xiamen Wanfu Trade Co., Ltd.
Xiamen Wanfu Trade Co., Ltd	Thinking Industries Corporation.
Xiamen Wanfu Trade Co., Ltd	Yifeng Industries Corporation.
Xiamen Wanli Stone Decoration & Design Co., Ltd	Xiamen Wanlistone Stock Co., Ltd.
Xiamen Wanli Stone Decoration & Design Co., Ltd	Quanzhou Yifeng Co., Ltd.
Xiamen Wanli Stone Decoration & Design Co., Ltd	Nan'an Fengsheng Stone Co., Ltd.
Xiamen Wanli Stone Decoration & Design Co., Ltd	Thinking Industries Corporation Limited.
Xiamen Wanli Stone Decoration & Design Co., Ltd	One Stone Quartz Co., Ltd.
Xiamen Wanli Stone Decoration & Design Co., Ltd	Taking Luck (Xiamen) Granite & Marble Co., Ltd.
Xiamen Wanlistone Stock Co., Ltd	Xiamen Wanlistone Stock Co., Ltd.
Xiamen Winson Import and Export Co., Ltd	Xiamen Oulandi New Building Materail Co., Ltd.
Xiamen Yadonglong Imp & Exp. Co., Ltd	Quanzhou Yifeng Co., Ltd.

SEPARATE RATES COMPANIES—Continued

Exporter	Producer
Xiamen Yadonglong Imp & Exp. Co., Ltd	Xiamen Orienti New Building Materials Ltd.
Xiamen Yadonglong Imp & Exp. Co., Ltd	Xinmingdu Building Materials (Xiamen) Co., Ltd.
Xiamen Yalitong Stone Industrial Co., Ltd	Fujian Nanan Xudong Building Materials Co., Ltd.
Xiamen Yalitong Stone Industrial Co., Ltd	Zhongci Wanjia Decoration Materials Co., Ltd.
Xiamen Yalitong Stone Industrial Co., Ltd	Quanzhou Yifeng Co., Ltd.
Xiamen Yeyang Import & Export Co., Ltd. (AKA Xiamen Yeyang Imp&Exp Co., Ltd.).	Fujian Nanan Yuanhong Construction Materails Co., Ltd.
Xiamen Yiqing Imp. & Exp. Co., Ltd	Fujian Nanan Yuanhong Construction Materails Co., Ltd.
Xiamen Zhongguanshi Stone Industry Co., Limited	Yunan Guanglai Stone co., Ltd.
Xiamen Zhongguanshi Stone Industry Co., Limited	Foshan Devialef New Materials Co., Ltd.
Xiamen Zhongguanshi Stone Industry Co., Limited	Nan'an Guang Tai Xiang Stone Co., Ltd.
Xiamen Zhongguanshi Stone Industry Co., Limited	Wanfeng Compound Stone Technology.
Xiamen Zhongguanshi Stone Industry Co., Limited	Foshan Xinghe Quartz Stone Co., Ltd.
Xinyun Stone (Yunfu) Co., Ltd	Xinyun Stone (Yunfu) Co., Ltd.
Yekalon Industry Inc	Foshan Xinyixin Stone Company Limited.
Yunfu Andi Stone Co., Ltd	Yunfu Andi Stone Co., Ltd.
Yunfu Chuangyun New Meterail Co., Ltd	Yunfu Chuangyun New Meterail Co., Ltd.
Yunfu Dong Shan Stone Material Co., Ltd	Yunfu Dong Shan Stone Material Co., Ltd.
Yunfu Honghai Co., Ltd	Yunfu Honghai Co., Ltd.
Yunfu Jiuru Stone Ltd	Yunfu Jiuru Stone Ltd.
Yunfu Meiao Stone Co., Ltd	Yunfu Meiao Stone Co., Ltd.
Yunfu Wayon Stone Co., Ltd	Yunfu Wayon Stone Co., Ltd.
Yunfu Wayon Stone Co., Ltd	Guangdong Wayon Industrial Co., Ltd.
Yunfu Weibao Stone Co., Ltd	Yunfu Weibao Stone Co., Ltd.
Yunfu Weibao Stone Co., Ltd	Guangdong Wayon Industrial Co., Ltd.
Yunfu Wintop Stone Co., Ltd	Yunfu Wintop Stone Co., Ltd.
Yunfu Wintop Stone Co., Ltd	Guangdong Bosun Quartz Stone Co., Ltd.
Yunfu Wintop Stone Co., Ltd	Yunfu Runtai Stone Co., Ltd.
Yunfu Wintop Stone Co., Ltd	RongHuaFu Yunfu Stone Co., Ltd.
Zhangzhou OCA Furniture Co., Ltd	Fujian Panmin Co., Ltd.
Zhangzhou OCA Furniture Co., Ltd	Wanfu Building Materials Products Co., Ltd.
Zhaoqing Aibo New Material Technology Co., Ltd	Zhaoqing Aibo New Material Technology Co., Ltd.
Zhaoqing Aibo New Material Technology Co., Ltd	Shanghai Meiyang Stone Co., Ltd.
Zhaoqing Maxstone Com., Ltd	Zhaoqing Maxstone Com., Ltd.
Zhaoqing Uni Marble Co., Ltd	Vemy Quartz Co., Ltd.
Zhaoqing Uni Marble Co., Ltd	Guangdong Bosun Quartz Stone Co., Ltd.

[FR Doc. 2019–14865 Filed 7–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX005

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Commercial Fisheries Research Foundation and Rhode Island Department of Environmental Management contains all of the required information and warrants further consideration. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before July 26, 2019.

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

- *Email: NMFS.GAR.EFP@NOAA.gov.* Include in the subject line ''BSB Research Fleet EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on BSB Research Fleet EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225.

SUPPLEMENTARY INFORMATION: The Commercial Fisheries Research Foundation (CFRF) and Rhode Island Department of Environmental Management (RI DEM) submitted a complete application for an Exempted Fishing Permit (EFP) on May 22, 2019, to collect fishery-dependent information on black sea bass from August 1, 2019 through July 31, 2020. The EFP would authorize nine commercial fishing vessels and one party/charter vessel to collect and retain black sea bass for onboard sampling. This EFP would exempt the participating vessels from the following Federal regulations:

1. Recreational fishery closure periods specified at 50 CFR 648.146;

2. Commercial and party/charter minimum size limits for black sea bass specified at § 648.147(a) and (b).

The proposed research would collect data on black sea bass to better characterize catch and discard data for potential use in stock assessments. The research fleet consists of vessels fishing with trawls, lobster pots, gillnets, and hook and line. All gear deployments will be consistent with routine fishing practices.

Each vessel will be randomly selected to conduct sampling events during three trips per month in the black sea bass

stock area. Up to 50 black sea bass would be temporarily held onboard to record their length and sex during each sampling event. Vessels would need to obtain the appropriate state exemptions to all applicable state regulations.

If approved, CFRF and RI DEM may request minor modifications and extensions to the EFP throughout the study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: July 5, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–14727 Filed 7–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of North Inlet Winyah Bay National Estuarine Research Reserve

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting and request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting and is soliciting comment for the performance evaluation of the North Inlet Winyah Bay National Estuarine Research Reserve.

DATES: *North Inlet Winyah Bay National Estuarine Research Reserve Evaluation:* The public meeting will be held on Tuesday August 6, 2019, and written comments must be received on or before Friday, August 16, 2019.

For the specific date, time, and location of the public meetings, see **SUPPLEMENTARY INFORMATION.**

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

Public Meeting and Oral Comments: A public meeting will be held in Georgetown, South Carolina for the North Inlet Winyah Bay Reserve. For the specific location, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please direct written comments to Pam Kylstra, Evaluator, NOAA Office for Coastal Management, 2234 S Hobson Avenue, Charleston, South Carolina or via email to *Pam.Kylstra@noaa.gov.* Comments that the Office for Coastal Management receives are considered part of the public record and may be publicly accessible. Any personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Pam Kylstra, Evaluator, NOAA Office for Coastal Management, 2234 S Hobson Avenue, Charleston, South Carolina or via email to *Pam.Kylstra@noaa.gov* by phone at (843) 740–1313, or via email to *Pam.Kylstra@noaa.gov.* Copies of the previous evaluation findings, Management Plan, and Site Profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent performance report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Sections 312 and 315 of the Coastal Zone Management Act (CZMA) require NOAA to conduct periodic evaluations of federally-approved National Estuarine Research Reserves. The process includes a public meeting, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. For the evaluation of National Estuarine Research Reserves, NOAA will consider the extent to which the state has met the national objectives, adhered to its management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the Coastal Zone Management Act. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate and submit oral comments at the public meeting scheduled as follows:

Date: Tuesday, August 6, 2019.

Time: 5:30 p.m., local time.

Location: Kimble Lodge on Hobcaw Barony, 22 Hobcaw Road, Georgetown, South Carolina 29440.

Written comments must be received on or before Friday, August 16, 2019.

Dated: July 5, 2019.

Nkolika Ndubisi,

Management and Program Analyst, National Ocean Service, National Oceanic and Atmospheric Administration.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

[FR Doc. 2019–14733 Filed 7–10–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX002

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside of scallop regulations in support of research conducted by the Coonamessett Farm Foundation. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before July 26, 2019.

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

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFF Compensation Fishing Gear Research EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFF Compensation Fishing Gear Research EFP.''

FOR FURTHER INFORMATION CONTACT: Emily Farr, Fisheries Management Specialist, 978–282–8477 or Shannah

Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: Coonamessett Farm Foundation (CFF) submitted a complete application for an Exempted Fishing Permit (EFP) on May 1, 2019, that would allow gear research to be conducted by vessels on compensation fishing trips associated with projects funded by the 2019 Scallop Research Set-Aside (RSA) Program. The exemptions would allow 21 participating commercial fishing vessels to exceed the crew size regulations at 50 CFR 648.51(c) to place a researcher on the vessel and temporarily exempt the participating vessels from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, for biological sampling purposes. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited, including landing fish in excess of a possession limit or below the minimum size.

Experimental fishing activity would test a one-way extended link dredge gear modification to reduce flatfish bycatch and catch of pre-recruit scallops in the scallop dredge fishery. Any modification would comply with existing scallop gear regulations. All trips would take place in scallop open access areas of Southern New England and scallop fishing areas open to scallop RSA compensation fishing.

The exemption from crew size limits is needed because a research technician would accompany vessels on the compensation fishing trips to collect catch data associated with the dredge modifications. The crew size exemption would be for approximately 120 days-at-sea and must be used in conjunction with a valid compensation fishing letter of authorization. The technician would only engage in data collection activities and would not process catch to be landed for sale. Exemption from possession limit and minimum sizes would support catch sampling activities and ensure the vessel is not in conflict with possession regulations while collecting catch data. All catch above a possession limit or below a minimum size would be discarded as soon as possible following data collection. The proposed gear modifications are not expected to increase catch above typical commercial fishing practices and gears. All research trips would otherwise be consistent with normal commercial fishing activity and catch would be retained for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: July 5, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–14728 Filed 7–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR012

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of fishery evaluation and management plans, a proposed evaluation and determination, and a draft environmental assessment for public comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), and Idaho Department of Fish and Game (IDFG) have provided two Fishery Management and Evaluation Plans (FMEP), and the Nez Perce Tribe has provided a Tribal Resource Management Plan (TRMP), pursuant to the protective regulations promulgated for Pacific salmon and steelhead under the Endangered Species Act (ESA). The FMEPs and TRMP specify the implementation of fisheries targeting fall Chinook salmon, and coho salmon in the Snake River Basin. This document serves to notify the public of the availability of the FMEPs, a Proposed Evaluation and Pending Determination (PEPD) on the Nez Perce Tribe's TRMP, and a draft Environmental Assessment for comment prior to a decision by NMFS on whether to approve the proposed fisheries.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5:00 p.m. Pacific time on August 12, 2019. Comments received after this date may not be accepted.

ADDRESSES: Written comments on the application should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is*: Snake.River.Salmon.Fisheries@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Snake River Salmon Fisheries.

FOR FURTHER INFORMATION CONTACT: Charlene Hurst, at phone number: (503) 230–5409, or via email: *Charlene.n.hurst@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, naturally produced and artificially propagated Snake River Spring/Summer, and Snake River Fall.
- Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated Snake River Basin.
- Sockeye salmon (*O. nerka*): Endangered, naturally produced and artificially propagated Snake River.

Background

The fall Chinook salmon FMEP submitted jointly by IDFG, ODFW, and WDFW describes fisheries targeting adult hatchery- and natural-origin fall Chinook salmon within the Snake River Basin waters in the States of Oregon, Washington, and Idaho. The coho FMEP submitted by IDFG describes fisheries targeting adult hatchery- and natural-origin coho salmon within Snake River Basin waters in Idaho and their boundary waters with Washington and Oregon. All FMEPs were submitted to NMFS under limit 4 of the ESA 4(d) Rule for salmon and steelhead. These fisheries were designed to support fishing opportunities while minimizing potential risks to ESA-listed species. The FMEP describes timing, location, harvest impact limits, licensing, and gear requirements, and requires that all fish caught with an intact adipose fin be released unharmed. A variety of monitoring and evaluation is included in the FMEPs. Prior to approving an FMEP, NMFS must publish notification announcing the availability of the FMEP for public review and comment.

The Nez Perce Tribe TRMP describes fisheries targeting adult fall Chinook and coho salmon within the Snake River Basin. The plan was provided to NMFS under the ESA Tribal 4(d) Rule. The

TRMP describes timing, location, harvest impact limits, and gear. A variety of monitoring and evaluation is included in the TRMP. Prior to making a final determination on Tribal plans, NMFS must take comments on its pending determination as to whether or not implementation of the plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids.

All of these plans are considered together in the draft Environmental Assessment. NMFS proposed approval of the FMEPs and proposed determination on the TRMP are considered as a single action in the Environmental Assessment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 4 of the updated 4(d) rule (50 CFR 223.203(b)(4)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to fisheries provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

The ESA Tribal 4(d) Rule (65 FR 42481, July 10, 2000) states that the ESA section 9 take prohibitions will not apply to Tribal Plans that will not appreciably reduce the likelihood of survival and recovery for the listed species (50 CFR 223.204(b)(3)).

Dated: July 8, 2019.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–14771 Filed 7–10–19; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for AmeriCorps National Civilian Community Corps (NCCC) Member Experience Survey

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, CNCS is soliciting comments concerning its proposed renewal of the AmeriCorps National Civilian Community Corps (NCCC) Member Experience Survey. The AmeriCorps NCCC Member Experience Survey is completed by AmeriCorps members who have been a part of an AmeriCorps NCCC team. AmeriCorps NCCC is a full-time, residential, national service program whose mission is to strengthen communities and develop leaders through team-based national and community service.

A copy of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by September 9, 2019.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attention Jacob Sgambati, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Jacob Sgambati, 202–606–6930, or by email at *jsgambati@cns.gov.*

SUPPLEMENTARY INFORMATION: The AmeriCorps NCCC Member Experience Survey is completed by AmeriCorps members who have been a part of an AmeriCorps NCCC team. Each year, AmeriCorps NCCC engages teams of members in projects in communities across the United States. Service projects, which typically last from six to eight weeks, address critical needs in natural and other disasters, infrastructure improvement, environmental stewardship and conservation, energy conservation, and urban and rural development. Members construct and rehabilitate low-income housing, respond to natural disasters, clean up streams, help communities develop emergency plans, and address other local needs.

CNCS seeks to renew and revise the current survey. The survey tool will be used in the same manner as the existing survey. CNCS additionally seeks to continue using the current survey until the revised survey tool is approved by OMB. The current survey is due to expire on December 31, 2019.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal

agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Title of Collection: AmeriCorps NCCC Member Experience Survey.

OMB Control Number: [3045–0181].

Type of Review: Renewal.

Respondents/Affected Public: Current/prospective AmeriCorps NCCC Members.

Total Estimated Number of Annual Responses: 800.

Total Estimated Number of Annual Burden Hours: 173 hours.

Dated: July 5, 2019.

Jacob Sgambati,

Acting Deputy Director.

[FR Doc. 2019–14761 Filed 7–10–19; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, July 29, 2019, 1 p.m.–5:15 p.m.; Tuesday, July 30, 2019, 9 a.m.–5 p.m.

ADDRESSES: North Augusta Municipal Building, 100 Georgia Avenue, North Augusta, SC 29841.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, July 29, 2019

Opening, Chair Update, and Agenda Review
Agency Updates
Administrative & Outreach Committee Update
Facilities Disposition & Site Remediation Committee Update
Nuclear Materials Committee Update
Strategic & Legacy Management Committee Update
Waste Management Committee Update
Break
Presentations:
- Overview of the Savannah River Site (SRS)
- Wild Pigs on SRS Update

Public Comments
Recess

Tuesday, July 30, 2019

Reconvene
Agenda Review
Presentations:
- EM Plutonium Disposition Strategy
- Update on Augmented Monitoring and Condition Assessment Program (AMCAP) Fuel Inspections

Lunch Break
Presentations:
- Contracting Process
- Military Training on SRS Update
- S.C. Department of Health and Environmental Control (DHEC) Oversight Role

Public Comments
Voting:
- Recommendation Closure:
  - #359: Plant Indigenous Flowering Plants on Industrial Landfills
  - #361: Pollinator Management Plan

Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Amy Boyette at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Amy Boyette's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Amy Boyette at the address or phone number listed above. Minutes will also be available at the following website: *http://cab.srs.gov/srs-cab.html.*

Signed in Washington, DC, on July 8, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–14753 Filed 7–10–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3251–010]

Cornell University; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 3251–010.

c. *Date Filed:* June 28, 2019.

d. *Applicant:* Cornell University.

e. *Name of Project:* Cornell University Hydroelectric Project (Cornell Project).

f. *Location:* On Fall Creek within the Cornell University campus in the City of Ithaca, Tompkins County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank Perry, Manager of Projects, Energy and Sustainability, Humphreys Service Building, Room 131, Cornell University, Ithaca, NY 14853–3701; (607) 255–6634; email *fdp1@cornell.edu.*

i. *FERC Contact:* Christopher Millard at (202) 502–8256; or email at *christopher.millard@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental

document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* August 27, 2019.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3251–010.

m. This application is not ready for environmental analysis at this time.

n. *The project works consist of:* (1) An existing 28-foot-high, 260-foot-long reinforced-concrete gravity overflow-type dam, known as Beebe Lake Dam, with a crest elevation of 780.7 feet mean sea level (msl); (2) an impoundment (Beebe Lake) with a surface area of 16 acres and a storage capacity of 50 acre-feet at the normal pool elevation of 780.7 feet msl; (3) a concrete forebay wall and reinforced-concrete intake with a 6-foot-high, 6-foot-wide steel vertical-slide gate along the right (north) bank; (4) a 5-foot-diameter, 1,507-foot-long reinforced-concrete underground pipeline and a 5-foot-diameter, 200-foot-long riveted-steel underground penstock; (5) a 79-foot-long, 29-foot-wide, 24-foot-high powerhouse containing two Ossberger turbines and induction generators with a combined authorized capacity of 1,718 kilowatts; (6) a tailrace located on the river right-side of Fall Creek directly below the powerhouse; (7) a 385-foot-long, 2.4-kilovolt transmission line connecting to Cornell's distribution system; and (8) appurtenant facilities.

The Cornell Project is operated in a run-of-river mode and bypasses a 1,800-foot-long reach of Fall Creek that extends from the toe of the dam to the powerhouse tailrace. From 2013 through 2018, the average annual generation was 4,599 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—August 2019

Request Additional Information—August 2019

Issue Acceptance Letter—November 2019

Issue Scoping Document 1 for comments—December 2019

Request Additional Information (if necessary)—February 2020

Issue Scoping Document 2—March 2020

Issue notice of ready for environmental analysis—March 2020

Commission issues EA—September 2020

Comments on EA—October 2020

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: July 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14735 Filed 7–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES19–33–000]

Northern Indiana Public Service Company; Notice of Filing

Take notice that on July 3, 2019, Northern Indiana Public Service Company filed an Errata to July 2, 2019 Supplement to its June 11, 2019 Application under section 204 of the Federal Power Act for Authorization to Issue Securities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on July 10, 2019.

Dated: July 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14736 Filed 7–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–471–000]

Bluewater Gas Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bluewater Compression Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Bluewater Compression Project (Project) involving construction and operation of facilities by Bluewater Gas Storage, LLC (Bluewater) in Macomb County, Michigan. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the Project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00pm Eastern Time on August 5, 2019.

You can make a difference by submitting your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this Project to the Commission before the opening of this docket on May 23, 2019, you will need to file those comments in Docket No. CP19–471–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Bluewater provided landowners with a brochure prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This brochure addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (CP19–471–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[1]

Summary of the Proposed Project

Bluewater proposes to construct, own, and operate a new compressor station in Ray Township, Macomb County, Michigan. The Project would restore the original design capacity of 500,000 million standard cubic feet of firm deliverability to Vector Pipeline L.P. According to Bluewater, additional compression would allow the Project Customers to utilize their maximum contractual withdrawal rights with Bluewater to deliver natural gas directly to Vector, as opposed to securing firm transportation at an additional cost on other third-party pipelines, so that it can ultimately be transported into Wisconsin.

The general location of the Project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 8 acres of land for the aboveground facilities and the pipeline. Following construction, Bluewater would maintain about 4.3 acres for permanent operation of the Project's facilities; the remaining

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

acreage would be restored and revert to former uses. The compressor station would be constructed on land entirely owned by Bluewater with some additional easement from Consumer's Energy.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- environmental justice;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2 of this notice.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] The EA for this Project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Bluewater. This preliminary list of issues may change based on your comments and our analysis.

- Purpose and need
- Noise
- Safety

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP19–471). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14734 Filed 7–10–19; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Wednesday, July 10, 2019

July 3, 2019.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, July 10, 2019 which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW, Washington, DC.

Item No.	Bureau	Subject
1	WIRELESS TELE–COMMUNICATIONS ..	TITLE: Transforming the 2.5 GHz Band (WT Docket No. 18–120).

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Item No.	Bureau	Subject
		SUMMARY: The Commission will consider a Report and Order that would allow for more efficient and effective use of 2.5 GHz spectrum by increasing flexibility for existing Educational Broadband Service licensees and providing new opportunities for rural Tribal Nations and other entities to access unused portions of the band.
2	OFFICE OF ECONOMICS & ANALYTICS	TITLE: Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services (AU Docket No. 19–59). SUMMARY: The Commission will consider a Public Notice that would establish application and bidding procedures for Auction 103, the incentive auction of Upper Microwave Flexible Use Service licenses in the Upper 37 GHz, 39 GHz, and 47 GHz bands.
3	WIRELINE COMPETITION	TITLE: Promoting Access to Connected Care Services (WC Docket No. 18–213). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would propose a Connected Care Pilot providing Universal Service Fund support to health care providers to defray the costs of broadband service to enable low-income patients and veterans to access telehealth services. (WC Docket No. 18–213).
4	WIRELINE COMPETITION	TITLE: Improving Competitive Broadband Access to Multiple Tenant Environments (GN Docket No. 17–142; MB Docket No. 17–91) SUMMARY: The Commission will consider a Notice of Proposed Rulemaking and Declaratory Ruling that would take steps to promote facilities-based broadband deployment and competition in apartments, condominiums, office buildings, and other multiple tenant environments.
5	WIRELINE COMPETITION	TITLE: Business Data Services in an Internet Protocol Environment; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) to Accelerate Investment in Broadband and Next-Generation Networks (WC Docket Nos. 16–143, 05–25; GN Docket No. 13–5; RM–10593; WC Docket No. 18–141). SUMMARY: The Commission will consider (1) a Report and Order on Remand that would grant price cap carriers relief from ex ante pricing regulation of their lower speed Time Division Multiplexing transport business data services nationwide; and (2) a Memorandum Opinion and Order that would partially grant USTelecom's request for forbearance from DS1 and DS3 transport unbundling obligations for price cap carriers.
6	MEDIA	TITLE: Modernizing Children's Television Programming Rules (MB Docket Nos. 18–202, 17–105). SUMMARY: The Commission will consider (1) a Report and Order that would modernize children's television programming rules and provide broadcasters greater flexibility in meeting their children's programming obligations; and (2) a Further Notice of Proposed Rulemaking that would seek additional comment on special efforts by broadcasters to produce or support Core Programming.
7	MEDIA	TITLE: Electronic Delivery of Carriage Election Notices (MB Docket Nos. 17–317, 17–105). SUMMARY: The Commission will consider (1) a Report and Order that would modernize the carriage election notice provisions in Part 76 of the FCC's Rules; and (2) a Further Notice of Proposed Rulemaking that would seek comment on applying these new procedures to entities that are not required to maintain online public inspection files.
8	MEDIA	TITLE: Electronic Delivery of Notices to Broadcast Television Stations (MB Docket Nos. 19–165, 17–105). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would propose to modernize certain cable and satellite television provider notice provisions in Part 76 of the FCC's Rules by requiring certain notices to be delivered to broadcasters by email.

* * * * *

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–14722 Filed 7–10–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receivership

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the following insured

depository institution, was charged with the duty of winding up the affairs of the former institution and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIP

Fund	Receivership name	City	State	Termination date
10042	Heritage Community Bank	Glenwood	IL	7/1/2019

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination date listed above, the Receivership has been terminated, the Receiver has been discharged, and the Receivership has ceased to exist as a legal entity.

Dated at Washington, DC, on July 8, 2019. Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–14746 Filed 7–10–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 28812.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, June 25, 2019 at 10:00 a.m. and its continuation on Thursday, June 27, 2019 at 10:00 a.m.

CHANGES IN THE MEETING: This meeting was continued on Tuesday, July 9, 2019.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2019–14893 Filed 7–9–19; 4:15 pm]

BILLING CODE 6715–01–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 changes to the currently approved information collection project: ''Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component.''

This proposed information collection was previously published in the **Federal Register** on May 1, 2019 and allowed 60 days for public comment. AHRQ received no substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by 30 days after date of publication.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

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 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 section to the 2020 self-administered questionnaire (SAQ, Male/Female) that will include questions 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 National Health Interview Survey (NHIS) nonrespondents in future MEPS panels as a strategy to improve the overall MEPS response rate.

MEPS Household Component and the MEPS Medical Provider Component

- *Household Component:* A sample of households participating in the 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-Household Component (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 healthcare 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.

6. *Mental Health Questions.* Added to SAQ (Male/Female). MEPS will include 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 to the SAQ for administration during the summer of 2020 with data collection targeting the adult (age 18 and over) population. AHRQ worked with several experts in the mental health field to develop these questions and used their expertise to take advantage of already tested and widely accepted measures.

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 are proposing to collect is the Summary of Benefits and Coverage. 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). AHRQ proposes to provide informational materials to respondents to help them identify the documents and also proposes to provide respondents with a $30 per plan, post-collection incentive to facilitate response and mitigate perceived additional burden.

8. *Pilot Test on Sampling NHIS Nonrespondents.* This test will be conducted on 400 sampled addresses in 6–8 selected MEPS 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 Questions in the Adult SAQ (Male/Female) will be completed during Round 2, Panel 25; Round 4, Panel 24 by each person in the RU that is 18 years old and older, an estimated 20,476 persons, and takes about 3.5 minutes to complete. The Diabetes Care SAQ will be completed once a year by each adult 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 6,258 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 Pilot Test Sampling NHIS Nonrespondents will be completed by 200 * (see note below Exhibit 1) ''family level'' respondents, also referred to as RU respondents. The Pilot MEPS–HC core requires an average response time of 92 minutes to administer. The total annual burden hours for the MEPS–HC are estimated to be 67,542 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.

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 Questions Included in Adult SAQ (Male/Female)—Year 2020	20,476	1	3.5/60	1,194
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	6,258	1.3	45/60	6,101
MEPS–HC Validation Interview	4,225	1	5/60	352
Pilot Test on Sampling NHIS Nonrespondents—2020	200	1	92/60	307
Subtotal for the MEPS–HC	102,366	na	na	67,542
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	84,930

* 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.

The total estimated annual burden hours for the MEPS has increased from 77,666 hours in the previous clearance to 84,930 hours in this clearance request, a difference of 7,264 hours. The addition of 1,194 hours due to the addition of Mental Health questions to the Adult SAQ (Male/Female), 6,101 additional hours due to the health

insurance cost sharing collection, and 307 additional hours due to the pilot test on sampling NHIS nonrespondents account for the difference. While the burden associated with these added tasks totals 7,602 hours, reductions in other burden estimates leave a net difference of 7,264 hours overall.

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	$1,244,479
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 Questions Included in Adult SAQ (Male/Female)—Year 2020	20,476	1,194	* 24.34	29,062
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	48,314
Health Insurance Cost Sharing Collection—2020	6,258	6,101	* 24.34	148,498
MEPS–HC Validation Interview	4,225	352	* 24.34	8,567
Pilot Test on Sampling NHIS Nonrespondents—2020	200	307	* 24.34	7,472
Subtotal for the MEPS–HC	102,366	67,542	na	1,643,968
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	na	1,942,548

* 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, 44 U.S.C. 3501–3521, 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.

Dated: July 8, 2019.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–14770 Filed 7–10–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–1768]

Harmonizing Compendial Standards With Drug Application Approval Using the United States Pharmacopeial Convention Pending Monograph Process; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Harmonizing Compendial Standards with Drug Application Approval Using the USP Pending Monograph Process.'' This guidance assists applicants (or drug substance master file (MF) holders referenced in an application) in the

initiation of either revisions to an existing monograph(s) or development of a new monograph(s) under the United States Pharmacopeial Convention Pending Monograph Process (USP–PMP) during FDA's evaluation of a drug substance master file or drug product application. This guidance describes the process that allows for the revision of compendial standards that are harmonized with the approved quality and labeling requirements for a drug product application.

DATES: Submit either electronic or written comments on the draft guidance by September 9, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–1768 for ''Harmonizing Compendial Standards With Drug Application Approval Using the USP Pending Monograph Process.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or Policy and Regulations Staff, HFV–6, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lana Bruney, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4157, Silver Spring, MD 20993–0002, 240–402–3462; or Mai Huynh, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rm. E337, Rockville, MD 20855, 240–402–0669.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Harmonizing Compendial Standards With Drug Application Approval Using the USP Pending Monograph Process.'' As part of the reauthorization of the Generic Drug User Fee Amendments (GDUFA II), FDA recommitted to promoting the efficiency and effectiveness of the application review process. Part of the application approval process includes compliance with the official compendium, the USP–NF (National Formulary), if applicable. This guidance assists applicants in the initiation of either revisions to an existing monograph(s) or development of a new monograph(s) under the USP–PMP during FDA's evaluation of a drug substance MF or drug product application.

A drug with a name recognized in the USP–NF must comply with compendial identity standards or the drug will be deemed adulterated, misbranded, or both (see section 501(b) and 502(e)(3)(b) and (g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 351(b) and 352(e)(3)(b) and (g)); and § 299.5(a) and (b) (21 CFR 299.5(a) and (b))). Such drugs must also comply with compendial standards for strength, quality, and purity, unless labeled to show all respects in which the drug differs, or they will be deemed adulterated (see section 501(b) of the FD&C Act and § 299.5(c)). Before USP–PMP launched, if during the review of a new drug application (NDA), an abbreviated new drug application (ANDA), a new animal drug application (NADA), or an abbreviated new animal drug application (ANADA), it was clear that the proposed specifications would not comply with the current

monograph, approval of the application and patient access to the drug were delayed because the USP–NF standards development processes did not accept proposals from applicants requesting changes to compendial standards for products that were not currently approved by FDA. If a monograph needed to be revised to include the applicant's proposed specifications, there were no mechanisms to do this until after the application was approved. For approval, the product would have to be shown to meet the current monograph, at least for identity, and the product label would have to indicate differences from the monograph regarding strength, quality, or purity. Typically, the revised monograph would not become official for 6 months or more. The USP–PMP was created to address these issues.

Under the USP–PMP, applicants that have successfully filed an NDA, ANDA, NADA, or ANADA with FDA and are awaiting review and approval can propose revisions to an existing monograph or can propose the publication of a new monograph for an article that is not currently part of the official compendia. MF holders referenced in a successfully filed NDA, ANDA, NADA, or ANADA may also propose revisions to an existing monograph or propose publication of a new monograph for their drug substance. Immediately following FDA approval of a specific NDA, ANDA, NADA, or ANADA, USP will make available a revised monograph (or new monograph, as applicable) harmonized with the application's approved quality specifications. This process results in the creation of compendial standards that are harmonized with the quality specifications in an approved application. (Note: Initiation of the USP–PMP does not confer Agency acceptability of the compendial standards proposed for the product, nor preclude full application evaluation by the Agency; all applications will be subject to complete evaluation using current established review practices.)

This guidance details the Agency's expectations for applicants (and MF holders referenced by applications awaiting approval) who choose to use the USP–PMP. The document explains how applicants (and MF holders) should initiate the process, provides Agency recommendations, and addresses some common situations that may arise during use of the USP–PMP.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Harmonizing Compendial Standards With Drug Application Approval Using the USP Pending Monograph Process.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information relating to NDAs and ANDAs in 21 CFR part 314, including 21 CFR 314.50, 314.94, and 314.420, have been approved under OMB control number 0910–0001. The collections of information relating to NADAs in 21 CFR part 514, including 21 CFR 514.1, 514.4, 514.5, 514.6, 514.8, 514.11, and 558.5 have been approved under OMB control number 0910–0032. The collections of information relating to ANADAs in sections 512(b)(2) and (n)(1) of the FD&C Act (21 U.S.C. 360b(b)(2) and (n)(1)) have been approved under OMB control number 0910–0669.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm, or https://www.regulations.gov.*

Dated: July 8, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–14781 Filed 7–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0331]

Live Case Presentations During Investigational Device Exemption Clinical Trials; Guidance for Institutional Review Boards, Industry, Clinical Investigators, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Live Case Presentations During Investigational Device Exemption (IDE) Clinical Trials.'' The purpose of this guidance is to provide institutional review boards (IRBs), industry, clinical investigators, and FDA staff with factors to consider when evaluating the appropriateness of a live case presentation within a clinical investigation conducted under an investigational device exemption (IDE) application. This document provides guidance on important information about a live case presentation that should be provided as part of an original IDE application or a supplement to an IDE application when requesting inclusion of a live case presentation during a clinical investigation.

DATES: The announcement of the guidance is published in the **Federal Register** on July 11, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–D–0331 for ''Live Case Presentations During Investigational Device Exemption (IDE) Clinical Trials.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Live Case Presentations During Investigational Device Exemption (IDE) Clinical Trials'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: John Doucet, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, 301–796–6474.

SUPPLEMENTARY INFORMATION:

I. Background

A live case presentation is a live or pre-recorded broadcast of a surgical or percutaneous procedure, typically narrated by the operator (or a discussant other than the operator), with or without expert panel and/or audience interaction. Our expectation is that very few investigations under an IDE will include live case presentations. However, by increasing awareness of the study for healthcare professionals and eligible subjects, live case presentations may lead to new therapies being made available sooner.

This guidance is intended, in part, to improve the quality of information about live case presentations submitted by sponsors as part of an investigational plan in an original IDE application or supplement to an IDE application, or to the IRB for non-significant risk studies, and to ensure consistency in the review of those submissions. It describes measures we recommend sponsors take to ensure adequate human subject protection, followup, reporting, and data analysis for live case presentations.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of April 17, 2014 (79 FR 21776). FDA revised the guidance as appropriate in response to the comments.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on live case presentations during IDE clinical trials. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Live Case Presentations During Investigational Device Exemption (IDE) Clinical Trials'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1736 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
812	Investigational Device Exemption	0910–0078
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards	0910–0755
56	Institutional Review Boards	0910–0130

Dated: July 8, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–14765 Filed 7–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–2397]

Using the Inactive Ingredient Database; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Using the Inactive Ingredient Database.'' This draft guidance describes FDA's Inactive Ingredient Database (IID) and provides recommendations for how to use the IID in the development of drug products. It is intended to give applicants a clearer understanding of the information provided in the IID and its terminology.

DATES: Submit either electronic or written comments on the draft guidance by October 9, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–2397 for ''Using the Inactive Ingredient Database.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Zuk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6162, Silver Spring, MD 20993–0002, 240–402–9133, *Susan.Zuk@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Using the Inactive Ingredient Database.'' Industry may use the information in FDA's IID to support the safety of an excipient, which can affect application filing and scientific review. Inclusion in the IID is evidence that the excipient has previously been used in FDA-approved drug products. If an excipient has been used in approved drug products for a particular route of administration, the excipient generally is not considered new and may warrant less extensive assessment the next time it is included in a new drug product for the same route of administration. This information is useful to industry when developing new drug products. The draft guidance explains how to use the IID in the development of drug products.

The draft guidance explains the meaning of terms used in the IID. It describes the information users will find in the IID for each excipient. It explains the link between FDA's Global Substance Registration System and nomenclature in the IID to facilitate ingredient searches. The draft guidance also clarifies terminology used in the IID, such as ''maximum potency,'' how that information is described for certain dosage forms, and when potency information is not provided.

The draft guidance provides advice on how applicants may use the IID to support the safety of excipients to facilitate application assessment. Topics such as referencing the IID for various excipient grades and ingredients in colors and flavors are addressed. Since the IID is referenced in many types of applications, topics of general concern to all application types and those specific to investigational new drug applications (INDs), new drug applications (NDAs), and abbreviated new drug applications (ANDAs) are described.

Finally, the draft guidance provides information about where and how to contact FDA with questions about excipients and information related to specific IID listings.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Using the Inactive Ingredient Database.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This draft guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collection of information in 21 CFR part 314, including the submission of NDAs and ANDAs, has been approved under OMB control number 0910–0001. The collection of information in 21 CFR part 312, including the submission of INDs, has been approved under OMB control number 0910–0014. The collection of information entitled ''Guidance for Industry on Formal Meetings between FDA and Sponsors and Applicants for PDUFA Products'' has been approved under OMB control number 0910–0429. The collection of information entitled ''Controlled Correspondence Related to Generic Drug Development'' has been approved under OMB control number 0910–0797.

In accordance with the PRA, prior to publication of any final guidance document, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to those previously approved collections of information found in FDA regulations or guidances.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: July 8, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–14780 Filed 7–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2836]

Allergenic Products Advisory Committee; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice entitled ''Allergenic Products Advisory Committee; Notice of Meeting'' that appeared in the **Federal Register** of June 24, 2019. The document announced a forthcoming public advisory committee meeting of the Allergenic Products Advisory Committee. The document was published with the incorrect name of the committee in the Agenda portion of the notice. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Capt. Serina Hunter-Thomas or Ms. Monique Hill, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6338, Silver Spring, MD 20993–0002, 240–402–5771, *serina.hunter-thomas@fda.hhs.gov* or 301–796–4620, *monique.hill@fda.hhs.gov,* respectively; or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Monday, June 24, 2019, 84 FR 29524, in FR Doc. 2019–13354, the following correction is made:

On page 29525, in the first column, under the headings, **SUPPLEMENTARY INFORMATION** and ''*Agenda*'', the first sentence is corrected to read ''On September 13, 2019, the Center for Biologics Evaluation and Research (CBER) Allergenic Products Advisory Committee (APAC) will meet in open session to discuss and make recommendations on the safety and efficacy of Peanut (*Arachis hypogaea*) Allergen Powder manufactured by Aimmune Therapeutics, Inc., indicated for treatment to reduce the risk of anaphylaxis after accidental exposure to peanut in patients aged 4 to 17 years with a confirmed diagnosis of peanut allergy.''

Dated: July 8, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–14779 Filed 7–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC) has scheduled a public meeting. Information about the ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: August 1, 2019, 9:00 a.m.–5:00 p.m. Eastern Time (ET) and August 2, 2019, 9:00 a.m.–3:00 p.m. ET.

ADDRESSES: This meeting will be held in person and by webcast. The address for the meeting is 5600 Fishers Lane, Rockville, Maryland 20857. While this meeting is open to the public, advance registration is required. Please visit the ACHDNC website for information on registration: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* The deadline for online registration is 12:00 p.m. ET on July 29, 2019. Instructions on how to access the meeting via webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau (MCHB), HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301–443–0721; or *ACHDNC@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of HHS (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC's recommendations regarding inclusion of additional conditions for screening, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA through the Recommended Uniform Screening Panel (RUSP) pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the August 1–2, 2019, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items include: (1) Review of the RUSP condition nomination and evidence review process; (2) updates on screening methodologies; (3) rare disease registries; (4) linking data resources; and (5) workgroup updates. Agenda items are subject to changes as priorities dictate. The final meeting agenda will be available on ACHDNC's website: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Information about ACHDNC, a roster of members, as well as past meeting summaries are also available on the ACHDNC website.

Members of the public will have the opportunity to provide comments. In addition to general public comments, the ACHDNC is soliciting specific feedback at this meeting from the public on processes for nominating conditions to the RUSP condition and conducting evidence reviews. There will be time reserved on the agenda for public participants to provide comments on the RUSP condition nomination and evidence review process. Requests to offer oral comments will be accepted in the order they are requested and may be limited as time allows. Public participants may also submit written statements as further described below. To submit written comments or request time for an oral comment at the meeting, please register online by 12:00 p.m. ET on July 26, 2019. Visit the ACHDNC website for information on registration *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Individuals associated with groups or who plan to provide comments on similar topics may be asked to combine their comments and present them through a single representative. No audiovisual presentations are permitted. Written comments should identify the individual's name, address, email, telephone number, professional or organization affiliation, background or area of expertise (*e.g.,* parent, family member, researcher, clinician, public health, etc.), and the topic/subject matter.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Alaina Harris, at the contact information listed above, at least 10 business days prior to the meeting. Since this meeting occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–14758 Filed 7–10–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Children's Hospitals Graduate Medical Education Payment Program, OMB No. 0915–0247, Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

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, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than September 9, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail them to HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Children's Hospitals Graduate Medical Education Payment Program, OMB No. 0915–0247, Extension.

Abstract: In 1999, the Children's Hospitals Graduate Medical Education (CHGME) Payment Program was enacted by Public Law 106–129 and most recently amended by the Dr. Benjy Frances Brooks Children's Hospitals Graduate Medical Education (GME) Support Reauthorization Act of 2018 (Pub. L. 115–241). The purpose of this program is to fund freestanding children's hospitals to support the training of pediatric and other residents in GME programs. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs; indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Need and Proposed Use of the Information: Data based on the number of full-time equivalent (FTE) residents in applicant children's hospital training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals.

HRSA will not collect any additional information on these forms. The previously approved information collection included 25 separate forms; this request includes 29 separate forms. Previously, the four additional forms were combined. Specifically:

- HRSA 99–2 is now HRSA 99–2 (Initial) and HRSA 99–2 (Reconciliation);
- Exhibit 2 (Initial, Resident FTE Assessment, Reconciliation) is now Exhibit 2 (Initial and Reconciliation) and Exhibit 2 (FTE Resident Assessment);
- Exhibit 3 (Initial, Resident FTE Assessment, Reconciliation) is now Exhibit 3 (Initial and Reconciliation) and Exhibit 3 (FTE Resident Assessment); and
- Exhibit 4 (Initial, Resident FTE Assessment, Reconciliation) is now Exhibit 4 (Initial and Reconciliation) and Exhibit 4 (FTE Resident Assessment).

Hospitals will be requested to submit data on the number of resident FTEs trained during the federal fiscal year to participate in the reconciliation payment process. Auditors will be requested to submit data on the number of resident FTEs trained by the hospitals in a resident FTE assessment summary. An assessment of the hospital data ensures that appropriate Medicare regulations and CHGME Payment Program guidelines are followed in determining which residents are eligible to be claimed for funding. The audit results affect final payments made by the CHGME Payment Program to all eligible children's hospitals.

Likely Respondents: Hospitals applying for and receiving CHGME funds and fiscal intermediaries auditing data submitted by the hospitals receiving CHGME funds.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application Cover Letter (Initial and Reconciliation)	60	2	120	0.33	39.6
HRSA 99 (Initial and Reconciliation)	60	2	120	0.33	39.6
HRSA 99–1 (Initial)	60	1	60	26.50	1,590.0
HRSA 99–1 (Reconciliation)	60	1	60	6.50	390.0
HRSA 99–1 (Supplemental) (FTE Resident Assessment)	30	2	60	3.67	220.2
HRSA 99–2 (Initial)	60	1	60	11.33	679.8
HRSA 99–2 (Reconciliation)	60	1	60	3.67	220.2
HRSA 99–4 (Reconciliation)	60	1	60	12.50	750.0
HRSA 99–5 (Initial and Reconciliation)	60	2	120	0.33	39.6
CFO Form Letter (Initial and Reconciliation)	60	2	120	0.33	39.6
Exhibit 2 (Initial and Reconciliation)	60	2	120	0.33	39.6
Exhibit 3 (Initial and Reconciliation)	60	2	120	0.33	39.6
Exhibit 4 (Initial and Reconciliation)	60	2	120	0.33	39.6
FTE Resident Assessment Cover Letter (FTE Resident Assessment)	30	2	60	0.33	19.8
Conversation Record (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit C (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit F (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit N (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit O(1) (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit O(2) (FTE Resident Assessment)	30	2	60	26.5	1,590.0
Exhibit P (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit P(2) (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit S (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit T (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit T(1) (FTE Resident Assessment)	30	2	60	3.67	220.2
Exhibit 1 (FTE Resident Assessment)	30	2	60	0.33	19.8
Exhibit 2 (FTE Resident Assessment)	30	2	60	0.33	19.8
Exhibit 3 (FTE Resident Assessment)	30	2	60	0.33	19.8
Exhibit 4 (FTE Resident Assessment)	30	2	60	0.33	19.8
Total	*90		*90		8,018.40

*The total is 90 because the same hospitals and auditors are completing the forms.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–14752 Filed 7–10–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Review for Mentored Research Scientist Development Award.

Date: July 30, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14744 Filed 7–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Analytical Tools and Approaches for (Multidimensional) Scholarly Research Assessment and Decision Support in the Biomedical Enterprise Allowed).

Date: July 9, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4235, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14738 Filed 7–10–19; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Clinical Trials.

Date: July 24, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Clinical Trials.

Date: July 31, 2019.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.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: July 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14742 Filed 7–10–19; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential

trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–K12 Application Review.

Date: July 31, 2019.

Time: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer Review Branch, DEA, NIDDK National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.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: July 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14739 Filed 7–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Support Services for the National Institute of Allergy and Infectious Diseases, Mali International Centers for Excellence in Research.

Date: August 7, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Chelsea D. Boyd, Ph.D., Scientific Review Officer, AIDS Review Branch, DEA/SRP, RM 3F46, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–9834, 301–761–6664, *chelsea.boyd@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14740 Filed 7–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Aging: Frailty, Deliurm, Immunosenescence, Cognition, and Alzheimer's Disease.

Date: August 8, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@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: July 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14737 Filed 7–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: July 28–30, 2019.

Closed: July 28, 2019, 7:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate to review and evaluate programmatic concerns and personnel qualifications.

Place: DoubleTree by Hilton, 2515 Meridian Pkwy., Durham, NC 27713.

Open: July 29, 2019, 8:30 a.m. to 11:50 a.m.

Agenda: Scientific Presentations.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: July 29, 2019, 11:50 a.m. to 1:30 p.m.

Agenda: To review and evaluate to review and evaluate programmatic concerns and personnel qualifications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium,

111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: July 29, 2019, 1:30 p.m. to 5:05 p.m.

Agenda: Scientific Presentations.

Place: Doubletree by Hilton, 2515 Meridian Pkwy., Durham, NC 27713.

Closed: July 29, 2019, 6:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate to review and evaluate programmatic concerns and personnel qualifications.

Place: DoubleTree by Hilton, 2515 Meridian Pkwy., Durham, NC 27713.

Closed: July 30, 2019, 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate to review and evaluate programmatic concerns and personnel qualifications.

Place: Nat. Inst. of Environmental Health Sciences Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: July 30, 2019, 9:45 a.m. to 11:00 a.m.

Agenda: Poster Session.

Place: Nat. Inst. of Environmental Health Sciences Building 101, Rodbell Auditorium 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: July 30, 2019, 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate to review and evaluate programmatic concerns and personnel qualifications.

Place: Nat. Inst. of Environmental Health Sciences Building 101, Rodbell Auditorium 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Darryl C. Zeldin, Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Sciences, NIH, 111 T.W. Alexander Drive, Mail drop MSC A2–09, Research Triangle Park, NC 27709, 919–541–1169, *zeldin@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14743 Filed 7–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2019–0014; OMB No. 1660–0098]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Citizen Responder Programs Registration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's Citizen Responder programs registration. These programs include Community Emergency Response Teams (CERTs) and Citizen Corps Councils.

DATES: Comments must be submitted on or before September 9, 2019.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2019–0014. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andy Burrows, Citizen Responder Lead, Individual and Community Preparedness Division, FEMA, 400 C Street SW, Washington DC 20024, 202–716–0527, *andrew.burrows@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Post Katrina Management Reform Act (PKEMRA), codified within Title 6 of the U.S. Code, requires the FEMA Administrator to provide Federal leadership necessary to prepare for, protect against, respond to, recover from or mitigate against a natural disaster, act of terrorism, or other man-made disaster. This responsibility includes planning, training, and building the emergency management profession by building a comprehensive incident management system with State, local, Tribal and Territorial (SLTT) government personnel, agencies and authorities, and helping the emergency response providers to effectively respond. 6 U.S.C. 314. As part of this responsibility to help and support emergency response providers, FEMA supports efforts to train and assist in organizing citizen responder programs. With Executive Order 13254, Citizen Corps was launched as a Presidential Initiative, on January 29, 2002 with a mission to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared for the threats of terrorism, crime, public health issues, and disasters of all kinds.

Another FEMA Citizen Responder program, the Community Emergency Response Team (CERT) was originally developed and implemented by the Los Angeles City Fire Department in 1985. Since 1993 when this training was made available nationally by FEMA, communities in 28 states and Puerto Rico have conducted CERT training. FEMA supports CERT by conducting or sponsoring Train-the-Trainer and Program Manager courses for members of the fire, medical and emergency management community.

To fulfill its mission, the Federal Emergency Management Agency (FEMA) Individual and Community Preparedness Division (ICPD) will collect information from Citizen Corps Councils and Community Emergency Response Team Programs through the Citizen Responder online registration form. The Citizen Responder registration form will allow FEMA as well as SLTT personnel to evaluate whether prospective Councils/Community Emergency Response Teams (CERTs) have the support of the appropriate government officials in their area, ensure a dedicated coordinator is assigned to the program, and provide an

efficient way to track the effectiveness of the nationwide network of Councils and CERT programs.

Collection of Information

Title: FEMA Citizen Responder Programs Registration.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0098.

FEMA Forms: FEMA Form 008–0–25, FEMA Citizen Responder Programs Registration.

Abstract: The FEMA Citizen Responder registration form will allow FEMA as well as SLTT personnel to evaluate whether prospective Councils/Community Emergency Response Teams (CERTs) have the support of the appropriate government officials in their area, ensure a dedicated coordinator is assigned to the program, and provide an efficient way to track the effectiveness of the nationwide network of Councils and CERT programs.

Affected Public: SLTT governments and FEMA affiliated citizen responders throughout the US and its territories.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses: 4,000.

Estimated Total Annual Burden Hours: 2,000.

Estimated Total Annual Respondent Cost: $54,750.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $10,475.

Comments: Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

William H. Holzerland,

Senior Director, Information Management Division, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2019–14766 Filed 7–10–19; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2019–N068; MO #300030113; OMB Control Number 1018–0165]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Implementing Regulations for Petitions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before August 12, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0165 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On March 15, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on May 14, 2019 (84 FR 9549). We received no comments in response to the **Federal Register** notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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 publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), specifies the process by which the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services, we) make decisions on listing, delisting, or changing the status of a listed species, or revising critical habitat. Any interested person may submit a written petition to the Services requesting to add a species to the Lists of Endangered and Threatened Wildlife and Plants (Lists), remove a species from the Lists, change the listed status of a species, or revise the boundary of an area designated as critical habitat. The petition process is a central feature of the ESA and serves a beneficial public purpose.

Petitions

Information collected from petitioners used to determine whether to list a species includes:

(1) Petitioner's name; signature; address; telephone number; and association, institution, or business affiliation;

(2) Scientific and any common name of the species that is the subject of the petition;

(3) Clear indication of the administrative action the petitioner seeks (*e.g.,* listing of a species or revision of critical habitat);

(4) Detailed narrative justification for the recommended administrative action that contains an analysis of the supporting information presented;

(5) Literature citations that are specific enough for the Services to locate the supporting information cited by the petition, including page numbers or chapters, as applicable;

(6) Electronic or hard copies of supporting materials (*e.g.,* publications, maps, reports, letters from authorities) cited in the petition;

(7) For petitions to list, delist, or reclassify a species:

• Information to establish whether the subject entity is a ''species'' as defined in the ESA;

• Information on the current geographic range of the species, including range States or countries; and

• Copies of notification letters to States (explained in more detail below);

(8) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available;

(9) Identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species;

(10) Whether any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.,* place the species in danger of extinction now or in the foreseeable future), and, if so, how, including a description of the magnitude and imminence of the threats to the species and its habitat;

(11) Information on existing regulatory protections and conservation activities that States or other parties have initiated or have put in place that may protect the species or its habitat;

(12) For petitions to revise critical habitat:

• Description and map(s) of areas that the current designation (a) does not include that should be included or (b) includes that should no longer be included, and the rationale for designating or not designating these specific areas as critical habitat. Petitioners should include sufficient supporting information to substantiate the requested changes, which may include GIS data or boundary layers that relate to the request, if appropriate;

• Description of physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

• For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas contain the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection. The petitioner should also indicate which specific areas contain which features;

• For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features that are essential to the conservation of the species, or that these features do not require special management consideration or protections; and

• For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species; and

(13) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.

Notification of States

For petitions to list, delist, or change the status of a species, or for petitions to revise critical habitat, petitioners must provide notice to the State agency responsible for the management and conservation of fish, plant, or wildlife resources in each state where the species that is the subject of the petition occurs of their intention to submit a petition. This notification must be made at least 30 days prior to submission of the petition. Copies of the notification letters must be included with the petition. States may provide to the Service whatever information they want to be considered in the listing decisions.

Title of Collection: Implementing Regulations for Petitions, 50 CFR 424.14.

OMB Control Number: 1018–0165.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals, private sector, and State/Tribal governments.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $280.00 (for materials, printing, postage, data equipment maintenance, etc.).

Requirement	Annual number of respondents	Average number of responses each	Annual number of responses	Average completion time per response (hours)	Estimated annual burden hours
Petitioner—Prepare and Submit Petitions (50 CFR 424.14(c), (d), (e), and (g)					
Individuals	2	1	2	120	240
Private Sector	11	1	11	120	1,320
Government	1	1	1	120	120
Petitioner—Notify States (50 CFR 424)					
Individuals	20	1	20	1	20
Private Sector	110	1	110	1	110
Government	10	1	10	1	10

Requirement	Annual number of respondents	Average number of responses each	Annual number of responses	Average completion time per response (hours)	Estimated annual burden hours
Totals	*154*		*154*		*1,820*

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 8, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–14763 Filed 7–10–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 190R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mkelly@usbr.gov;* telephone (303) 445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement

P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone (208) 378–5344.

The Pacific Northwest Region has no changes to report for this quarter.

Mid–Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone (916) 978–5250.

New contract actions:

50. Truckee-Carson ID, Newlands Project, Nevada: Negotiation and execution of an OM&R transfer agreement for the Newlands Project.

51. North Kern and and Buena Vista Water Storage Districts, Kern River Project, California: Contract for reimbursement of SOD costs assigned to the irrigation component of Isabella Dam.

52. Individual, Klamath Project, Oregon: Warren Act (Section 2) contract termination.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone (702) 293–8192.

Completed contract action:

8. Reclamation, Davis Dam (Davis Dam) and Big Bend WD; BCP; Arizona and Nevada: Enter into proposed ''Agreement for the Diversion, Treatment, and Delivery of Colorado River Water'' for the District to divert, treat, and deliver to Davis Dam the Davis Dam Secretarial Reservation amount of up to 100 acre-feet per year of Colorado River water. Agreement executed on February 22, 2019.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone (801) 524–3864.

New contract action:

27. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Requested a contract to store up to 50,000 acre-feet of project water in Elephant Butte Reservoir. The proposed contract would have a 40-year maximum term, which due to ongoing consultations with the U.S. Fish and Wildlife Service, the existing contract No. 3–CS–53–01510 which expired on January 26, 2008, has been extended annually. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract. Reclamation is conducting environmental compliance to proceed with the 40-year contract.

Completed contract action:

20. Mancos Water Conservancy District, Mancos Project, Colorado: The District and Reclamation are discussing an amendment to the Public Law 111–11 repayment contract for rehabilitation of the Jackson Gulch facilities to continue to facilitate the District's ability to receive funding under the legislation. Contract executed on May 7, 2009.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone (406) 247–7752.

New contract actions:

30. Kansas Bostwick ID No. 2; Bostwick Division, P–SMBP; Kansas: Consideration of contract for repayment of SOD costs.

31. Bostwick ID in Nebraska; Bostwick Division, P–SMBP; Nebraska: Consideration of contract for repayment of SOD costs.

32. Midvale ID; Riverton Unit, P–SMBP; Wyoming: Consideration for renewal of repayment contract No. 14–06–600–444A.

33. Lucerne Water and Sewer District, P–SMBP, Wyoming: Consideration for renewal of contract No. 1–07–60–WS091.

34. Town of Shoshoni, P–SMBP, Wyoming: Consideration for renewal of contract No. 0–07–60–WS083.

Completed contract action:

11. Donala Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a long-term excess capacity contract. Contract executed on February 14, 2019.

18. Bureau of Land Management, Fryingpan-Arkansas Project, Colorado: Consideration of an excess capacity contract to store water in the Fryingpan-Arkansas Project. Contract executed on February 14, 2019.

Discontinued contract actions:

7. Roger W. Evans (Individual); Boysen Unit, P–SMBP; Wyoming: Renewal of long-term water service contract.

13. Western Heart River ID; Heart Butte Unit, P–SMBP; North Dakota: Consideration of amending the long-term irrigation repayment contract and project-use power contract to include additional acres.

Lisa Vehmas,

Acting Director, Policy and Administration.

[FR Doc. 2019–14725 Filed 7–10–19; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF LABOR

Employment and Training Administration

Program Year (PY) 2019 Workforce Innovation and Opportunity Act (WIOA) Section 167, National Farmworker Jobs Program (NFJP) Grantee Allotments

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: This Notice announces allotments for Program Year (PY) 2019 for the WIOA Title I Section 167 National Farmworker Jobs Program, as required under Section 182(d) of the Workforce Innovation and Opportunity Act of 2014. The Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019, enacted September 28, 2018, provides $82,447,000 for formula grants and another $5,922,000 for migrant and seasonal farmworker housing (of which not less than 70 percent shall be for permanent housing). Another $527,000 will be set aside for discretionary purposes.

The formula was developed for the purpose of distributing funds geographically by State service area, on the basis of each State service area's relative share of persons eligible for the program. The formula's methodology was described in a notice published in the **Federal Register** on May 19, 1999 (64 FR 27390). That information is accessible at *https://www.federalregister.gov/.*

Beginning with PY 2018, ETA incorporated two modifications to the allotment formula, with the goal of providing more accurate estimates of each State service area's relative share of persons eligible for the program. The formula also used updated data from each of the four data files serving as the basis of the formula since 1999. Based on the new estimates, the Department of Labor (DOL or Department) instituted a hold-harmless provision for PY 2018 and two following years. The hold-harmless provision is designed to provide a staged transition from old to new funding levels for State service areas and minimize the impact on those states incurring significant change.

DATES: The PY 2019 NFJP allotments become effective July 1, 2019 through June 30, 2020.

ADDRESSES: Questions on this notice can be submitted to the Employment and Training Administration, Office of Workforce Investment, 200 Constitution Ave. NW, Room C4510, Washington, DC

20210, Attention: Laura Ibañez, Unit Chief, (202) 693–3645 or Steven Rietzke, Division Chief at (202) 693–3912, or at *NFJP@dol.gov.* Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY–TDD).

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 182(d) of the WIOA, Prompt Allotment of Funds.

I. Background

The Department is announcing final PY 2019 allotments for the NFJP. This notice provides information on the amount of funds available during PY 2019 to State service areas awarded grants through the PY 2016 Funding Opportunity Announcement (FOA) for the NFJP Career Services and Training and Housing Assistance Grants. The allotments are based on the funds appropriated in the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019, Public Law 115–245, enacted September 28, 2018, (from this point forward, referred to as ''the Act''). In appropriating these funds, Congress provided $82,447,000 for Career Services and Training Grants; $5,922,000 for Housing Assistance Grants; and $527,000 for discretionary purposes. Included below is the table listing the PY 2019 allotments for the NFJP Career Services and Training Grants, as well as the sub-allocation table for the state of California. California is the only State service area with more than one grant; the current sub-allocation formula for California was developed in collaboration with the existing grantees. Individual grants are awarded for Housing Assistance as a result of the grants competition and are further distributed according to language in the appropriations law requiring that of the total amount available, not less than 70 percent shall be allocated to permanent housing activities, leaving not more than 30 percent to temporary housing activities.

II. Description of Updated Data Files and Proposed Modifications to the Allotment Formula

As with all State planning estimates since 1999, the PY 2019 estimates are based on four data sources: (1) State-level, 2012 hired farm labor expenditure data from the United States Department of Agriculture's (USDA) Census of Agriculture (COA); (2) regional-level, 2012 average hourly earnings data from the USDA's Farm Labor Survey; (3) regional-level, 2006–2014 demographic data from the ETA's National Agricultural Workers Survey (NAWS); and, (4) 2010–2014 (5-year file) Lower Living Standard Income Level data from the United States Census Bureau's American Community Survey. A detailed description of how each data source is used within the formula is in the May 19, 1999 FRN (pages 27396 to 27399).

Two modifications were incorporated into the formula in PY 2018, and the formula for PY 2019 retains those modifications. 'Back-out' adjustments were made to the COA hired labor expenditures (Wage Bill) to account for: (1) Unemployment Insurance (UI) payroll tax payments made on behalf of farm workers; and (2) expenditures on H–2A workers. The modifications allowed DOL to more accurately estimate each State's share of the NFJP-eligible population. The first modification removed non-wages from COA farm labor expenditures. UI payroll tax payments, which vary by State, are not wages. The second modification removed labor expenditures on H–2A workers from COA farm labor expenditures to align the allotment formula with the NFJP-eligible population. H–2A workers may only be provided emergency services. Additional information regarding these modifications is located in the May 23, 2018 FRN 83 (pages 23937 to 23940) and the July 11, 2018 FRN 83 (pages 32151 to 32155).

III. Description of the Hold-Harmless Provision

For PY 2019 and 2020, the Department will continue the hold-harmless provision to the allotment formula in order to allow a staged transition from the application of the previous formula to the modified formula. The hold-harmless provision provides for a stop loss/stop gain limit to transition to the use of the updated data. Due to the length of time between updates, there were significant changes for a few states, necessitating the stop loss/stop gain approach. This approach is based on a State service area's previous year's allotment percentage share, which is its relative share of the total formula allotments. The staged transition of the hold-harmless provision is proposed specifically as follows:

(1) In PY 2018, State service areas received an amount equal to 95 percent of their PY 2017 allotment percentage share, as applied to the PY 2018 formula funds available;

(2) In PY 2019, State service areas will receive an amount equal to 90 percent of their PY 2018 allotment percentage share, as applied to the PY 2019 formula funds available;

(3) In PY 2020, State service areas will receive an amount equal to at least 85 percent of their PY 2019 allotment percentage share, as applied to the PY 2020 formula funds available.

In PY 2019 and 2020, the hold-harmless provision also provides that no State service area will receive an amount that is more than 150 percent of their previous year's allotment percentage share.

IV. Minimum Funding Provisions

A State area which would receive less than $60,000 by application of the formula will, at the option of the DOL, receive no allotment or, if practical, be combined with another adjacent State area. Funding below $60,000 is deemed insufficient for sustaining an independently administered program. However, if practical, a State jurisdiction which would receive less than $60,000 may be combined with another adjacent State area.

V. Program Year 2019 Preliminary Planning Estimates

For PY 2019, ETA based estimated funding on the funding levels provided for in the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act for the migrant and seasonal farmworker program, of which $82,447,000 was allotted to career services and training grants and $5,922,000 was allotted to housing grants on the basis of the formula. The State service area allotment table shows the application of the second-year (90 percent) hold-harmless and minimum funding provisions versus what was allotted in PY 2018, followed by the difference in dollar amounts from PY 2018, and the total percentage change (positive or negative).

Signed at Washington, DC.

Molly E. Conway,

Assistant Secretary, Employment and Training Administration.

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION NATIONAL FARMWORKER JOBS PROGRAM—CAREER SERVICES AND TRAINING GRANTS PY 2019 IMPACT TO GRANT ALLOTMENTS WITH STOP LOSS/STOP GAIN

State	PY 2018 95% stop loss/ 150% stop gain	PY 2019 90% stop loss/ 150% stop gain	Difference ($)	Difference (%)
Total	$81,203,000	$82,447,000	$1,244,000	1.53
Alabama	780,688	751,290	(29,398)	−3.77
Alaska	.....	.....	.....	0.00
Arizona	2,208,505	2,378,836	170,331	7.71
Arkansas	1,128,611	1,072,255	(56,356)	−4.99
California	20,302,807	21,868,660	1,565,853	7.71
Colorado	1,172,108	1,262,507	90,399	7.71
Connecticut	350,127	377,130	27,003	7.71
Delaware	135,621	146,081	10,460	7.71
District of Columbia	.....	.....	.....	0.00
Florida	4,087,192	3,734,826	(352,366)	−8.62
Georgia	1,510,489	1,566,766	56,277	3.73
Hawaii	325,797	301,846	(23,951)	−7.35
Idaho	1,546,823	1,666,122	119,299	7.71
Illinois	1,520,015	1,637,247	117,232	7.71
Indiana	996,927	1,073,815	76,888	7.71
Iowa	1,381,814	1,488,387	106,573	7.71
Kansas	1,061,734	1,143,620	81,886	7.71
Kentucky	1,193,671	1,090,762	(102,909)	−8.62
Louisiana	897,859	820,452	(77,407)	−8.62
Maine	288,925	308,242	19,317	6.69
Maryland	357,371	362,410	5,039	1.41
Massachusetts	317,464	341,568	24,104	7.59
Michigan	1,852,921	1,995,828	142,907	7.71
Minnesota	1,418,215	1,527,595	109,380	7.71
Mississippi	1,278,771	1,168,525	(110,246)	−8.62
Missouri	971,866	923,513	(48,353)	−4.98
Montana	588,789	589,076	287	0.05
Nebraska	1,127,274	1,214,215	86,941	7.71
Nevada	177,200	178,911	1,711	0.97
New Hampshire	100,577	108,334	7,757	7.71
New Jersey	686,369	627,196	(59,173)	−8.62
New Mexico	933,298	983,177	49,879	5.34
New York	1,633,201	1,492,399	(140,802)	−8.62
North Carolina	2,652,776	2,472,721	(180,055)	−6.79
North Dakota	720,475	776,042	55,567	7.71
Ohio	1,242,028	1,328,722	86,694	6.98
Oklahoma	1,254,634	1,146,469	(108,165)	−8.62
Oregon	2,129,586	2,293,830	164,244	7.71
Pennsylvania	1,522,968	1,392,650	(130,318)	−8.56
Puerto Rico	3,014,964	2,755,037	(259,927)	−8.62
Rhode Island	52,828	56,902	4,074	7.71
South Carolina	953,186	871,010	(82,176)	−8.62
South Dakota	611,453	572,272	(39,181)	−6.41
Tennessee	845,253	838,575	(6,678)	−0.79
Texas	6,578,359	6,011,223	(567,136)	−8.62
Utah	406,255	437,588	31,333	7.71
Vermont	188,091	174,107	(13,984)	−7.43
Virginia	914,652	939,663	25,011	2.73
Washington	3,931,488	4,234,704	303,216	7.71
West Virginia	193,552	176,865	(16,687)	−8.62
Wisconsin	1,426,806	1,536,848	110,042	7.71
Wyoming	230,617	230,181	(436)	−0.19

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION NATIONAL FARMWORKER JOBS PROGRAM PY 2019 CAREER SERVICES AND TRAINING GRANT ALLOTMENTS

State	Total
Total	$82,447,000
Alabama	751,290
Alaska.	
Arizona	2,378,836
Arkansas	1,072,255
California	21,868,660
Colorado	1,262,507
Connecticut	377,130
Delaware	146,081

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION NATIONAL FARMWORKER JOBS PROGRAM PY 2019 CAREER SERVICES AND TRAINING GRANT ALLOTMENTS—Continued

State	Total
District of Columbia	.....
Florida	3,734,826
Georgia	1,566,766
Hawaii	301,846
Idaho	1,666,122
Illinois	1,637,247
Indiana	1,073,815
Iowa	1,488,387
Kansas	1,143 ,620
Kentucky	1,090,762
Louisiana	820,452
Maine	308,242
Maryland	362,410
Massachusetts	341,568
Michigan	1,995,828
Minnesota	1,527,595
Mississippi	1,168,525
Missouri	923,513
Montana	589,076
Nebraska	1,214,215
Nevada	178,911
New Hampshire	108,334
New Jersey	627,196
New Mexico	983,177
New York	1,492,399
North Carolina	2,472,721
North Dakota	776,042
Ohio	1,328,722
Oklahoma	1,146,469
Oregon	2,293,830
Pennsylvania	1,392,650
Puerto Rico	2,755,037
Rhode Island	56,902
South Carolina	871,010
South Dakota	572,272
Tennessee	838,575
Texas	6,011,223
Utah	437,588
Vermont	174,107
Virginia	939,663
Washington	4,234,704
West Virginia	176,865
Wisconsin	1,536,848
Wyoming	230,181

CALIFORNIA CAREER SERVICES AND TRAINING GRANTS

Grantee	Total
California Human Development Corporation	4,067,571
Proteus, Inc	4,439,338
Center for Employment Training, Inc	8,791,201
County of Kern, Employers Training Resource	2,493,027
Central Valley Opportunities Centers, Inc	2,077,523
Total	21,868,660

[FR Doc. 2019–14731 Filed 7–10–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Childcare Costs Database

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Women's Bureau sponsored information collection request (ICR) proposal titled, ''National Childcare Costs Database,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 12, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201811-1290-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick C. Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–DM, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick C. Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the National Childcare Costs Database information collection. The creation of a comprehensive and publicly available data source for childcare prices will provide a more comprehensive picture of the cost of childcare at the local level in the United States. Because data are collected within local areas, childcare prices will more accurately reflect the prices parents pay in the market, rather than estimates derived from state averages. This data source will be used to show how, who, and where childcare prices are impacting labor force participation, and allow government agencies, practitioners, and policymakers to more accurately measure potential economic impacts and identify strategies for enhancing employment options and economic security for women. Women's Bureau Act of 1920 section 3 authorizes this information collection. *See* 29 U.S.C. 13.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on December 26, 2018 (83 FR 66309).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201811–1290–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Agency: DOL–OS.

Title of Collection: National Database of Childcare Costs.

OMB ICR Reference Number: 201811–1290–002.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 51.

Total Estimated Number of Responses: 51.

Total Estimated Annual Time Burden: 153 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 2, 2019.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–14730 Filed 7–10–19; 8:45 am]

BILLING CODE 4510–HD–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Pharmacy Billing Requirements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Pharmacy Billing Requirements,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 12, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://*

www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201903-1240-003 (this link will only become active on the day following publication of this notice) or by contacting Frederick C. Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick C. Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authorization for the Pharmacy Billing Requirements information collection. The OWCP is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*; the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*; and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require the OWCP to pay for covered medical treatment provided to beneficiaries; this medical treatment can include medicinal drugs dispensed by pharmacies. In order to determine whether amounts billed for drugs are appropriate, the OWCP must receive the required data elements—including the name of the patient/beneficiary, the National Drug Code number of each drug prescribed, the quantity provided, the prescription number, and the date the prescription was filled. The regulations implementing these statutes require the collection of information needed to enable the OWCP to determine whether bills for drugs submitted directly by pharmacies or as reimbursement requests submitted by claimants should be paid. *See* 20 CFR 10.801, 30.701, 725.701, and 725.705. FECA section 9, BLBA section 413, and EEOICPA section 3629(c) authorize this information collection. *See* 5 U.S.C. 8103, 30 U.S.C. 936, and 42 U.S.C. 7384t.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0050.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 1, 2019 (84 FR 7133).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0050. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Agency: DOL–OWCP.

Title of Collection: Pharmacy Billing Requirements.

OMB Control Number: 1240–0050.

Affected Public: Public Sector—Businesses or other for-profits, Not-for-profit institutions.

Total Estimated Number of Respondents: 4,146.

Total Estimated Number of Responses: 1,381,903.

Total Estimated Annual Time Burden: 24,203 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 3, 2019.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–14741 Filed 7–10–19; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Tuesday, August 6, 2019, from 12:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after October 1, 2019. Because the

meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: July 2, 2019.

Elizabeth Voyatzis,

Committee Management Officer, Federal Council on the Arts and the Humanities & Deputy General Counsel, National Endowment for the Humanities.

[FR Doc. 2019–14751 Filed 7–10–19; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289; NRC–2019–0142]

Exelon Generation Company LLC; Three Mile Island Nuclear Station Unit 1; Post-Shutdown Decommissioning Activities Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt; availability; public meeting; and request for comment.

SUMMARY: On April 5, 2019, the U.S. Nuclear Regulatory Commission (NRC) received the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Three Mile Island Nuclear Station, Unit 1 (TMI–1). The PSDAR provides an overview of Exelon Generation Company, LLC's (Exelon or the licensee) planned decommissioning activities, schedule, projected costs, and environmental impacts for TMI–1. The NRC will hold a public meeting to discuss the PSDAR's content and receive comments.

DATES: Submit comments by October 9, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID: NRC–2019–0142. Address questions about NRC dockets IDs 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:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Justin C. Poole, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2048; email: *Justin.Poole@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0142 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 *https://www.regulations.gov/* and search for Docket ID NRC–2019–0142.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0142 in your comment submission.

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

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

II. Discussion

Exelon is the holder of Renewed Facility Operating License No. DPR–50 for TMI–1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility consists of one pressurized-water reactor located in Dauphin County, Pennsylvania. By letter dated June 20, 2017 (ADAMS Accession No. ML17171A151), the licensee submitted Certification of Permanent Cessation of Power Operations for TMI–1. In this letter, Exelon notified the NRC of its intent to permanently cease operations at TMI–1 no later than September 30, 2019.

On April 5, 2019, Exelon submitted the PSDAR for TMI–1, in accordance with § 50.82(a)(4)(i) of title 10 of the *Code of Federal Regulations* (ADAMS Accession No. ML19095A041). The PSDAR includes a description of the planned decommissioning activities, a proposed schedule for their accomplishment, the expected decommissioning and spent fuel management costs, and a discussion that provides the basis for concluding that the environmental impacts associated with the site-specific decommissioning activities will be bounded by appropriate, previously issued generic and plant-specific environmental impact statements. In separate letters, Exelon submitted its Site Specific Decommissioning Cost Estimate and Spent Fuel Management Plan for TMI–1 on April 5, 2019 (ADAMS Accession Nos. ML19095A010 and ML19095A009, respectively).

III. Request for Comment and Public Meeting

The NRC is requesting public comments on the PSDAR for TMI–1. The NRC will conduct a public meeting to discuss the PSDAR and receive comments on Tuesday, July 23, 2019, from 6 p.m. until 9 p.m., at the Sheraton Harrisburg Hershey Hotel, 4650 Lindle Road, Harrisburg, Pennsylvania 17111. The NRC requests that comments that are not provided during the meeting be submitted as noted in Section I, ''Obtaining Information and Submitting Comments,'' of this document in writing by October 9, 2019.

Dated at Rockville, Maryland, this 8th day of July 2019.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–14745 Filed 7–10–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260, and 50–296; NRC–2019–0145]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to provide comments, request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating Licenses (RFOL) Nos. DPR–33, DPR–52, and DPR–68, issued to Tennessee Valley Authority (TVA, the licensee) for the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, respectively. The proposed amendment requested that the implementation due dates for Modifications 102 and 106 listed in Transition License Condition 2 in each unit's license be extended to the end of Unit 1's Fall 2020 outage and April 30, 2020, respectively, due to technical and scheduling difficulties related to implementation of these modifications. In its application, TVA stated that ''An extension of these implementation due dates will ensure that TVA can complete the modifications and not impact operation and safety of the BFN units.''

DATES: Submit comments by August 12, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date. Requests for a hearing or petition for leave to intervene must be filed by September 9, 2019.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0145. Address questions about NRC docket IDs in *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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Farideh Saba, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1447; email: *Farideh.Saba@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0145 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 *https://www.regulations.gov/* and search for Docket ID NRC–2019–0145.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0145 in your comment submission.

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

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

II. Introduction

The NRC is considering issuance of amendments to RFOL Nos. DPR–33, DPR–52, and DPR–68 for BFN, Units 1, 2, and 3, respectively, located in Limestone County, Alabama, as outlined in TVA's request dated July 3, 2019 (ADAMS Accession No. ML19184A633).

The proposed license amendments would amend the RFOLs for BFN, Units 1, 2, and 3. In its license amendment request, TVA requested changes to the BFN units' RFOLs to support extension to the implementation due dates for Modifications 102 and 106. The implementation due date for Modification 102 would be extended from August 14, 2019, to the end of Unit 1's Fall 2020 outage, and the due date for Modification 106 would be extended from October 14, 2019, to April 30, 2020.

Modification 102 modifies the actuation for the Main Unit Service Station Transformer and Common Service Station Transformer water spray system, such that the circuits are supervised per National Fire Protection Association (NFPA) 15–2001, 6.5.3.1.1. Modification 106 installs additional equipment to provide water to the cooling tower lift pump bearing lubrication water system in order to provide this system with a water supply independent from the Raw Service Water and High Pressure Fire Protection pumps to ensure that pressure is maintained in the fire protection system

during normal operation without using a fire pump. TVA stated in its application that ''[t]he above Modifications have no direct impact on the BFN Fire PRA [Probabilistic Risk Assessment (FPRA)].''

Before issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment adds the reference to this letter [TVA letter dated July 3, 2019] to the BFN RFOL License Condition, Transition Condition 2, paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The change encompassed by the proposed amendment is to extend the implementation due dates of Modifications 102 and 106.

Modification 102 modifies the actuation circuitry for a transformer spray fire suppression system. Delaying implementation of this modification does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not affect the ability to transfer to alternate onsite power sources in the event of a loss of a transformer and therefore does not affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment adds the reference to this letter to the BFN RFOL License Condition, Transition Condition 2, paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The changes encompassed by the proposed amendment are to extend the implementation due dates of Modifications 102 and 106.

There is no direct impact to CDF [Core Damage Frequency] or LERF [Large Early Release Frequency]. These proposed changes are an NFPA 805 [Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants] Chapter 3 compliance issue only, and this level of detail is not modeled in the FPRA.

The proposed change does not result in any new or different kinds of accident from that previously evaluated because it does not change any precursors or equipment that is previously credited for accident mitigation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed amendment adds the reference to this letter to the BFN RFOL License Condition, Transition Condition 2, paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The change encompassed by the proposed amendment is to extend the implementation due dates of Modifications 102 and 106.

The proposed changes associated with Modifications 102 and 106 do not involve any licensing basis analyses. Therefore, the safety margin inherent in the analyses for fire events has been preserved.

Therefore, based on the above discussion, these proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue

of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located

on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated July 3, 2019 (ADAMS Accession No. ML19184A633).

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Dated at Rockville, Maryland, this 8th day of July, 2019.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–14764 Filed 7–10–19; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before September 9, 2019.

ADDRESSES: Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke at Peace Corps address above or by telephone at 202–692–1887.

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Returned Volunteer Impact Survey.

OMB Control Number: 0420–****

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 997.

b. *Frequency of response:* 1 time.

c. *Completion time:* 15 minutes.

d. *Annual burden hours:* 249 hours.

General Description of Collection: Information will be collected from Returned Peace Corps Volunteers (RPCVs) through an online survey that will be administered by the Peace Corps. As mandated by the Sam Farr and Nick Castle Peace Corps Reform Act of 2018 (22 U.S.C. 2501; Pub. L. 115–256, section 1(a), Oct. 9, 2018, 132 Stat. 3650), the Peace Corps will conduct the survey to assess the impact of the Peace Corps on the RPCV, including the RPCV's well-being, career, civic engagement, and commitment to public service. By measuring and documenting such impact, the agency will have data that allows it to assess the continuing impact of the Peace Corps on American society, through the lives and careers that Peace Corps Volunteers build after they return to the United States from Peace Corps service.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on July 5, 2019.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2019–14718 Filed 7–10–19; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86315; File No. SR–FINRA–2019–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Expand OTC Equity Trading Volume Data Published on FINRA's Website

July 5, 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 July 1, 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 Rules 6110 and 6610 to expand the summary firm data relating to over-the-counter (''OTC'') equity trading that FINRA publishes on its website.

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

Pursuant to Rules 6110(b) and 6610(b), FINRA currently publishes certain volume information for OTC transactions[3] in NMS stocks[4] and OTC Equity Securities,[5] respectively, that are executed outside of an alternative trading system (''ATS'').[6] All published data is derived directly from OTC trades reported to a FINRA equity trade reporting facility (*i.e.,* the Alternative Display Facility, a Trade Reporting Facility or the OTC Reporting Facility). FINRA does not charge a fee for this data.[7]

Specifically, FINRA publishes weekly non-ATS OTC volume information (number of trades and shares) by firm and by security on a two-week or four-week delayed basis. Weekly security-specific information for transactions in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility (''Tier 1 NMS stocks'') is published on a two-week delayed basis, while information on the remaining NMS stocks (''Tier 2 NMS stocks'') and OTC Equity Securities is published on a four-week delayed basis. FINRA also publishes aggregate weekly non-ATS volume totals by firm and category of security (Tier 1 NMS stocks, Tier 2 NMS stocks and OTC Equity Securities) on the same timeframes, as well as aggregate non-ATS volume totals by firm for all NMS stocks and OTC Equity Securities, respectively, for each calendar month on a one-month delayed basis.[8] All data is published by firm on an attributed basis,[9] except that for firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period,[10] FINRA combines and publishes the volume for these firms on an aggregate non-attributed basis identified in the published data as ''*De Minimis* Firms.''[11]

As part of FINRA's ongoing efforts to improve market transparency, FINRA is proposing to expand the summary firm data relating to non-ATS OTC equity trading that FINRA publishes on its website. The proposed rule change has two primary components. First, FINRA is proposing to publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, on the same terms as FINRA currently publishes aggregate block-size trading data for trades in NMS stocks occurring on ATSs. Second, FINRA is proposing to eliminate the current *de minimis* exception for publication of aggregate non-ATS trading volume across all NMS stocks and OTC Equity Securities and publish each firm's aggregate non-ATS volume on an attributed basis. These two components of the proposed rule change are each addressed below.

Non-ATS Block-Size Trading Data

FINRA currently publishes monthly information on block-size trades in all NMS stocks occurring on ATSs pursuant to Rule 6110(c)(2). Data regarding ATS block-size trades is aggregated across all NMS stocks (*i.e.,* there is no security-by-security block data), is for a time period of one month of trading, and is published no earlier than one month following the end of the month for which trading was aggregated.

As announced in *Regulatory Notice* 16–14,[12] FINRA currently publishes information on block-size ATS trades in NMS stocks using share-based thresholds, dollar-based thresholds and thresholds that include both shares and dollar amount as follows:

- 10,000 or more shares;
- $200,000 or more in dollar value;
- 10,000 or more shares and $200,000 or more in dollar value;
- 2,000 to 9,999 shares;
- $100,000 to $199,999 in dollar value; and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rules 6110 and 6610 apply only to OTC transactions in NMS stocks and OTC Equity Securities, respectively, *i.e.,* transactions effected otherwise than on or through a national securities exchange.

[4] ''NMS stock'' is defined in Rule 600(b)(47) of the SEC's Regulation NMS. *See* Rule 6110(a). Generally, NMS stocks include any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(47).

[5] ''OTC Equity Security'' means any equity security that is not an NMS stock, other than a Restricted Equity Security. *See* Rule 6420(f). A ''Restricted Equity Security'' means any equity security that meets the definition of ''restricted security'' as contained in Securities Act Rule 144(a)(3). *See* Rule 6420(k); 17 CFR 230.144(a)(3).

[6] Rules 6110(b) and 6610(b) govern the publication of information for OTC transactions executed outside of an ATS (''non-ATS'' volume data or information). Rules 6110(c) and 6610(c) separately govern the publication of trading information for OTC transactions executed on ATSs.

[7] OTC transaction volume data published pursuant to Rules 6110 and 6610 is available on FINRA's OTC Transparency Data web page, *available at https://otctransparency.finra.org/otctransparency/.*

[8] Monthly aggregated data is categorized by NMS stocks and OTC Equity Securities, *i.e.,* there is no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.

[9] Non-ATS data is published at the firm level, aggregating each market participant identifier (''MPID'') used by a particular firm (but excluding any MPIDs used by a firm to report trades executed on its ATS).

[10] For a firm with multiple non-ATS MPIDs, the total volume across all its MPIDs is combined for purposes of determining whether the *de minimis* threshold has been met.

[11] There is no parallel *de minimis* exception for ATS transactions under Rules 6110(c) and 6610(c). Therefore, all ATS volume data is currently published on an attributed basis.

[12] *See Regulatory Notice* 16–14 (April 2016).

• 2,000 to 9,999 shares and $100,000 to $199,999 in dollar value.

For each of these categories, FINRA publishes monthly trade count and volume information for each ATS, on an attributed basis, aggregated across all NMS stocks with no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks. FINRA also calculates and displays the average trade size and each ATS's rank as well as ''ATS Block Market Share'' (*i.e.,* the proportion of each ATS's block-size trading volume in relation to total block-size trading by all ATSs) and ''ATS Block Business Share'' (*i.e.,* the proportion of a particular ATS's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.[13]

FINRA is proposing to expand the block-size trading data that it publishes on its website to also include monthly aggregate non-ATS block-size trading data for all NMS stocks. The new non-ATS block-size data would be published on the same terms as current ATS block-size data and FINRA would not charge a fee for the new data. Specifically, proposed paragraph (b)(3) of Rule 6110 provides that non-ATS block-size data would be aggregated across all NMS stocks (*i.e.,* there would be no security-by-security block data), would be for a time period of one month of trading, and would be published no earlier than one month following the end of the month for which trading was aggregated. All published data would be derived directly from OTC trades reported to the Alternative Display Facility or a Trade Reporting Facility.

Pursuant to proposed Rule 6110(b)(3), FINRA will publish the new non-ATS block-size data with elements to be determined from time to time by FINRA in its discretion as stated in a *Regulatory Notice* or other equivalent publication. As with current ATS block-size data, rather than defining what constitutes a ''block-size'' trade, non-ATS block-size data would be published using the same share-based, dollar-based and combination share- and dollar-based thresholds used for ATS block-size data, as described above. For each category, FINRA would publish monthly trade count and volume information for each firm, on an attributed basis,[14] aggregated across all NMS stocks with no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.[15] FINRA would also calculate and display the average trade size and each firm's rank as well as ''Firm Block Market Share'' (*i.e.,* the proportion of each firm's block-size trading volume in relation to total block-size trading by all firms) and ''Firm Block Business Share'' (*i.e.,* the proportion of a particular firm's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.[16]

In developing its proposal to publish non-ATS block-size data, FINRA discussed the initiative with a number of FINRA's industry advisory committees, informally consulted a number of firms and solicited written comment in *Regulatory Notice* 18–28 (discussed in greater detail below). Firms were generally supportive of publishing non-ATS block-size data, which would provide enhanced transparency into the OTC market as a complement to the currently published ATS block-size data. Several firms noted potential information leakage concerns involved with publishing new block-size data, but indicated that such concerns would be mitigated by publishing data on an aggregated basis, rather than security-by-security, and by delaying publication.

FINRA believes that publication of non-ATS block-size data as described above would be beneficial to firms and the general public and provide interested parties with more detailed information on non-ATS trading activities, thus enhancing transparency in the OTC market for NMS stocks.

Elimination of the De Minimis Exception

As noted above, pursuant to Rules 6110(b)(2)(B) and 6610(b)(2)(B), for firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period, FINRA publishes the volume for these firms on an aggregate non-attributed basis identified in the published data as ''*De Minimis* Firms.'' FINRA is proposing to eliminate this *de minimis* exception and publish on an attributed basis each firm's aggregate non-ATS volume (number of trades and shares) on a weekly or monthly basis, as applicable. As a result, each individual firm would be identified in the published aggregate data and there would no longer be a *de minimis* exception for published aggregate volume information. However, FINRA is not proposing to eliminate the *de minimis* exception for purposes of the security-specific non-ATS volume data under Rules 6110(b)(2)(C) and 6610(b)(2)(C). Therefore, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA would continue to aggregate the firm's volume in that security with that of similarly situated firms and there would continue to be a *De Minimis* Firms category for published security-by-security volume data.

When FINRA amended its rules to expand its transparency initiative by publishing non-ATS trading volume, it noted its belief at the time that publishing volume information for each firm that executed only a small number of trades or shares in any given period would not provide meaningful information to the marketplace.[17] FINRA also noted that it would consider whether modifications to the *de minimis* threshold would be appropriate based on feedback it may receive from interested parties.[18] Since that time, FINRA has continued to review and assess the published data to determine whether changes are warranted that would improve market transparency, including whether publishing more granular data on trading currently aggregated in the ''*De Minimis* Firms'' category would provide meaningful information to firms and the public.

Based on a review of trading data for the period from January 1, 2018 through December 30, 2018, FINRA determined that, on average, there are only 37 and 33 firms with attributed volume for Tier 1 NMS stocks and Tier 2 NMS stocks, respectively, on a weekly basis. For OTC Equity Securities during the same time period, there are, on average, only 23 firms with attributed volume on a weekly basis. By removing the *de minimis* exception, on average, 148 and 177 firms would have their aggregate non-ATS volume in Tier 1 NMS stocks

[13] ATS block-size data can be viewed on FINRA's OTC Transparency Data web page, *available at https://otctransparency.finra.org/otctransparency/AtsBlocks.* The data may also be directly downloaded through the OTC Transparency Data web page, *available at https://otctransparency.finra.org/otctransparency/AtsBlocksDownload.*

[14] Each firm that engages in block-size non-ATS trading of NMS stocks would be separately identified, *i.e.,* FINRA is not proposing any *de minimis* exception for non-ATS block-size data.

[15] FINRA is not proposing at this time to publish non-ATS block-size data for trading in OTC Equity Securities, due largely to the wide variance of trading activity in these securities and the difficulty associated with determining appropriate block thresholds. FINRA notes that the currently published ATS block-size data is also limited to NMS stocks and does not cover trading in OTC Equity Securities. FINRA will continue to assess whether block-size trading data should be expanded to include trades in OTC Equity Securities or a subset thereof.

[16] FINRA will announce any changes to these elements in advance in a *Regulatory Notice* or similar publication.

[17] *See* Securities Exchange Act Release No. 75356 (July 2, 2015), 80 FR 39463, 39464 (July 9, 2015) (Notice of Filing of File No. SR–FINRA–2015–020).

[18] *See* Securities Exchange Act Release No. 75356 (July 2, 2015), 80 FR 39463, 39467 (July 9, 2015) (Notice of Filing of File No. SR–FINRA–2015–020).

and Tier 2 NMS stocks, respectively, published. For OTC Equity Securities, the number of firms that would have their aggregate non-ATS volume published, on average, is 124. Since a large number of small trades can add up to significant volume, FINRA believes that the data at the firm level may be more meaningful if each firm's volume is published, irrespective of size.

FINRA discussed the proposed elimination of the *de minimis* exception with a number of FINRA's industry advisory committees, informally consulted a number of firms and solicited written comment. Based on the feedback received, FINRA believes that removing the *de minimis* exception for publication of aggregated non-ATS volume data would provide valuable additional transparency into the OTC markets that is not currently available.[19]

Technical Changes

The text of the proposed rule change also includes several other minor, non-substantive and conforming changes to the current rule text in addition to the two substantive proposed changes discussed above. These edits are being proposed to improve the readability and consistency of the rules and are not intended to create or modify any substantive provisions. First, Rules 6110(b)(1)(A) and (B) and 6610(b)(1)(A) would be amended to clarify that those provisions apply to the publication of aggregate weekly Trading Information. This conforms to language in current Rules 6110(c) and 6610(c). Second, conforming changes would be made to Rules 6110(b)(2)(B) and 6610(b)(2)(B) (as re-designated by the proposed rule change) to clarify that the remaining *de minimis* exceptions under those provisions apply to Trading Information by security. Third, the final sentence of Rule 6610(b)(3) would be amended to correct the cross-reference to the definition of ''ATS Trading Information.'' Finally, Rule 6610(c)(1) would be amended to correct the punctuation at the end of the sentence.

If the Commission approves the proposed rule change, FINRA proposes that the effective date of the proposed rule change will be no earlier than October 1, 2019 and no later than March 31, 2020. Currently, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2019 and will announce the specific date in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] 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. FINRA believes that the proposed rule change will provide enhanced transparency into the OTC market by providing more detailed information on block-size OTC transactions in NMS stocks and by enabling market participants and investors to better understand each individual firm's OTC trading volume and market share in the equity market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and any alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

FINRA is proposing to publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, with the intent to improve market transparency relating to trading in the OTC market. As mentioned above, FINRA makes similar block-size trading data for trades in NMS stocks occurring on ATSs available to the public, and has received support from the industry on its transparency initiatives in the non-ATS OTC equity markets.

FINRA also proposes to eliminate the *de minimis* exception for firms that have fewer than, on average, 200 non-ATS transactions per day and publish, on an attributed basis, each firm's aggregate non-ATS volume on a weekly or monthly basis, as applicable. FINRA believes that non-ATS data at the firm level provides better insight into market activity when each firm's volume is published individually, irrespective of size.

Economic Baseline

FINRA currently publishes monthly information on block-size trades in NMS stocks on ATSs, by share- and dollar-based thresholds as announced in *Regulatory Notice* 16–14, but does not make such data publicly available for trading in NMS stocks outside ATSs in the OTC equity market. Therefore, market participants and investors have access to trading data on block trades in only one segment of the market. In the sample period from January 2018 through December 2018, non-ATS OTC block trading volume for the 10,000 share threshold constituted, on average, 39.4% of the monthly share volume in the aggregate non-ATS OTC volume. For the same sample period, non-ATS OTC block trading volume for the $200,000 threshold constituted, on average, 37.7% of the monthly share volume in the aggregate non-ATS OTC volume. This represents a higher percentage compared to the share of ATS block trading in the aggregate ATS volume during the same period. From January 2018 through December 2018, ATS block trading volume for the 10,000-share threshold constituted, on average, 11.9% of the monthly share volume in the aggregate ATS OTC volume. For the same sample period, ATS OTC block trading volume for the $200,000 threshold constituted, on average, 13.5% of the monthly share volume in the aggregate ATS OTC volume.

FINRA also currently publishes weekly non-ATS OTC volume information by firm and by security on a two-week (Tier 1 NMS stocks) and four-week (Tier 2 NMS stocks and OTC Equity Securities) delayed basis, as well as aggregate non-ATS volume by firm for all NMS stocks and OTC Equity Securities for each calendar month on a one-month delayed basis. FINRA combines and publishes volume data for firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period, on an aggregate non-attributed basis under ''*De Minimis* Firms.''

Economic Impacts

The proposal described above would not impose any additional requirements on firms because the non-ATS OTC block trade data will be derived solely from trade reports already submitted to the FINRA equity trade reporting facilities and disseminated trade-by-trade on an anonymous basis through the securities information processors. In addition, because the data is available free of charge, FINRA does not believe

[19] FINRA notes that some firms and commenters suggested that FINRA should also eliminate the *de minimis* exception for security-by-security non-ATS volume data. FINRA continues to assess whether further enhancements to its published volume data may be warranted but is not at this time proposing to eliminate the *de minimis* exception for the security-by-security non-ATS volume data that it publishes on its website.

[20] 15 U.S.C. 78*o*–3(b)(6).

that there would be any direct costs associated with the proposal—to firms, investors or data consumers.

At the same time, the proposal is anticipated to help market participants better understand the overall OTC trading of equities, by providing information that could be utilized in assessing where liquidity is concentrated and how order routing strategies could be improved. Based on a review of trading data in the sample period, there would be 236 firms, on average, represented in the monthly non-ATS block-size data, compared to 32 ATSs during the same sample period. Hence, the proposal would provide additional transparency into OTC trading activity by expanding the availability of information about OTC block-size trading to non-ATS volume at no required cost to firms.

FINRA evaluated the impact of removing the *de minimis* exception for publication of aggregated non-ATS OTC volume. During the sample period,[21] there were, on average, 37, 33 and 23 firms in the weekly volume reports for Tier 1 NMS, Tier 2 NMS and OTC Equity Securities, respectively. By removing the *de minimis* exception, the number of additional firms that would have their aggregate non-ATS volume published would be 111, 144, and 101, respectively, for the categories of securities described above. Their average weekly share volume represented 8.43%, 7.99% and 0.90% of the aggregate non-ATS OTC volume in the sample period. Hence, FINRA believes that expanding transparency to all segments of the OTC equity market would bridge gaps in information published across ATS versus non-ATS segments of the OTC equity market and removing the *de minimis* exception would provide a more complete picture of OTC trading activity, thereby reducing any competitive distortions that may be associated with such information gaps.

FINRA also considered information leakage concerns, *i.e.,* whether a firm's proprietary trading strategy could be discerned from the published data. FINRA believes that the proposed data dissemination structure mitigates such information leakage concerns, by limiting the granularity of the data at the firm level only, with no accompanying security level data. In addition, FINRA believes that the delay in publication is a well-calibrated effort to reduce information leakage. FINRA's previous experience with the publication of ATS OTC trading volume provides support that the proposed dissemination is expected to benefit market participants by providing access to meaningful information on non-ATS trading activity.

FINRA also notes that there may be differences in non-ATS block-size trading and ATS block-size trading, *e.g.,* the total number of shares traded in non-ATS block-size trades of 10,000 or more shares tends to be a significantly higher percentage of the overall non-ATS OTC activity as compared to ATS block activity. Nonetheless, such differences are not expected to produce any information that could be used as a part of a trading strategy due to the reasons explained in the above paragraph.

Other Proposals Considered

FINRA notes that *Regulatory Notice* 18–28 also solicited comment on a proposal to separately identify firms' volume of trading on a single dealer platform (''SDP''). FINRA continues to consider comments provided in response to *Regulatory Notice* 18–28 but is not proposing at this time to require identification of SDP trading volume.

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 *Regulatory Notice* 18–28 (September 2018). Four comments were received in response to the *Regulatory Notice.*[22] The comments are summarized below.[23]

Citadel generally supported efforts to increase market transparency that benefit end investors, but did not specifically comment on the two aspects of the proposed rule change that FINRA is proposing at this time.[24]

Virtu and Global OTC specifically supported the proposal to publish new non-ATS block-size data for NMS stocks.[25] Virtu noted its belief that any concerns about information leakage with respect to non-ATS block-size data are alleviated by the one-month publication delay and the fact that disclosure would not be made on a security-by-security basis or differentiate between Tier 1 NMS stocks and Tier 2 NMS stocks.[26]

Global OTC suggested that the proposal go further by including all OTC Equity Securities in published monthly aggregate non-ATS block-size trading data, noting its belief that the public interest of including all OTC Equity Securities outweighs the difficulty that may arise in determining block thresholds that would be appropriate across all OTC Equity Securities.[27] As noted above, FINRA is not proposing at this time to publish non-ATS block-size data for trading in OTC Equity Securities, but will continue to assess whether block-size trading data should be expanded in the future.

FIF stated that the rationale for publication of non-ATS block-size data does not bear a valid relationship to the costs and risks associated with the proposal.[28] However, FIF did not identify any specific costs or risks associated with the proposed publication of non-ATS block-size data. FINRA notes that the newly published information would be derived directly from data already reported to FINRA's equity reporting facilities and that firms would have no new reporting obligations as a result of the proposed rule change. Based on consultations with firms and industry advisory committees, FINRA believes that the proposal to publish non-ATS block-size data will provide additional transparency into non-ATS activity and enhance market participants' and investors' understanding of the OTC market.

Global OTC generally supported additional transparency into OTC trading activity and expanding the availability of information about OTC trading, but did not specifically address the proposed elimination of the *de minimis* exception for publication of aggregate non-ATS volume data.[29] Virtu disagreed with the proposed elimination of the *de minimis* exception because it is concerned that the ''next 'logical' step'' would be to require the publication of transaction data on a

[21] The sample period included weekly data from January 1, 2018 through December 30, 2018.

[22] *See* Letter from Christopher Bok, Esq., Financial Information Forum to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 9, 2018 (''FIF Letter''); letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 12, 2018 (''Citadel Letter''); letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2018 (''Virtu Letter''); and letter from Bob Hill, Global OTC to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 16, 2018 (''Global OTC Letter'').

[23] As noted above, *Regulatory Notice* 18–28 also solicited comment on other possible enhancements to the OTC equity trading volume data published on FINRA's website, including a proposal to separately identify firms' volume of trading on an SDP. FINRA is not proposing at this time to require identification of SDP trading volume. The discussion above is therefore limited to comments relevant to the proposed rule change.

[24] *See* Citadel Letter.

[25] *See* Virtu Letter; Global OTC Letter.

[26] *See* Virtu Letter.

[27] *See* Global OTC Letter.

[28] *See* FIF Letter.

[29] *See* Global OTC Letter.

security-by-security basis.[30] While Virtu believes that eliminating the *de minimis* exception for security-by-security volume data could expose firms to principal risk,[31] Virtu did not express any specific concerns regarding the proposal to eliminate the *de minimis* exception for aggregate, rather than security-by-security, data. As noted above, FINRA is not proposing to eliminate the *de minimis* exception for purposes of security-specific non-ATS volume data.

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 (i) as the Commission may designate up to 90 days of such date 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–2019–019 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–2019–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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–2019–019, and should be submitted on or before August 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2019–14724 Filed 7–10–19; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Virtu Letter.

[31] *See* Virtu Letter.

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86314; File No. SR–NASDAQ–2019–009]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Revise the Exchange's Initial Listing Standards Related to Liquidity

July 5, 2019.

I. Introduction

On March 21, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Exchange's initial listing standards related to liquidity. The proposed rule change was published for comment in the **Federal Register** on April 9, 2019.[3] On May 24, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On June 12, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. On June 13, 2019, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. On July 1, the Exchange withdrew Amendment No. 2 and filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] The Commission received one comment on the proposed rule change.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Exchange's Description of the Proposal, as Modified by Amendment No. 3

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing this amendment to SR–NASDAQ–2019–009,[8] which was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85503 (April 3, 2019), 84 FR 14172 (April 9, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85933, 84 FR 25329 (May 31, 2019). The Commission designated July 8, 2019, as the date by which the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

[6] Amendment No. 3 is available at: *https://www.sec.gov/comments/sr-nasdaq-2019-009/srnasdaq2019009-5751370-186792.pdf.*

[7] *See* Letter from Carol Anne Huff, Kirkland & Ellis LLP, to Eduardo A. Aleman, Deputy Secretary, Commission, dated June 5, 2019 (''Kirkland Letter''). The commenter stated that it believes the Exchange's proposed exclusion of ''restricted securities'' from the calculation of round lot holders and public float will provide for a more accurate measure of liquidity, but advocated for a reasonable grace period for former special purpose acquisition vehicles (''SPACs''), after their business combination, to demonstrate compliance with round lot holder and public float requirements, irrespective of the structure of the business combination.

[8] Securities Exchange Act Release No. 85503 (April 3, 2019), 84 FR 14172 (April 9, 2019) (the ''Initial Proposal'').

published for comment by the Commission on April 9, 2019, in order to (i) clarify Nasdaq's initial intent to impose a new requirement that at least 50% of a company's round lot holders must each hold unrestricted securities with a market value of at least $2,500; (ii) clarify that the new listing rule requiring a minimum average daily trading volume for securities trading over-the-counter (''OTC'') of at least 2,000 shares over the 30 day period prior to listing (with trading occurring on more than half of those 30 days) includes trading volume of the underlying security on the primary market with respect to an ADR; (iii) clarify that, in connection with a company applying to list on the Exchange through a direct listing that has not had sustained recent trading in a private placement market prior to listing, Nasdaq will determine that the company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable requirement and provides an independent third-party valuation evidencing a market value of publicly held shares of at least $250,000,000; and (iv) make minor technical changes. This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq proposes several amendments in this rule change to increase Nasdaq's requirements for initial listing and help assure adequate liquidity for listed securities. In addition to the changes described above, Nasdaq proposes to revise its initial listing criteria to exclude restricted securities from the Exchange's calculations of a company's publicly held shares, market value of publicly held shares and round lot holders (''Initial Liquidity Calculations''). To do so, Nasdaq proposes to add three new definitions to define ''restricted securities'', ''unrestricted publicly held shares'' and ''unrestricted securities'' and proposes to amend the definition of ''round lot holder''. Nasdaq is not proposing to change the requirements for continued listing purposes at this time, but believes that these heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.[9] Each amendment is described in more detail below.

I. Restricted Securities

Nasdaq is proposing to modify its initial listing standards to exclude securities subject to resale restrictions from its Initial Liquidity Calculations. Currently, securities subject to resale restrictions are included in the Exchange's Initial Liquidity Calculations, however, such securities are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. Because the current Initial Liquidity Calculations include restricted securities, a security with a substantial number of restricted securities could satisfy the Exchange's initial listing requirements related to liquidity and list on the Exchange, even though there could be few freely tradable shares, resulting in a security listing on the Exchange that is illiquid. Nasdaq is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

To address this concern, Nasdaq is proposing to adopt a new definition of ''restricted securities'' at Nasdaq Rule 5005(a)(37), which includes any securities subject to resale restrictions for any reason, including restricted securities (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; [10] (2) acquired through an employee stock benefit plan or as compensation for professional services; [11] (3) acquired in reliance on Regulation S, which cannot be resold within the United States; [12] (4) subject to a lockup agreement or a similar contractual restriction; [13] or (5) considered ''restricted securities'' under Rule 144.[14] Nasdaq is also proposing to adopt a new definition of ''unrestricted securities'' at Nasdaq Rule 5005(a)(46), which includes securities that are not restricted securities. In connection with these amendments, Nasdaq is proposing to renumber the remaining provisions of Rule 5005 to maintain an organized rule structure.

The Exchange believes that these proposed amendments to the listing rules will enhance its listing criteria and better protect investors by helping to ensure that securities listed on Nasdaq are liquid and have sufficient investor interest to support an exchange listing. Nasdaq notes that in developing their index methodologies the FTSE Russell and S&P indices take a similar approach. As disclosed by FTSE Russell, ''All FTSE Russell equity index constituents are free float adjusted in accordance with the index rules, to reflect the actual availability of stock in the market for public investment.'' [15] FTSE Russell excludes shares held within employee share plans, shares subject to a ''lock-in'' clause, and shares subject to contractual restrictions.[16] S&P Dow Jones adjusts its indices to ''reflect only those shares available to investors rather than all of a company's outstanding shares.'' [17]

A. Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum number of publicly held shares in order to list its primary equity securities (including American Depositary Receipts or ''ADRs'') [18] on all tiers of the Exchange. A company is also required

[9] Nasdaq staff may apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements but where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. In such circumstances, Nasdaq would typically first allow the company to provide and implement a plan to increase its liquidity in the near term.

[10] *See, e.g.,* 17 CFR 230.144(a)(3)(i) and (ii).

[11] *See, e.g.,* 17 CFR 230.701(g), which states that securities issued pursuant to certain compensatory benefit plans and contracts relating to compensation are considered restricted securities.

[12] *See* 17 CFR 230.144(a)(3)(v), which states that securities of domestic issuers acquired in a transaction in reliance on Regulation S are considered restricted securities.

[13] Securities issued in such transactions would typically include a ''restrictive'' legend stating that the securities cannot be freely resold unless they are registered with the SEC or in a transaction exempt from the registration requirements, such as the exemption available under Rule 144.

[14] *See* generally Securities and Exchange Commission Investor Publications, Rule 144: Selling Restricted and Control Securities (January 16, 2013), available at: *https://www.sec.gov/reportspubs/investorpublications/investorpubsrule144htm.html.* Nasdaq would consider a security as subject to a resale restriction until any restrictive legends are removed, even if a safe harbor is available that permits the sale of the security at an earlier date.

[15] *See* FTSE Russell, ''Free-Float'', available at: *https://www.ftse.com/products/indices/free-float.*

[16] *See* FTSE Russell, ''Free Float Restrictions v2.0'', May 2018, available at: *https://www.ftse.com/products/downloads/Free_Float_Restrictions.pdf.*

[17] *See* S&P Dow Jones Indices, ''Float Adjustment Methodology'', April 2018, available at: *https://us.spindices.com/documents/index-policies/methodology-sp-float-adjustment.pdf.*

[18] Rule 5005(a)(33) defines ''Primary Equity Security'' as ''a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).''

to have a minimum number of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq's Global and Capital Market tiers; [19] subscription receipts on Nasdaq's Capital Market tier; or paired share units on Nasdaq's Global Select or Global Market tiers. Currently, Nasdaq Rule 5005(a)(35) defines ''publicly held shares'' as ''shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.'' As discussed above, the current definition of publicly held shares does not exclude securities subject to resale restrictions, which may result in a security with limited liquidity satisfying the Exchange's initial listing requirements related to publicly held shares and qualifying to list on the Exchange.

Nasdaq proposes adding a new definition of ''unrestricted publicly held shares'' at Nasdaq Rule 5005(a)(45), which would be defined as publicly held shares excluding the newly defined ''restricted securities.'' Nasdaq proposes to revise references to ''publicly held shares'' to ''unrestricted publicly held shares'' in the following rules:

Rule No.	Nasdaq market tier	Security type	Current required number of publicly held shares
5315(e)(2)	Global Select	Primary Equity Security (including Paired Share Units and direct listings)	At least 1,250,000.
5405(a)(2)	Global	Primary Equity Security (including Paired Share Units)	At least 1,100,000.
5415(a)(1)	Global	Preferred Stock or Secondary Class of Common Stock	At least 200,000.
5505(a)(2)	Capital	Primary Equity Security	At least 1,000,000.
5510(a)(3)	Capital	Preferred Stock or Secondary Class of Common Stock	At least 200,000.
5520(g)(3)	Capital	Subscription Receipts	At least 1,100,000.

As a result, only securities that are freely transferrable will be included in the calculation of publicly held shares to determine whether a company satisfies the Exchange's initial listing criteria under these rules. Nasdaq believes that excluding restricted securities will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors.

In addition to the above, Nasdaq proposes revising references to ''publicly held shares'' to ''unrestricted publicly held shares'' in Rule 5310(d), which states that ''in computing the number of publicly held shares for Global Select purposes, Nasdaq will not consider shares held by an officer, director or 10% or greater Shareholder [20] of the Company,'' and Rule 5226(b) which requires a paired share unit to satisfy the security-level requirements of Rule 5315 or 5405, including the number of publicly held shares. Nasdaq also proposes to revise Rule 5205(g) to reflect the change to ''unrestricted publicly held shares.'' [21] Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below.

B. Market Value of Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to market value of publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum market value of publicly held shares in order to list its primary equity securities (including ADRs) on all tiers of the Exchange. A company is also required to have a minimum market value of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq's Global and Capital Market tiers; subscription receipts on Nasdaq's Capital Market tier; or paired share units on Nasdaq's Global Select or Global Market tiers. The calculation of ''market value of publicly held shares'' does not exclude stock subject to resale restrictions. As discussed above, restricted securities may not contribute to liquidity and therefore the current calculation of market value of publicly held shares may result in a security with limited true liquidity satisfying the listing requirements related to the market value of publicly held shares and qualifying to list.

Nasdaq proposes revising its initial listing requirements so that they are based on the market value of unrestricted publicly held shares, and therefore exclude restricted securities, in the following rules:

Rule No.	Nasdaq market tier	Security type	Current required market value
5315(c)(1)–(3)	Global Select	Primary Equity Security of a Closed End Management Investment Company Listed with a Fund Family.	(i) A total market value of the fund family of at least $220 million; (ii) an average market value of all funds in the fund family of at least $50 million; and (iii) a market of each fund in the fund family of at least $35 million.

[19] There are no separate listing requirements on the Nasdaq Global Select Market for classes of securities other than primary equity securities. Instead, pursuant to Rule 5320, if the primary equity security is listed on the Nasdaq Global Select Market, generally any other security of that same company that qualifies for listing on the Nasdaq Global Market is also included in the Nasdaq Global Select Market.

[20] Rule 5005(a)(40) defines ''Shareholder'' as ''a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term ''Shareholder'' includes, for example, a limited partner, the owner of a depository receipt, or unit.''

[21] Rule 5205(g) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

Rule No.	Nasdaq market tier	Security type	Current required market value
5315(f)(2)(A)–(D)	Global Select	Primary Equity Securities (including direct listings and Paired Share Units).	(i) At least $110 million; (ii) at least $100 million, if the company has stockholders' equity of at least $110 million; (iii) at least $45 million in the case of an initial public offering or spin-off; or (iv) at least $70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940.
5405(b)(1)(C)	Global	Primary Equity Securities (including Paired Share Units).	At least $8 million (Income Standard).
5405(b)(2)(C)	Global	Primary Equity Securities (including Paired Share Units).	At least $18 million (Equity Standard).
5405(b)(3)(B)	Global	Primary Equity Securities (including Paired Share Units).	At least $20 million (Market Value Standard).
5405(b)(4)(B)	Global	Primary Equity Securities (including Paired Share Units).	At least $20 million (Total Assets/Total Revenue Standard).
5415(a)(2)	Global	Preferred Stock or Secondary Classes of Common Stock.	At least $4 million.
5505(b)(1)(B)	Capital	Primary Equity Securities	At least $15 million (Equity Standard).
5505(b)(2)(C)	Capital	Primary Equity Securities	At least $15 million (Market Value Standard).
5505(b)(3)(C)	Capital	Primary Equity Securities	At least $5 million (Net Income Standard).
5510(a)(4)	Capital	Preferred Stock or Secondary Classes of Common Stock.	At least $3.5 million.
5520(g)(2)	Capital	Subscription Receipts	At least $100 million.

As discussed above, Nasdaq believes that excluding restricted securities from the calculation of market value of publicly held shares will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors. Specifically, market value of publicly held shares is an indication of the size and investor interest in a company. When restricted securities are included in that calculation, a company could technically meet Nasdaq's requirement without actually having sufficient investor interest, resulting in a security that is illiquid. Less liquid securities may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices and a company's market value of publicly held shares.

In addition to the above, Nasdaq proposes revising references to ''market value of publicly held shares'' to ''market value of unrestricted publicly held shares'' in Rule 5226(b), which requires a paired share unit listing on Nasdaq's Global Select or Global Market tiers to satisfy the security-level requirements of Rule 5315 or 5405, including the market value of publicly held shares.[22] Nasdaq also proposes to revise Rule 5205(g) to reflect that the computation for market value of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.[23]

Nasdaq also proposes revising references to ''market value of publicly held shares'' to ''market value of unrestricted publicly held shares'' in the preamble and subsections (a) and (b) of IM–5315–1, which currently set forth the Exchange's method of determining bid price, market capitalization and market value of publicly held shares for a company applying to list on the Exchange through a direct listing.[24] Currently, IM–5315–1(a) states that ''[i]f the Company's security has had sustained recent trading in a Private Placement Market,[25] Nasdaq will attribute a price, market capitalization, and Market Value of Publicly Held Shares to the Company equal to the lesser of (i) the value calculable based on an independent third-party valuation (a ''Valuation'') and (ii) the value calculable based on the most recent trading price in a Private Placement Market.'' As a result of the proposed change, Nasdaq will attribute a market value of unrestricted publicly held shares to the company equal to the lesser of (i) the value calculable based on a Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

Currently, IM–5315–1(b) states that ''[f]or a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq will determine that such Company has met the Market Value of Publicly Held Shares requirement if the Company provides a Valuation evidencing a Market Value of Publicly Held Shares of at least $250,000,000. Nasdaq will also determine the bid price and market capitalization based on such Valuation.'' Nasdaq is proposing to revise this rule to clarify that Nasdaq will determine that such company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable market value of unrestricted publicly held shares requirement and provides a Valuation evidencing a market value of publicly held shares of at least $250,000,000. As a result, a company applying to list on the Exchange through a direct listing will be subject to all proposed changes in Rule 5315 to exclude restricted securities from the Exchange's Initial Liquidity Calculations, but restricted securities will not be excluded for purposes of determining whether the Valuation evidences a market value of publicly held shares of at least $250,000,000. Nasdaq believes that it is appropriate to include restricted securities in this calculation because this requirement is

[22] Nasdaq is also proposing to capitalize defined terms in Rule 5226(b) that were previously not capitalized for consistency and in order to maintain an organized rule book structure.

[23] Rule 5205(g) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

[24] A ''direct listing'' is the listing of a company that has sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing on Nasdaq.

[25] Rule 5005(a)(34) defines ''Private Placement Market'' as ''a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.''

meant to measure the size of the entity, and not necessarily measure its liquidity, and restricted securities should be included in the measure of the entity size. Furthermore, as discussed above, a direct listing would also need to comply with the initial listing standards set forth in Rule 5315 including the revised Initial Liquidity Calculations.

Lastly, Nasdaq proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the market value of unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below.

C. Round Lot Holders

Nasdaq is proposing to revise the listing criteria related to the minimum number of round lot holders for companies seeking to initially list primary equity securities (including ADRs), preferred stock, secondary classes of common stock and warrants on the Exchange so that they are based on holders of unrestricted securities. Currently, Nasdaq defines a ''round lot holder'' as ''a holder of a Normal Unit of Trading'' and notes that ''beneficial holders will be considered in addition to holders of record.'' [26] Nasdaq defines a ''round lot or normal unit of trading'' as ''100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares.'' [27] A company is required to have a minimum number of round lot holders in order to list securities on the Exchange. While this is another measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed, as noted above, under the existing rule, all the shares held by a holder could be restricted securities that do not contribute to liquidity.

To address this concern, Nasdaq is proposing to revise the definition of ''round lot holder'' to mean a holder of a normal unit of trading of unrestricted securities. This change will impact the following rules:

Rule No.	Nasdaq market tier	Security type	Current required number of round lot holders
5315(f)(1)(C)	Global Select	Primary Equity Security (including Paired Share Units and direct listings).	At least 450 round lot holders or a minimum number of total holders.
5405(a)(3)	Global	Primary Equity Security (including Paired Share Units).	At least 400.
5410(d)	Global	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering.
5415(a)(4)	Global	Preferred Stock or Secondary Class of Common Stock.	At least 100.
5505(a)(3)	Capital	Primary Equity Securities	At least 300.
5510(a)(2)	Capital	Preferred Stock or Secondary Class of Common Stock.	At least 100.
5515(a)(4)	Capital	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering.
5520(g)(4)	Capital	Subscription Receipts	At least 400.

As a result of these changes, a holder of only restricted securities would not be considered in the round lot holder count. Nasdaq believes that these amendments will help ensure adequate distribution and investor interest in a listed security, which will result in a more liquid trading market and which will better protect investors. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

In addition to the above, Nasdaq proposes revising references to ''holder'' to ''round lot holders'' in Rule 5226(b), which requires a paired share unit applying to list on the Nasdaq Global Select or Global Market tiers to meet the security-level requirements of Rule 5315 or 5405, which includes the number of round lot holders. Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies this proposed change that determination of round lot holders be based on holders of unrestricted securities, Nasdaq will consider whether round lot holders of the underlying security hold unrestricted shares of that underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below. Nasdaq will also apply the new minimum value requirement for round lot holders to the underlying security, as proposed below, in addition to the minimum number of round lot holders required by the applicable tier that the company is seeking to list on.

D. American Depositary Receipts

Lastly, Nasdaq proposes to revise Rule 5215(b) to specify how these new requirements apply to ADRs. Specifically, as under the current rule for calculating publicly held shares, market value of publicly held shares, and round lot holders, Nasdaq will continue to consider the underlying security in calculating the unrestricted publicly held shares and market value of unrestricted publicly held shares and in calculating the new definition of a round lot holder. In determining whether shares of the underlying security are ''restricted'' for these purposes, only restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market would result in those securities being considered restricted for purposes of the proposed rules. Thus, if the restrictions provided as examples in the new definition of ''restricted

[26] Currently, this is Nasdaq Rule 5005(a)(39) but will be converted to Nasdaq Rule 5005(a)(40).

[27] Currently, this is Nasdaq Rule 5005(a)(38) but will be converted to Nasdaq Rule 5005(a)(39).

securities'' would restrict the underlying security from being freely sold or tradable on its home country market, Nasdaq would also consider such restrictions when calculating ''unrestricted publicly held shares.'' Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.[28] Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S.

In addition, Nasdaq proposes to revise the reference to Form S–12 in Rule 5215(b) to Form F–6 in order to refer to the current form required by the Commission to register ADRs under the Securities Act of 1933.[29]

II. Minimum Value Requirement for Holders

Nasdaq is also proposing to revise the listing rules related to round lot holders listed in Part I.C, above, except for those applicable to listing warrants, to impose a new requirement related to the minimum investment amount held by shareholders. Under the current definition of a round lot, a shareholder may be considered a round lot holder by holding exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share.[30] Nasdaq believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange. To address this concern, Nasdaq proposes to require that for initial listing at least 50% of a company's required round lot holders must each hold unrestricted securities with a market value of at least $2,500. Nasdaq does not propose to impose this requirement on initial listings of warrants, however, because warrants do not have a minimum price requirement and may have little value at the time of issuance.[31] Nonetheless, warrants are often issued as part of a unit and the common stock component of the unit would be required to satisfy the minimum value requirement. Further, in all cases, the security underlying a warrant must be listed on Nasdaq or be a covered security, as defined in Section 18(b) of the Securities Act of 1933.[32] Nasdaq has not observed problems with the trading of warrants.

Nasdaq believes that adopting this amendment will help ensure that a majority of the required minimum number of shareholders hold a meaningful value of unrestricted securities and that a company has sufficient investor interest to support an exchange listing.

III. Average Daily Trading Volume

Nasdaq is proposing to adopt an additional initial listing criteria for primary equity securities (including ADRs), preferred stock, secondary classes of common stock and paired share units, previously trading OTC in the United States. The new rules will require such securities to have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). Nasdaq believes that this will help ensure a liquid trading market, promote price discovery and establish an appropriate market price for the listed securities.

Nasdaq is proposing to implement this new requirement by making additional amendments to Rule 5315(e) to add a new Rule 5315(e)(4); Rule 5405(a) to add a new Rule 5405(a)(4); Rule 5415(a) to add a new Rule 5415(a)(6); Rule 5505(a) to add a new Rule 5505(a)(5); and Rule 5510(a) to add a new Rule 5510(a)(6).[33] In connection with the foregoing amendments, Nasdaq is proposing to revise the cross-references in Rules 5415(a) and 5510(a) to add new Rules 5415(a)(6) and 5510(a)(6), respectively, and renumber the remaining provisions of Rule 5505(a) to maintain an organized rule structure. In addition, Nasdaq is proposing to revise Rule 5226(b) to clarify that the average daily trading volume requirement would apply to companies seeking to list paired share units on the Exchange.

As noted above, the average daily trading volume requirement will also apply to ADRs. Currently, Nasdaq considers the underlying security of an ADR when determining annual income from continuing operations, publicly held shares, market value of publicly held shares, stockholders' equity, round lot or public holders, operating history, market value of listed securities, total assets and total revenue. Nasdaq is proposing amend Rule 5215(b) to state that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations for this new requirement. Nasdaq would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. Nasdaq believes that this will help demonstrate adequate investor interest in the foreign issuer and the underlying security, which will help promote price discovery and establish an appropriate market price for the ADR.[34]

[28] For example, the underlying security may not be eligible to trade in the U.S., but that would not cause all shares of that security to be considered restricted if they are freely tradable on the foreign issuer's home country market.

[29] Securities Exchange Act Release No. 34–19612 (March 18, 1983), 48 FR 12346 (March 24, 1983).

[30] On the Nasdaq Capital Market, certain companies are also eligible to list at $2 or $3 and the minimum value held by such a holder would be only $200 or $300, respectively. See Listing Rule 5505(a)(1)(B).

[31] Warrants issued as part of a unit must satisfy the initial listing requirements for warrants applying to list on the applicable market tier in accordance with Rule 5225.

[32] 15 U.S.C. 77r(b).

[33] Rule 5005(a)(33) defines ''Primary Equity Security'' as ''a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).'' The Exchange considers ADRs to be primary equity securities and therefore the Exchange's initial listing requirements for preferred stock and secondary classes of common stock (including Rules 5415(a)(6) and 5510(a)(6)) do not apply to ADRs.

[34] ADR shares trade separately from the underlying securities, and often have slightly different values. However, ADR share values usually track closely with the value of the underlying security.

Nasdaq is proposing to adopt an exemption from the proposed average daily trading volume requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least $4 million. Nasdaq believes that the sale of securities in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such securities after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. For these reasons, in part, Nasdaq's rules already provide similar exemptions in other situations involving a firm commitment underwritten offering.[35] Nasdaq believes that the process of a firm commitment underwritten offering similarly supports an exception from the proposed average daily trading volume requirement. Nasdaq also notes that the same volume requirement is being proposed for each of Nasdaq's Global Select, Global and Capital Market tiers, and that it is therefore appropriate to base the exemption on the same minimum $4 million offering in each case, notwithstanding the different listing criteria generally applicable to companies seeking to list on each tier. Finally, Nasdaq believes that the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering. In that regard, Nasdaq notes that the minimum $4 million offering would be sufficient to satisfy Nasdaq's one million share public float requirement at the minimum $4 price for listing on Capital Market. This exemption will be included in new Rules 5315(e)(4), 5405(a)(4), 5415(a)(6), 5505(a)(5), and 5510(a)(6).

Nasdaq proposes that this change be effective 30 days after approval by the SEC. Nasdaq notes that it had originally solicited comment on a similar proposal in October 2018,[36] which provided companies with notice that Nasdaq was considering adopting the proposed changes to the Exchange's Initial Liquidity Calculations. The proposed 30-day delay from approval until operation of the proposed rule will allow companies a short opportunity to complete an offering or transaction before the new rules become effective if they have substantially completed the Nasdaq review process or are near completion of an offering or transaction, and have relied on the existing rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[37] in general, and furthers the objectives of Section 6(b)(5) of the Act,[38] in particular, in that it is designed to promote just and equitable principles of trade, 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, as set forth below. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.[39] In particular, the Commission stated:

Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[40]

As described below, Nasdaq believes that the proposed rule changes in this filing are consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable Nasdaq to help ensure that issuers seeking to list on the Exchange have sufficient public float, investor base, and trading interest likely to generate depth and liquidity. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

I. Restricted Securities

The proposed amendments will adopt new definitions of ''restricted securities'' and ''unrestricted securities'' in order to exclude securities that are subject to resale restrictions from the Exchange's Initial Liquidity Calculations. The Exchange believes that these amendments will bolster the Exchange's quantitative shareholder requirements, and as a result, better reflect and safeguard the liquidity of a security. The Commission has previously noted the importance of adequate liquidity in a security and the consequences for investors when a security is thinly traded. In *In the Matter of the Application of Rocky Mountain Power Company,* the Commission observed:

We note that the requirement concerning the number of shareholders is not only an important listing criterion but is also a standard used in conjunction with other standards to ensure that a stock has the investor following and liquid market necessary for trading. In response to the Panel's questions, the Company's president acknowledged that the market for Rocky Mountain's shares would be initially ''very, very small,'' and that fewer than 20,000 of the Company's over 700,000 shares outstanding were freely tradeable. While Rocky Mountain, as a technical matter, complied with the shareholder requirement, it failed to demonstrate an adequate market for its shares, which is at the heart of this and other [Nasdaq] inclusion requirements.[41]

Nasdaq believes that adopting the new definitions of restricted securities and unrestricted securities will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest

[35] For example, Rules 5410(d) and 5515(a)(4) provide an exemption from the minimum round lot holder requirement for warrants listed in connection with an initial firm commitment underwritten public offering. Rule 5110(c)(3) provides an exemption from the requirements applicable to a company that was formed by a reverse merger if the company completes a firm commitment underwritten public offering where the gross proceeds to the company will be at least $40 million.

[36] *See https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf.*

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR–Nasdaq–2011–073 adopting additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company.)

[40] *Id.* at 70802.

[41] *See* Rocky Mountain Power Co., Securities Exchange Act Release No. 40648, 1998 SEC LEXIS 2422; 53 SEC. 979 (November 9, 1998).

because securities subject to resale restrictions are not freely transferrable and therefore excluding restricted securities from the Exchange's Initial Liquidity Calculations will help ensure that Nasdaq lists only companies with liquid securities and sufficient investor interest to support an exchange listing meeting the Exchange's listing criteria, which will better protect investors.

A. Publicly Held Shares

The proposed amendments will adopt a new definition of ''unrestricted publicly held shares'' which excludes restricted securities and revise Nasdaq's initial listing standards to conform the minimum number of publicly held shares to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

B. Market Value of Publicly Held Shares

The proposed amendments will revise the definition of ''market value'' to exclude restricted securities from the calculation of ''market value of unrestricted publicly held shares'' and revise Nasdaq's initial listing standards to conform the minimum market value to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and investor interest and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

C. Round Lot Holders

The proposed amendments will exclude restricted securities from the calculation of the number of round lot holders required to meet the Exchange's initial listing criteria by revising the definition of ''round lot holder'' to exclude restricted securities. Nasdaq believes that this amendment will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security.

D. American Depositary Receipts

The proposed amendments will modify Nasdaq's rules to state that when considering the security underlying an ADR, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market. However, any restrictions, including those provided as examples in the new definition of ''restricted securities,'' which would restrict the underlying security from being freely sold or tradable on its home country market would be considered by Nasdaq when calculating ''unrestricted publicly held shares.'' Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S. Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. For the foregoing reasons, Nasdaq believes that this provision will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Further, the Exchange believes that this provision is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the Exchange's Initial Liquidity Calculations for ADRs would be calculated differently than other securities, these differences are not unfair because they recognize the unique structure of ADRs, as already reflected in the existing treatment of ADRs under Nasdaq's rules, where Nasdaq looks to the underlying security in order to ensure sufficient investor interest and adequate liquidity and distribution of the foreign issuer's underlying security, which is represented by the ADR.

II. Minimum Value Requirement for Holders

The Exchange proposes adopting a new requirement that at least 50% of a company's round lot holders hold unrestricted securities with a market value of at least $2,500. Nasdaq believes that the proposed $2,500 minimum value is reasonable because the Exchange has noticed problems with companies listing where a large number of round lot holders hold exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share, or as little as $200 in the case of a stock listing under the alternative price criteria. Nasdaq notes that the proposed $2,500 threshold is from 6.5 times to 12.5 times larger than the existing minimum investment, and Nasdaq believes that this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the requirement through share transfers for no value. As such, Nasdaq believes that these amendments will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by requiring more than half of the required number of shareholders hold a more significant investment in the company, and that the company will therefore have an adequate distribution, shareholder interest and a liquid trading market of a security.

Nasdaq does not propose to impose this requirement on the initial listings of warrants because warrants do not have a minimum price requirement and may have little value at the time of issuance. The value of warrants is derived from the value of the underlying security, which must be listed on Nasdaq or be a covered security and Nasdaq has not

observed problems with the trading of warrants. As such, Nasdaq believes that it is not unfairly discriminatory to treat warrants differently under this proposal and that excluding warrants avoids imposing an unnecessary impediment to the mechanism of a free and open market.

III. Average Daily Trading Volume

The proposed amendments will generally impose a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). This will apply to primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC in the United States that apply to list on the Exchange. Nasdaq believes this proposed change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping to assure adequate liquidity and price discovery of a security. The Exchange believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on a national stock exchange.

The proposed rule change will provide a limited exemption to this requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least $4 million. Nasdaq believes that it is consistent with the protection of investors and the public interest, and not unfairly discriminatory, to exempt from the proposed average daily trading volume requirement securities satisfying this exemption because underwriters facilitate appropriate price discovery and will generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. Further, Nasdaq believes that this exemption is consistent with the protection of investors and the public interest, and not unfairly discriminatory, because the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering.

Under the proposed rule, Nasdaq would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. Nasdaq believes that this distinction is not unfairly discriminatory because the trading volume in the underlying security on the foreign issuer's primary market represents interest in the foreign issuer's security and that interest is reasonably likely to be indicative of investor interest in the ADR.

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 not necessary or appropriate in furtherance of the purposes of the Act. All domestic and foreign companies seeking to list primary equity securities, preferred stock, secondary classes of common stock or subscription receipts would be affected in the same manner by these changes, across all market tiers. As discussed above, companies listing ADRs would be treated differently in some respects than companies listing other primary equity securities, but those differences reflect the unique characteristics of ADRs and does not impose an unnecessary burden on competition.

To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On October 5, 2018, Nasdaq launched a formal comment solicitation on proposals to exclude restricted securities from the Exchange's Initial Liquidity Calculations and adopt a new initial listing criteria related to prior trading volume for securities that are currently trading OTC (''2018 Solicitation''), a copy of which is attached hereto as *Exhibit 2.*[42] No comments were received in response to the comment solicitation.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[43] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,[44] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful listing standards for an exchange is of critical importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[45]

Nasdaq has proposed to make more rigorous certain of its initial listing

[42] The Commission notes that Exhibit 2 is attached to the Exchange's Amendment No. 3 and not to this notice and order.

[43] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78f(b)(5).

[45] *See, e.g.,* Securities Exchange Act Release Nos. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (SR–Nasdaq–2011–073) (order approving a proposal to adopt additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company); 63607 (December 23, 2010), 75 FR 82420 (December 30, 2010) (SR–NASDAQ–2010–137) (order approving a proposal to amend initial listing standards to list securities of special purpose acquisition companies); and 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17) (order approving a proposal to adopt new initial and continued listing standards to list securities of special purpose acquisition companies).

standards in order to help assure an adequate level of liquidity exists for securities that are listing on the Exchange for the first time. The Exchange has proposed to exclude securities subject to resale restrictions from the Exchange's Initial Liquidity Calculations. The Commission believes the proposed changes to the Exchange's calculation of a company's publicly held shares, market value of publicly held shares, and round lot holders for purposes of qualifying the company's securities for initial listing, including the proposed new definitions of ''Restricted Securities,'' ''Unrestricted Publicly Held Shares,'' and ''Unrestricted Securities,'' and the proposed amended definition of ''Round Lot Holder,'' are consistent with the requirements of the Act, including the protection of investors, the prevention of fraudulent and manipulative acts and practices, and the promotion of fair and orderly markets.

As noted by the Exchange, Exchange rules currently only exclude from the publicly held share requirement shares held, directly or indirectly, by officers, directors or any person who is the beneficial owner of more than 10 percent of the total shares outstanding.[46] Nasdaq's publicly held share and market value of publicly held share requirements, as well as its round lot holder requirement, however, currently do not exclude restricted shares that would not be freely tradeable at the time of listing. As a result, under the Exchange's current initial listing standards,[47] a security that may not have a substantial number of unrestricted, freely transferable securities outstanding and may be considered illiquid may nevertheless satisfy the Exchange's current initial listing requirements related to liquidity and qualify to list on the Exchange. Nasdaq notes that an illiquid stock may trade infrequently and may be subject to volatility as well as potentially more susceptible to manipulation.[48]

The proposed amendments should allow the Exchange to more accurately determine whether a security has adequate distribution and liquidity and is thus suitable for listing and trading on the Exchange. The Commission believes that these amendments should help to ensure that the Exchange lists only securities with a sufficient market, with adequate depth and liquidity, and with sufficient investor interest to support an exchange listing.

With respect to a company applying to list on the Exchange through a direct listing, the Exchange amended its proposal to specify that for a company that has not had sustained recent trading in a private placement market prior to listing, Nasdaq will determine that the company has met the Market Value of Unrestricted Publicly Held Shares requirement if the Company satisfies the applicable Market Value of Unrestricted Publicly Held Shares requirement set forth in Nasdaq Rule 5315 and provides a Valuation evidencing a Market Value of Publicly Held Shares of at least $250,000,000.[49] The Commission believes that this change is reasonable given that a company applying to list on the Exchange through a direct listing that is subject to the $250,000,000 valuation requirement would also be required to comply with the initial listing standards set forth in Nasdaq Rule 5315, including the revised Initial Liquidity Calculations.

With respect to ADRs, the Commission believes that it is reasonable and consistent with the Act for the Exchange to consider restrictions that prohibit the resale or trading of the foreign security underlying the ADR on the foreign issuer's home country market (rather than on the U.S. markets) when determining whether a security is restricted for purposes of the Initial Liquidity Calculations. The Exchange states that for ADRs, the purpose of the Initial Liquidity Calculations is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer's underlying security on its home country market, which is held by the depositary bank and represented by the ADR; therefore, excluding securities that are only restricted from resale or trading in the United States would not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.[50] The Commission notes that pursuant to current Nasdaq Rule 5215(b), the Exchange looks to an ADR's underlying foreign security for purposes of the Initial Liquidity Calculations, and that the proposal should help to ensure adequate liquidity and distribution and sufficient investor interest in the company's underlying security on its home country market to support the listing of an ADR in the U.S.

The Commission received one comment letter that generally supported the proposed changes but requested that SPACs be given additional time to comply with the new requirements after a business combination.[51] The commenter notes that the Exchange currently provides a 30-day grace period for a former SPAC to demonstrate compliance with the round lot requirement, if the business combination is structured in a certain way, and states that a grace period will become more important if the new standards are approved and should be allowed regardless of the transaction structure. Nasdaq has not proposed a grace period for SPACs so the comment is beyond the scope of this proposal. The Commission notes, however, that it previously stated, in reviewing a Nasdaq proposal providing for a grace period for SPACs to comply with the holder and other requirements after a business combination, that initial listing standards, absent an explicit exception, apply upon initial listing.[52] The Commission also recently disapproved a NYSE proposal requesting additional time for a post-business combination SPAC to comply with listing standards.[53] As noted above, the Commission believes that the proposed standards should help to ensure upon initial listing (including for SPACs and former SPACs after the business combination) that there is adequate depth and liquidity and investor interest to support exchange listing and trading, which should help to protect investors and the public interest.

The Commission also believes the proposed new initial listing requirement that at least 50% of a company's required Round Lot Holders hold Unrestricted Securities with a market value of at least $2,500 is consistent with the Act, including the protection of investors, the prevention of fraudulent and manipulative acts and practices, and the promotion of fair and orderly markets. The Exchange stated that it has

[46] *See* definition of ''Publicly Held Shares'' in Nasdaq Rule 5005(a)(35).

[47] *See supra* Section II.A.1.I (Restricted Securities).

[48] *See id.*

[49] *See supra* Section II.A.1.I.B (Market Value of Publicly Held Shares). The Exchange originally proposed that it would determine that such a company had met the Market Value of Unrestricted Publicly Held Shares requirement if the company provided a valuation evidencing a Market Value of *Unrestricted* Publicly Held Shares of at least $250,000,000. *See* Notice, *supra* note 3, 84 FR at 14174. The Exchange states that the $250,000,000 valuation requirement is designed to be a measure of the size of the company rather than a measure of its liquidity. *See supra* Section II.A.1.I.B (Market Value of Publicly Held Shares).

[50] *See supra* note 28 and accompanying text.

[51] *See* Kirkland Letter, *supra* note 7.

[52] *See* Securities Exchange Act Release No. 82478 (January 9, 2018), 83 FR 2278 (January 16, 2018) (SR–NASDAQ–2017–087) (Order Instituting Proceedings).

[53] *See* Securities Exchange Act Release No. 86117 (June 14, 2019), 84 FR 28879 (June 20, 2019) (SR–NYSE–2018–46).

noticed problems with companies listing where a large number of Round Lot Holders hold exactly 100 shares, worth as little as $400 in the case of a stock that is trading at the minimum bid price of $4 per share, or as little as $200 in the case of a stock listing under the alternative price criteria.[54] The Exchange stated that the proposed $2,500 threshold is 6.5 times to 12.5 times larger than the existing minimum investment, and that it believes this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the Round Lot Holder requirement through share transfers for no value.[55] The Commission believes that the proposed new minimum value requirement is reasonably designed to ensure that at least 50% of the required number of Round Lot Holders have a sufficient investment in the company and that the company should therefore have adequate distribution and liquidity and shareholder interest to support an exchange listing.

The Commission believes that it is reasonable and not unfairly discriminatory for the Exchange not to impose this minimum value requirement on the initial listing of warrants. The Exchange states that warrants do not have minimum price requirements and may have little value at the time of issuance.[56] The Exchange also represents that it has not observed problems with the trading of warrants.[57] The Commission notes that the security underlying a warrant must be listed on the Exchange or be a covered security, as defined in Section 18(b) of the Securities Act of 1933.[58]

The Commission further believes that the Exchange's proposal to impose a new minimum average daily trading volume requirement for the initial listing of securities trading OTC at the time of their listing is consistent with the Act.[59] The Exchange states that it believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on the Exchange and help to promote price discovery of a security when listed.[60] The Commission believes that the proposed requirement is reasonably designed to ensure that companies trading OTC prior to listing have adequate liquidity and trading activity to support an exchange listing.

With respect to ADRs, the Exchange amended its proposal to make clear that, to the extent the ADR has trading in the U.S. OTC market, such daily trading volume will be combined with trading volume of the security underlying the ADR in the foreign issuer's primary market. The Commission believes that combining the trading volume of the ADR and the security underlying the ADR to meet this standard is consistent with the Exchange's purpose to ensure there is sufficient interest and trading activity to support an exchange listing of the ADR and help in price discovery upon listing.

In addition, the Commission believes that the proposed exception to the minimum average daily trading volume requirement for securities listed in connection with a firm commitment underwritten public offering of at least $4 million reasonably accommodates issuers that may not meet the requirement but should nevertheless have adequate liquidity upon an exchange listing. As noted by the Exchange, it has proposed this exception to the trading volume requirement because it believes the underwritten offering process is designed to promote appropriate price discovery and provides a basis for believing that a liquid trading market will likely develop for the securities after listing. The Commission notes that the underwriters in a firm commitment underwriting will typically have ''indications of interest'' from prospective investors and will use this information to recommend a price for the shares[61] and, as the Exchange stated, will generally make a market in the securities for a period of time after the offering and thereby assist in creating a liquid market. While the dollar amount for the exception of a $4 million underwritten public offering is relatively low,[62] particularly when compared to the higher listing standards of the Global Select and Global tiers, the Commission notes that the other changes to the liquidity requirements, as well as other listing standards, will all still have to be met upon initial listing.

Nasdaq states that it is not proposing to change the requirements for continued listing at this time, and believes that the proposed heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.[63] The Commission would expect Nasdaq to review its experience with the new initial listing standards and consider whether the adoption of the new rule has addressed the concerns identified by Nasdaq and propose any appropriate changes, if necessary, to its listing standards, including continued listing standards.

For the reasons discussed above, the Commission believes that Nasdaq's proposal will further the purposes of Section 6(b)(5) of the Act by, among other things, protecting investors and the public interest, and preventing fraudulent and manipulative acts and practices, as well as promoting fair and orderly markets under the Act.

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 3 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–NASDAQ–2019–009 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–NASDAQ–2019–009. 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

[54] *See supra* Section II.A.2.II (Minimum Value Requirement for Holders).

[55] *See id.* Nasdaq Rule 5505(a)(1)(B) allows, under certain conditions, for companies to list with a minimum price of $2.00 or $3.00 per share.

[56] *See supra* Section II.A.1.II (Minimum Value Requirement for Holders).

[57] *See id.* As Nasdaq stated, warrants are often issued as part of a unit and the common stock component of the unit would be required to satisfy the minimum value requirement. *See id.*

[58] *See* Nasdaq Rules 5410(b) and 5515(a)(2).

[59] The trading volume provisions apply to primary equity securities, ADRs, preferred stock, secondary classes of common stock and paired share units to the extent there is trading in these securities in the U.S. OTC market. *See supra* Section I.A.1.III (Average Daily Trading Volume).

[60] *See id.*

[61] *See* ''Investor Bulletin: Investing in an IPO,'' issued by the Commission, available at *https://www.sec.gov/files/ipo-investorbulletin.pdf.*

[62] *See, e.g.,* Nasdaq Rule 5110(c)(3) (providing an exception to certain initial listing requirements for a ''reverse merger'' company completing an underwritten public offering of at least $40 million).

[63] *See supra* note 9 and accompanying text.

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–NASDAQ–2019–009 and should be submitted on or before August 1, 2019.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. The Commission notes that the original proposal was published for comment in the **Federal Register**.[64] The Commission notes that Amendment No. 3 clarifies and provides additional explanation relating to the proposed rule change. The changes and additional information in Amendment No. 3 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[65] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[66] that the proposed rule change (SR–NASDAQ–2019–009), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2019–14723 Filed 7–10–19; 8:45 am]

BILLING CODE 8011–01–P

[64] *See* Notice, *supra* note 3.

[65] 15 U.S.C. 78s(b)(2).

[66] *Id.*

[67] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Agency Information Collection Activity: Generic Information Collection Under Circular A–11, Section 280: Improving Customer Service

AGENCY: U.S. Small Business Administration.

ACTION: 60-Day notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act (PRA) of 1995, federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information and allow 60 days for public comment in response to the notice. Accordingly, the U.S. Small Business Administration (SBA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a new proposed information collection on improving customer service.

DATES: Written comments must be submitted on or before September 9, 2019.

ADDRESSES: Direct all comments to Terell Lasane, Lead Program Evaluator, Office of Performance Management and the Chief Financial Officers, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Terell Lasane, Lead Program Evaluator, *performance.management@sba.gov,* 202–205–7111, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Whether seeking a loan, Social Security benefits, veterans' benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations. To enable Federal programs to deliver the experience taxpayers deserve, agencies must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*e.g.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. The U.S. Small Business Administration will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to understand and improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, formative evaluations, reports and summaries of customer feedback data and user insights.

II. Method of Collection

SBA will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. SBA may also utilize observational techniques to collect this information.

III. Data

Form Number(s): None.

Type of Review: New.

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with a program or may have experience

with it in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 500,000.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview.

Estimated Total Annual Burden Hours: 37,500.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

The U.S. Small Business Administration 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.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–14749 Filed 7–10–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16020 and #16021; Indiana Disaster Number IN–00065]

Administrative Declaration of a Disaster for the State of Indiana

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of INDIANA dated 07/03/2019.

Incident: Tornadoes, High Winds and Severe Storms.

Incident Period: 06/15/2019 through 06/17/2019.

DATES: Issued on 07/03/2019.

Physical Loan Application Deadline Date: 09/03/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 04/03/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Monroe.

Contiguous Counties:

Indiana: Brown, Greene, Jackson, Lawrence, Morgan, Owen.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16020 C and for economic injury is 16021 0.

The State which received an EIDL Declaration # is Indiana.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–14760 Filed 7–10–19; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Finance Docket 34936]

Notice of Availability of the Draft Supplemental Environmental Assessment for Northern Columbia Basin Railroad Project

AGENCY: Office of Environmental Analysis (OEA), Surface Transportation Board (Board).

ACTION: Notice of availability of the Draft Supplemental Environmental Assessment (DSEA) on July 11, 2019 and request for comments.

SUMMARY: On November 2, 2018, the Port of Moses Lake (Applicant) filed a Petition to Reopen with the Board seeking authorization for modifications to portions of an 11-mile (7.6 miles of which would be new construction) rail line previously approved by the Board in 2009 in the City of Moses Lake, Grant County, Washington. The purpose of this Notice of Availability (NOA) is to notify individuals and agencies interested in or affected by the proposed action of the availability of the DSEA for review and comment on July 11, 2019.

DATES: The DSEA will be available for public review and comment on July 11, 2019. Mailed comments must be postmarked by August 12, 2019. Electronic comments must be received by August 12, 2019.

ADDRESSES: Please mail written comments on the DSEA, including the recommended environmental mitigation to: Mr. Adam Assenza, Surface Transportation Board, Docket No. FD 34936, 395 E Street SW, Washington, DC 20423. Electronic comments on this DSEA may also be submitted electronically on the STB's website: *https://www.stb.gov* or emailed to *Adam.Assenza@stb.gov.* Please refer to Docket No. FD 34936 in all correspondence, including electronic, addressed to the lead agency.

FOR FURTHER INFORMATION CONTACT: Adam Assenza, Surface Transportation Board, Docket No. FD 34963, 395 E Street SW, Washington, DC 20423, (202) 245–0301.

SUPPLEMENTARY INFORMATION: The purpose of the proposed project is to promote economic development through the attraction of new rail-

dependent businesses, thereby encouraging the long-term, continued use, growth, and preservation of rail operations in the region. The Federal Railroad Administration (FRA) is participating as a cooperating agency in the preparation of this DSEA pursuant to CEQ NEPA implementing regulations (40 CFR 1501.6). The DSEA analyzes the potential environmental impacts of the proposed modifications to the previously-approved alignment. It also contains OEA's preliminary recommendations for environmental mitigation measures. The DSEA will be available on July 11, 2019 through the Board's website at *https://www.stb.gov* by following the Decisions link and at the City of Moses Lake Public Library in Grant County, Washington.

Next Steps: Following the close of the 30-day comment period on August 12, 2019 of the DSEA, OEA, and FRA as a cooperating agency, will issue a Final Supplemental EA that considers comments on the DSEA. The Board will then issue a final decision based on the Draft and Final Supplemental EAs and all public and agency comments in the public record for this proceeding. The final decision will address the transportation merits of the proposed project and the entire environmental record. The final decision will take one of three actions: Approve the proposed project, deny it, or approve it with mitigation conditions, including environmental conditions.

Written Comments: Any interested party may submit written comments on the DSEA. The procedures for submitting written comments are outlined in the **ADDRESSES** section.

Dated: July 9, 2019.

By the Board, Victoria Ruston, Director, Office of Environmental Analysis.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–14826 Filed 7–10–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub–No. 793X); Docket No. AB 1233 (Sub–No. 1X)]

CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, Pa.; Allegheny Valley Railroad Company—Discontinuance Exemption—in Allegheny County, Pa.

CSX Transportation, Inc. (CSXT) and Allegheny Valley Railroad Company (AVR) (collectively, Applicants), have jointly filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for CSXT to abandon, and for AVR to discontinue service over, an approximately 0.85-mile rail line on the River Branch, Baltimore Division, P&W Subdivision between Val. Sta. 40+75 and the end of the line at Val. Sta. 85+76, in Pittsburgh, Allegheny County, Pa. (the Line). The Line traverses U.S. Postal Service Zip Code 32609.

Applicants have certified that: (1) No local traffic has moved over the Line for at least two years; (2) any overhead traffic can be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Any employee of AVR adversely affected by the discontinuance or abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] these exemptions will be effective on August 10, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 22, 2019. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 31, 2019, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Applicants' representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by July 16, 2019. Interested persons may obtain a copy of the EA on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by July 11, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: July 8, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–14747 Filed 7–10–19; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property for Land Disposal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to rule on release of airport property for land

disposal at the Oskaloosa Municipal Airport, Oskaloosa, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Oskaloosa Municipal Airport, Oskaloosa, Iowa.

DATES: Comments must be received on or before August 12, 2019.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Michael Schrock, Jr., City Manager, City of Oskaloosa, 220 S Market St., Oskaloosa, IA 52577, (641) 673–9431.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 330.78± acres consisting of 6 parcels of airport property at the Oskaloosa Municipal Airport (OOA) under the provisions of 49 U.S.C. 47107(h)(2). On June 5, 2019, the City Manager of the City of Oskaloosa requested from the FAA that approximately 6 parcels of land totaling 330.78± acres of property be released for sale in order to purchase land for a new centrally located airport. On July 1, 2019, the FAA determined that the request to release property at the Oskaloosa Municipal Airport (OOA) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Oskaloosa Municipal Airport (OOA) is proposing the release of airport property totaling 6 parcels totaling 330.78± acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Oskaloosa Municipal Airport (OOA) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to dispose of the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the future new airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Oskaloosa City Hall.

Issued in Kansas City, MO, on July 1, 2019.

Rodney Joel,

Acting Director, FAA Central Region, Airports Division.

[FR Doc. 2019–14634 Filed 7–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–35]

Petition for Exemption; Summary of Petition Received; L. Salcedo

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 31, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0286 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michelle Ross (202) 267–9836, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 2, 2019.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0286.

Petitioner: L. Salcedo.

Section(s) of 14 CFR Affected: 121.311(b).

Description of Relief Sought: Petitioner seeks relief from 14 CFR part 121.311(b) to the extent necessary to allow her son to use a child restraint system (CRS), E–Z–ON Push Button Adjustable Vest, model 203PB or 403PB, during all phases of flight while on board U.S.-certificated aircraft in commercial air carrier operations under part 121. This request, if granted, would be precedent setting because relief has

not previously been given for this specific model number. Therefore, the FAA seeks public comment on whether the FAA should grant the petitioner's request for an exemption from 14 CFR 121.311(b) to allow her son to use a CRS, E–Z–ON Push Button Adjustable Vest, model 203PB or 403PB, during all phases of flight while on board U.S.-registered aircraft in commercial air carrier operations under part 121.

[FR Doc. 2019–14776 Filed 7–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2019–0025]

Agency Information Collection Activities: Request for Comments for a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 9, 2019. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 12, 2019.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2016–0009.

FOR FURTHER INFORMATION CONTACT: James Garland, 202–366–6221, Office of Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Transportation Planning Excellence Awards Nomination Form.

OMB Control #: 2125–0615.

Background: Transportation Planning Excellence Awards Nomination Form. The Transportation Planning Excellence Awards (TPEA) Program is a biennial awards program developed by the FHWA and the Federal Transit Administration (FTA) to recognize outstanding initiatives across the country to develop, plan and implement innovative transportation planning practices. The program is co-sponsored by the American Planning Association.

The on-line TPEA nomination form is the tool for submitters to nominate a process, group, or individual involved in a project or process that has used the FHWA and/or the FTA funding sources to make an outstanding contribution to the field of transportation planning. The information about the process, group or individual provided by the submitter may be shared and published if that submission is selected for an award.

The TPEA Program is a biennial awards program and individuals will be asked to submit nominations via the online form every two years. The participants will provide their information by means of the internet.

Respondents: For the TPEA, 35 participants biennially.

Frequency: For the TPEA, nominations are solicited every two years.

Estimated Average Burden per Response: For the TPEA Program, approximately 90 minutes.

Estimated Total Annual Burden Hours: For the TPEA Program, 225 hours in the first year and 225 hours in the third year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: July 8, 2019.

Michael Howell,

Information Collection Officer.

[FR Doc. 2019–14757 Filed 7–10–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0047]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 19, 2019, the Everett Railroad Company (EV) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 and 224. Specifically, EV seeks a waiver of compliance for one box car, PRR 571060, for stenciling, reflectorization, and bolster without an identification mark or pattern number. FRA assigned the petition Docket Number FRA–2019–0047.

EV's petition states that the car was built in 1925 and will be operated only as a historic relic in conjunction with EV's tourist and excursion trains. EV operates over approximately 25 miles of track located entirely in Blair County, Pennsylvania, which is generally rural in nature. EV trains operate under restricted speed rules not exceeding 20 miles per hour. When operated, the subject car will be loaded to not more than fifty percent capacity. The subject car will not interchange with any other railroad. EV explains that the car has been inspected and determined to be safe for operation, and last received a single car air brake test on December 7, 2015. EV wishes to maintain the subject car in its historic appearance and identity for photography, film, and purposes of historic interpretation.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 26, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

John Karl Alexy,

Acting Associate Administrator for Railroad Safety.

[FR Doc. 2019–14783 Filed 7–10–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: U.S. Treasury Auction Submitter Agreement

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the U.S. Treasury Auction Submitter Agreement.

DATES: Written comments should be received on or before September 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Treasury Auction Submitter Agreement.

OMB Number: 1530–0056.

Form Number: FS Form 5441 and FS Form 5441–2.

Abstract: The information is requested from entities wishing to participate in U.S. Treasury Securities auctions via TAAPS.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Depository Institutions, Brokers/Dealers, Assessment Management Companies, Pension Funds, and other Institutional Investors.

Estimated Number of Respondents: 1,050.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 88.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 8, 2019.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2019–14754 Filed 7–10–19; 8:45 am]

BILLING CODE 4810–AS–P

FEDERAL REGISTER

Vol. 84 Thursday,
No. 133 July 11, 2019

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance on Passive Foreign Investment Companies; Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105474–18]

RIN 1545–BO59, 1545–BM69

Guidance on Passive Foreign Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 1291, 1297, and 1298 of the Internal Revenue Code (''Code'') regarding the determination of ownership in a passive foreign investment company within the meaning of section 1297(a) (''PFIC'') and the treatment of certain income received or accrued by a foreign corporation and assets held by a foreign corporation for purposes of section 1297. The regulations provide guidance regarding when a foreign corporation is a qualifying insurance corporation (''QIC'') under section 1297(f) of the Code and the amounts of income and assets that a QIC excludes from passive income and assets pursuant to section 1297(b)(2)(B) (''PFIC insurance exception'') for purposes of section 1297(a). The regulations also clarify the application and scope of certain rules that determine whether a United States person that directly or indirectly holds stock in a PFIC is treated as a shareholder of the PFIC, and whether a foreign corporation is a PFIC. The regulations affect United States persons with direct or indirect ownership interests in certain foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 9, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–105474–18), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–105474–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–105474–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Josephine Firehock at (202) 317–4932 (for the PFIC Insurance Exception) or Jorge M. Oben at (202) 317–6934 (for general rules, including indirect ownership and look-through rules); concerning submissions and requests for a public hearing, Regina L. Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains proposed amendments to 26 CFR part 1 under sections 1291, 1297, and 1298. Sections 1291 through 1298 set forth tax regimes for shareholders that own stock of a PFIC. Under section 1297(a), a foreign corporation (''Tested Foreign Corporation'') qualifies as a PFIC if it satisfies either of the following tests: (i) 75 percent or more of the Tested Foreign Corporation's gross income for a taxable year is passive (''Income Test''); or (ii) the average percentage of assets held by the Tested Foreign Corporation during a taxable year that produce (or that are held for the production of) passive income is at least 50 percent (''Asset Test''). Section 1297(b)(1) generally defines passive income as any income of a kind that would constitute foreign personal holding company income (''FPHCI'') under section 954(c), and section 1297(b)(2) provides exceptions to this general definition. Income of a kind not described in section 954(c)(1) (for example, premiums on insurance and annuity contracts) is excluded from passive income.

In addition, section 1297(c) provides a look-through rule that applies when determining the PFIC status of a Tested Foreign Corporation that directly or indirectly owns at least 25 percent of the stock (determined by value) of another corporation.

Section 1298(b)(3) provides an exception from PFIC status for certain Tested Foreign Corporations that change from one active business to another active business. Section 1298(b)(7) provides that certain stock (''qualified stock'') in a domestic C corporation owned by a Tested Foreign Corporation through a 25-percent-owned domestic corporation is treated as an asset generating non-passive income for purposes of section 1297(a), provided that the Tested Foreign Corporation is subject to the accumulated earnings tax or waives any treaty protections against the imposition of the accumulated earnings tax.

Section 1298(a) sets forth special rules applicable to shareholders of PFICs, including attribution rules that treat a United States person as the owner of PFIC stock that is owned by another person (other than an individual). For instance, section 1298(a)(2) sets forth the attribution rules for ownership through a corporation, and section 1298(a)(3) sets forth the attribution rules for ownership through a partnership, estate, or trust. In addition, section 1298(a)(1)(B) provides that, except to the extent provided in regulations, section 1298(a) will not apply to treat stock owned (or treated as owned) by a United States person as owned by another United States person.

The Department of the Treasury (''Treasury Department'') and the IRS announced their intention to issue regulations that address the operation of the Income Test and Asset Test in Notice 88–22, 1988–1 C.B. 489 (''Notice 88–22'').

II. PFIC Insurance Exception

Before its amendment by section 14501 of the Tax Cuts and Jobs Act, Pub. L. 115–97, 131 Stat. 2234 (2017) (the ''Act''), former section 1297(b)(2)(B) provided that passive income generally did not include investment income derived in the active conduct of an insurance business by a corporation that is predominantly engaged in an insurance business and that would be subject to tax under subchapter L if it were a domestic corporation. Congress was concerned about a lack of clarity and precision in the PFIC insurance exception, and in particular about the lack of precision regarding how much insurance or reinsurance business a company must do to qualify under the exception, which made the exception difficult to enforce. H.R. Report 115–409 at 409–410. To address these concerns, the Act modified the PFIC insurance exception to provide that passive income does not include investment income derived in the active conduct of an insurance business by a QIC. Thus, for taxable years beginning after December 31, 2017, the PFIC insurance exception provides that a foreign corporation's income attributable to an insurance business will not be passive income if three requirements are met. First, the foreign corporation must be a QIC as defined in section 1297(f). Second, the foreign corporation must be engaged in an ''insurance business.'' Third, the income must be derived from the ''active conduct'' of that insurance business.

On April 24, 2015, the **Federal Register** published a notice of proposed rulemaking at 80 FR 22954 (the ''2015 proposed regulations'') under former sections 1297(b)(2)(B) and 1298(g). The 2015 proposed regulations addressed the PFIC insurance exception and provided guidance regarding the extent

to which a foreign corporation's investment income and the assets producing that income are excluded from passive income and passive assets for purposes of the passive income and passive asset tests in section 1297(a). Comments were received on the previously proposed regulations. A public hearing was requested and was held on September 18, 2015.

This document withdraws the 2015 proposed regulations and proposes new regulations with respect to the insurance exception as amended by the Act. Accordingly, this preamble does not address the comments received regarding the 2015 proposed regulations unless the comment relates to these new proposed regulations.

Explanation of Provisions

I. General Rules

A. Overview

These regulations provide guidance with respect to a number of issues that are not specifically addressed in the current regulations and resolve some of the complexities that arise in the determination of the ownership of a PFIC and in the application of the Income Test and Asset Test in cases in which the look-through rule of section 1297(c) applies to a Tested Foreign Corporation.

Specifically, these regulations provide guidance on the application of the corporate attribution rules when a partnership indirectly holds a Tested Foreign Corporation through a corporation that is not a PFIC. These regulations also clarify the scope of the section 1297(b)(1) cross-reference to section 954(c) for purposes of defining passive income, and they set forth rules that address certain computational and characterization issues that arise in applying the Asset Test. In addition, these regulations provide rules concerning the treatment of income and assets of a 25-percent-owned subsidiary under section 1297(c). These regulations provide guidance on the application of the section 1298(b)(3) change of business exception and also propose a new rule analogous to the section 1298(b)(3) change of business exception that takes into consideration the assets of the Tested Foreign Corporation. Finally, these regulations provide guidance on the application of the section 1298(b)(7) qualified stock exception and provide a rule for waiving treaty benefits that would exempt a Tested Foreign Corporation from the accumulated earnings tax.

B. Determination of Ownership and Attribution Through Partnerships

Section 1298(a) provides attribution rules that apply to the extent that the effect is to treat stock of a PFIC as owned by a United States person. Except as provided in regulations, the attribution rules do not apply to treat stock owned or treated as owned by a United States person as owned by any other person.

Section 1298(a)(2)(A) provides that if 50 percent or more in value of the stock of a corporation is owned, directly or indirectly, by or for any person, that person is considered to own the stock owned directly or indirectly by or for the corporation in proportion to the person's ownership of the corporation. However, under section 1298(a)(2)(B), the 50 percent ownership threshold does not apply in the case of stock held through a PFIC or a corporation that would be a PFIC if it were not a controlled foreign corporation within the meaning of section 957(a) (''CFC''). Section 1298(a)(3) provides that stock owned, directly or indirectly, by a partnership, estate, or trust is considered owned proportionately by its partners or beneficiaries. The current rules in § 1.1291–1(b)(8) are consistent with these statutory provisions.

Comments have inquired whether the attribution rules are intended to be applied to a tiered ownership structure on a ''top-down'' basis, by starting with a United States person and determining what stock is considered owned at each successive lower tier on a proportionate basis. Alternatively, the comments have posited, the rules could be applied on a ''bottom-up'' basis, by starting with a PFIC and attributing ownership of its stock upwards to each successive upper tier until the United States person whose ownership in the PFIC is being tested is reached.

The two approaches can have different ownership consequences when a partnership indirectly owns stock of a Tested Foreign Corporation through a corporation that is not a PFIC. A United States person not treated as a shareholder of PFIC stock indirectly held by a partnership through a non-PFIC corporation under a ''top-down'' approach may be treated as a shareholder under a ''bottom-up'' approach as a result of the application of section 1298(a)(3) and § 1.1291–1(b)(8)(iii), which provide that holders of interests in a pass-through entity are considered to proportionately own stock owned directly or indirectly by the pass-through entity. Consider, for example, the following fact pattern. A, a United States citizen, owns 50 percent of the interests in Foreign Partnership, a foreign partnership, the remainder of which is owned by an unrelated foreign person. Foreign Partnership owns 100 percent of the stock of FC1 and 50 percent of the stock of FC2, the remainder of which is owned by an unrelated foreign person. Both FC1 and FC2 are foreign corporations that are not PFICs (determined without applying section 1297(d)). FC1 and FC2 each own 50 percent of the stock of FC3, a foreign corporation that is a PFIC. Under a ''bottom-up'' approach, Foreign Partnership could be treated as owning 75 percent of the stock of FC3 indirectly through FC1 and FC2, and accordingly, A could be treated as owning 37.5 percent of the stock of FC3. Under a ''top-down'' approach, however, A would be treated as owning 50 percent of the stock of FC1 and 25 percent of the stock of FC2, and the only stock of FC3 that would be attributed to A would be the 25 percent of the FC3 stock treated as indirectly owned by A through FC1. Comments have noted that a ''top-down'' approach produces the same result as if the partnership were disregarded and partners were treated as if they directly or indirectly owned a partnership's direct and indirect interests in a non-PFIC foreign corporation; it could thus be viewed as consistent with an aggregate theory of partnerships.

Under the proposed regulations, the attribution rules apply consistently whether a United States person owns stock of a non-PFIC foreign corporation through a partnership or directly, as they would under the ''top-down'' approach. This ensures that ownership of a foreign corporation that is a PFIC through a partnership will not change the amount of the stock of the PFIC that the United States person is treated as owning. Accordingly, under the proposed regulations, for purposes of determining whether a partner, S corporation shareholder, or beneficiary in a partnership, S corporation, estate, or nongrantor trust is considered under § 1.1291–1(b)(8)(ii)(A) to own a portion of stock of a PFIC owned indirectly by the partnership, S corporation, estate, or trust through a non-PFIC foreign corporation, the partner, shareholder, or beneficiary will be considered to own 50 percent or more in value of the stock of the non-PFIC foreign corporation through the partnership, estate, or trust only if the partner, shareholder, or beneficiary directly or indirectly owns 50 percent or more of the ownership interests in the partnership, estate, or trust. *See* proposed § 1.1291–1(b)(8)(iii).

If, in the previously posited example, Foreign Partnership were replaced with

another foreign corporation, FC4, the proposed regulations would not apply. It may seem less appropriate for the amount of FC3 stock that is treated as owned by A to be limited to the 25 percent of FC3 indirectly owned by A through FC4 and FC1. Instead, FC4 could be treated as owning 25 percent of the stock of FC3 indirectly through FC2, and thus A could be treated as owning 12.5 percent of the stock of FC3 indirectly through FC4 and FC2 in addition to the 25 percent owned indirectly through FC4 and FC1. The Treasury Department and the IRS request comments as to whether a ''top-down'' attribution analysis or some alternative analysis should apply under section 1298(a) in a purely corporate structure such as this one, such that A would not be treated as owning any stock of FC3 indirectly through FC4 and FC2.

C. Income Test

1. In General

In the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342), Congress amended section 1297(b)(1) to define the term passive income generally as any income of a kind that would constitute FPHCI under section 954(c). FPHCI, and thus passive income, includes interest income that would be tax-exempt under section 103. *See* §§ 1.954–2(b)(3), 1.952–2(c)(1). Neither the rules under subtitle A, chapter 1, subchapter N, part III, subpart F of the Code (''subpart F'') nor rules under section 1297, however, address the treatment for purposes of FPHCI or the Income Test of other types of income that are otherwise excluded from gross income, such as intercompany dividends that are excluded from the income of a recipient under the consolidated return regulations. *See* § 1.1502–13(f)(2)(ii). As discussed in more detail in Part I.F of this Explanation of Provisions, a Tested Foreign Corporation may be treated under section 1297(c) as receiving directly income received by a 25-percent-owned subsidiary, including a domestic corporation. As discussed in more detail in Part I.H of this Explanation of Provisions, a Tested Foreign Corporation could own a second domestic corporation through a 25-percent-owned domestic corporate subsidiary and could thus be treated under sections 1297(c) and 1298(b)(7) as receiving intercompany dividends from the lower-tier domestic corporation that would be excluded from the income of the upper-tier domestic corporation under the consolidated return regulations. Accordingly, the operation of the statutory rules under sections 1297 and 1298 indicate that the Income Test is intended to take into account all income of a Tested Foreign Corporation, without regard to reductions or exclusions that might apply for purposes of determining the U.S. Federal income tax imposed on such income. Consistent with those rules, the Treasury Department and the IRS have concluded that intercompany dividends received by a corporation from a member of its consolidated group and treated as received under section 1297(c) by a Tested Foreign Corporation that directly or indirectly owns stock in the corporation should be taken into account for purposes of the Income Test. Thus, the proposed regulations indicate that income for purposes of the Income Test includes all dividend income, including dividends that are excluded from gross income under section 1502 and § 1.1502–13. *See* proposed § 1.1297–1(b). The Treasury Department and the IRS welcome comments on this approach. However, see Part I.F.3 of this Explanation of Provisions for a discussion of rules that could eliminate such dividends.

2. Exceptions From Passive Income

Furthermore, there are a number of exceptions to the definition of FPHCI in section 954(c), as well as in section 954(h) and (i), and special rules and definitions in section 954(c) that affect the determination of FPHCI. Specifically, in addition to the exceptions contained within the general definition of FPHCI in section 954(c)(1), section 954(c)(2) provides three exceptions: (i) An active rents and royalties exception; (ii) an export financing exception; and (iii) a dealer exception. Section 954(c)(3) provides two additional exceptions: (i) A related person, same country dividend and interest exception; and (ii) a related person, same country rents and royalty exception. In addition, for taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, section 954(c)(6) excludes from FPHCI certain dividends, interest, rents, and royalties received or accrued from a related corporation that is a CFC. Moreover, section 954(h) provides rules that apply for purposes of section 954(c)(1) pursuant to which income derived in an active banking or financing business is excluded from FPHCI. Additionally, under section 954(i), income from an active insurance business is excluded from FPHCI for purposes of section 954(c)(1). Finally, section 954(c)(4) contains a look-through rule that applies in the case of a sale of certain partnership interests, and section 954(c)(5) contains definitions and special rules applicable to commodity transactions.

Separately, section 1297(b)(2) provides explicit exclusions to the general definition of passive income set forth in section 1297(b)(1). Specifically, section 1297(b)(2) provides four exceptions: (i) An active banking exception; (ii) an active insurance business exception; (iii) a related person interest, dividends, rents, and royalties exception; and (iv) an export trade financing exception.

Questions have been raised regarding the scope of the cross-reference to section 954(c) in section 1297(b)(1) for purposes of defining passive income for PFIC purposes. Comments have inquired whether the section 954(c) reference in section 1297(b) incorporates all of the exceptions to FPHCI that are in section 954(c). In addition, by their terms, certain exceptions to FPHCI apply only to a foreign corporation that is a CFC. If these exceptions apply for PFIC purposes, the comments also question whether a Tested Foreign Corporation must also be a CFC in order to benefit from the exceptions.

The Treasury Department and the IRS understand that Congress did not intend for all of the exceptions in section 954(c) to apply for purposes of determining passive income under the PFIC provisions. In particular, the exceptions in section 954(c)(3) (relating to certain income received from related persons) and 954(c)(6) (relating to certain income received from related CFCs) were not meant to be taken into account for PFIC purposes. The legislative history indicates that Congress intended for the section 1297(c) look-through rules or the section 1297(b)(2)(C) exception to apply to income items that otherwise would be entitled to the section 954(c)(3) exception. It indicates:

> The bill conforms the PFIC definition of passive income to the definition of passive income under subpart F (sec. 954(c)). This change, in conjunction with the look-through rule for certain 25-percent-owned corporations and the lookthrough rules added by the bill (described below), makes it explicit that earnings of certain related foreign corporations organized in the same country as its shareholder that, if distributed to the shareholder would be excluded from foreign personal holding company income under the same-country exception of subpart F (sec. 954(c)(3)), are subject to either the section [1297(c)] look-through treatment or the look-through treatment for amounts paid by related parties that are not 25 percent owned (described below).

H.R. Rep. No. 100–795, at 271–272 (1988); S. Rep. No. 100–445, at 285–286 (1988).

Thus, the proposed regulations do not incorporate the section 954(c)(3) exception for purposes of determining passive income for PFIC purposes. Similarly, under the proposed regulations, the section 954(c)(6) exception also does not apply for determining PFIC status because the section 1297(b)(2)(C) related-person exception is intended to be the sole related-person exception applicable for determining passive income under the PFIC rules.

Additional questions are raised with respect to the FPHCI exceptions for active banking, financing, and insurance income because section 1297(b) does not specifically cross-reference section 954(h) and (i). As with section 1297(b)(2)(C), it is possible that sections 1297(b)(2)(A) and (B) were intended to be the sole exceptions for active banking, financing, and insurance income applicable for determining passive income under the PFIC rules because section 1297(b) has specific exceptions for active banking, financing, and insurance income. Alternatively, the section 1297(b) cross-reference to section 954(c) could be read to include the exceptions provided in section 954(h) and (i), which apply for purposes of section 954(c) by their terms. It may be appropriate for income that satisfies the requirements in section 954(h) and (i) to be excluded from passive income because Congress generally defined passive income by reference to FPHCI, and when section 954(h) and (i) were enacted, each with a cross-reference to section 954(c), Congress did not provide that section 954(h) or (i) should not apply for PFIC purposes. Moreover, the fact that the PFIC provisions are more generally not intended to apply to foreign corporations engaged in active businesses supports the application of rules excluding active banking, financing, and insurance income from the definition of passive income.

However, with respect to section 954(i), Congress recently amended the exclusion for income derived in the active conduct of an insurance business in section 1297(b)(2)(B) to require that income be earned by a QIC, as discussed in Part II of the Background section of this preamble. Given this statutory change and the tests contained in the definition of QIC in section 1297(f), the Treasury Department and the IRS have determined that the exception for insurance income in section 954(i) should not apply in addition to the newly modified exception in section 1297(b)(2)(B). Accordingly, the proposed regulations provide that the section 954(i) exception to FPHCI does not apply in addition to the PFIC exception. *See* proposed § 1.1297–1(c)(1)(i)(B). By contrast, given that no final regulations under the PFIC regime provide rules concerning an exclusion of active banking and financing income, these proposed regulations provide that the FPHCI exception for banking and financing income under section 954(h) applies for purposes of determining PFIC status. *See* proposed § 1.1297–1(c)(1)(i)(A). The application of section 954(h) is in addition to the PFIC exception. The Treasury Department and the IRS request comments about whether, when regulations are in force under section 1297(b)(2)(A), the corollary FPHCI exclusion should also continue to apply.

Comments have noted that the application of section 954(c) for PFIC purposes can be uncertain when a Tested Foreign Corporation is not also a CFC. For instance, the application of section 954(h) for PFIC purposes could be interpreted to apply only to amounts received by a Tested Foreign Corporation that also is a CFC. Passive income for PFIC purposes is defined by cross-reference to section 954(c) because the income items that comprise FPHCI are generally passive in nature. The CFC status of the recipient of an item of FPHCI does not affect the passive nature of the item, and thus is not relevant for purposes of determining whether an item is passive under the PFIC rules. Therefore, it is appropriate for income derived by any Tested Foreign Corporation, and not just Tested Foreign Corporations that also are CFCs, to be eligible for the exceptions to FPHCI, including the section 954(h) exception.

For the reasons discussed in this Part I.C.2, the proposed regulations provide that for purposes of section 1297(b)(1), passive income is determined by reference to the items of income listed in section 954(c)(1), subject only to the exceptions found in section 954(c)(1), section 954(c)(2)(A) (relating to active rents and royalties), section 954(c)(2)(B) (relating to certain export financing interest), section 954(c)(2)(C) (relating to dealers), and section 954(h) (relating to entities engaged in the active conduct of a banking, financing, or similar business). *See* proposed § 1.1297–1(c)(1)(i) and (c)(1)(i)(A). In addition, the rules in section 954(c)(4) (relating to sales of certain partnership interests) and 954(c)(5) (relating to certain commodity hedging transactions) apply for PFIC purposes. *See* proposed § 1.1297–1(c)(1)(i)(C). However, for the reasons stated in this Part I.C.2, the exceptions in section 954(c)(3) (relating to certain income received from related persons), section 954(c)(6) (relating to certain amounts received from related controlled foreign corporations), and section 954(i) (relating to entities engaged in the active conduct of an insurance business) are not taken into account for purposes of section 1297(b)(1). *See* proposed § 1.1297–1(c)(1)(i)(B). The proposed regulations also provide that an entity is treated as a CFC for purposes of applying an exception to FPHCI and for purposes of determining whether a person is a related person with respect to the entity. *See* proposed § 1.1297–1(c)(1)(i)(D). Comments are requested as to whether regulations should provide any additional special rules concerning the definition of a related person under section 954(d)(3) for purposes of applying an FPHCI exception to a Tested Foreign Corporation that is not a CFC.

3. Income and Gains From Certain Transactions

The Income Test is computed based on a Tested Foreign Corporation's gross income. However, pursuant to section 954(c), certain categories of income are FPHCI only to the extent that gains exceed losses with respect to the category. For instance, under section 954(c)(1)(B) only ''the excess of gains over losses from the sale or exchange'' of certain property is treated as FPHCI. Similar rules apply to income from commodities transactions under section 954(c)(1)(C), foreign currency gains under section 954(c)(1)(D), and income from notional principal contracts under section 954(c)(1)(F). The proposed regulations provide that for purposes of the Income Test, items of income under section 954(c) that are determined by netting gains against losses are taken into account by a corporation on that net basis, so that only net gains in a particular category of FPHCI are taken into account. *See* proposed § 1.1297–1(c)(1)(ii). However, the net amount of income in each category of FPHCI is determined separately for each relevant corporation, such that net gains or losses of a corporation, at least 25 percent of the value of stock of which is owned, directly or indirectly, by a Tested Foreign Corporation (''Look-Through Subsidiary'') may not be netted against net losses or gains of another Look-Through Subsidiary or of a Tested Foreign Corporation.

4. Income Earned Through Partnerships

The proposed regulations provide guidance on the treatment of a corporation's distributive share of partnership income for purposes of the

Income Test. The Treasury Department and the IRS have determined that income earned by a Tested Foreign Corporation through a partnership should be treated similarly to income earned through a corporate subsidiary. As discussed in more detail in Part I.F of this Explanation of Provisions, if a Tested Foreign Corporation owns a Look-Through Subsidiary, the Tested Foreign Corporation is treated as if it directly received its proportionate share of the income of the Look-Through Subsidiary, and certain items of income received from the Look-Through Subsidiary are proportionately eliminated. If a corporation is not a Look-Through Subsidiary, income received from the corporation is characterized in accordance with the general rules described in Part I.C.2 of this Explanation of Provisions, under which dividends generally will be passive. Accordingly, the proposed regulations provide that a Tested Foreign Corporation's distributive share of any item of income of a partnership is treated as income received directly by the Tested Foreign Corporation, provided the Tested Foreign Corporation owns, directly or indirectly, at least 25 percent of the value of the partnership, in which case the partnership is referred to as a ''Look-Through Partnership,'' and income elimination rules similar to those for Look-Through Subsidiaries apply. *See* proposed § 1.1297–1(c)(2)(i). If the Tested Foreign Corporation owns less than 25 percent of the value of a partnership, the corporation's distributive share of any item of income of the partnership is passive income. *See* proposed § 1.1297–1(c)(2)(ii).

As a result of these rules, in cases in which the Tested Foreign Corporation owns at least 25 percent of the value of the partnership, the exceptions to passive income contained in section 1297(b)(2) and the relevant exceptions to foreign personal holding company income in section 954(c) and (h) that are based on whether income is derived in the active conduct of a business generally apply if, and only if, the partnership engages in the relevant business activities. The focus on partnership activities is consistent with the principles applicable to partnership interests under the regulations under subpart F. *See* § 1.954–2(a)(5)(ii)(A); § 1.954–3(a)(6). However, as described in Part I.F.5 of this Explanation of Provisions, these proposed regulations also include rules that, in certain circumstances, allow the character of income to be determined at the level of the Tested Foreign Corporation, taking into account activities performed by the Tested Foreign Corporation and certain subsidiaries of the Tested Foreign Corporation, whether such subsidiaries are in corporate or partnership form.

Although the subpart F regulations provide rules concerning the classification of a CFC's distributive share of partnership income that, absent these proposed regulations, would generally be applicable by virtue of section 1297's adoption of FPHCI as the basis for passive income, the Treasury Department and the IRS have determined that the differing policies of the subpart F and PFIC regimes warrant different rules for partnerships. Specifically, the Treasury Department and the IRS have concluded that it is appropriate to generally characterize a corporation's distributive share of partnership income as passive when the corporation owns less than 25 percent of the value of the partnership, consistent with the treatment of Look-Through Subsidiary income, notwithstanding the fact that under the subpart F regulations, such income could have been excluded from FPHCI by virtue of the partnership's activities regardless of the corporation's level of ownership. The different treatment is warranted because of the flexibility that entities have in their characterization for U.S. Federal income tax purposes under § 301.7701–3 and because of the fact that treating a subsidiary as a partnership may not have U.S. income tax consequences for a Tested Foreign Corporation, as it could for a CFC. However, the Treasury Department and the IRS request comments as to whether a 25 percent threshold for the Tested Foreign Corporation's percentage ownership in the partnership is the appropriate threshold for distinguishing between a distributive share of partnership income that is automatically treated as passive and a distributive share that is characterized in accordance with the activities undertaken by the partnership (or, as applicable under the rules described in Part I.F.5 of this Explanation of Provisions, the Tested Foreign Corporation and certain subsidiaries of the Tested Foreign Corporation), or whether an alternative threshold should be considered. Furthermore, the Treasury Department and the IRS request comments as to whether different rules should apply with respect to partners in general partnerships than with respect to partners in limited partnerships, or with respect to partners that materially participate in the activities of the partnership.

5. Income From a Related Person

The proposed regulations provide additional guidance on the application of the section 1297(b)(2)(C) related-person exception to dividends, interest, rents, and royalties. The proposed regulations provide that the determination of whether the payor of an item of income is a related person should be made on the date of receipt or accrual, as applicable based on the recipient's method of accounting, of the item of income. *See* proposed § 1.1297–1(c)(3)(iv).

Under § 1.904–5(c)(2)(ii)(C) (the ''cream-skimming rule''), interest paid to a related person is treated as passive income to the payee to the extent that the payor has passive income. Under this rule, if a foreign corporation had $200 of passive gross income and $200 of non-passive gross income, and that foreign corporation made an interest payment of $100 to a related foreign corporation, for purposes of determining the nature of the interest income in the hands of the payee foreign corporation, the entire $100 of interest would be treated as passive income rather than as ratably allocable between passive and non-passive income. Although the Treasury Department and the IRS considered applying a cream-skimming rule for purposes of section 1297(b)(2)(C), the Treasury Department and the IRS have concluded that the PFIC regime does not raise the policy concerns addressed by the cream-skimming rule in the foreign tax credit and subpart F contexts. In those contexts, because interest expense can reduce a foreign corporation's subpart F income or otherwise affect the calculation of foreign tax credits, an interest payment could otherwise be used to try to reduce the passive income of the payor and convert it into non-passive income of the payee. However, because the Income Test is applied on the basis of gross income, an interest payment cannot be used in the same fashion for purposes of the Income Test. Accordingly, under the proposed regulations, for purposes of the section 1297(b)(2)(C) exception, interest is properly allocable to income of the related person that is not passive income based on the relative portion of the related person's income for its taxable year that ends in or with the taxable year of the recipient that is not passive income. *See* proposed § 1.1297–1(c)(3)(i). Dividends are treated as properly allocable to income of the related person that is not passive income based on the portion of the related payor's current-year earnings and profits for the taxable year that ends

in or with the taxable year of the recipient that are attributable to non-passive income. *See* proposed § 1.1297–1(c)(3)(ii). Comments are specifically requested concerning alternative methods of determining the portion of dividends treated as properly allocable to income of a related person (including if the payor has no current earnings and profits), including by reference to accumulated earnings and profits, and if so, how to address concerns about the availability of information. The proposed regulations further provide that rents and royalties are allocable to income of the related person which is not passive income to the extent the related person's deduction for the rent or royalty is allocated to non-passive income under the principles of §§ 1.861–8 through 1.861–14T. *See* proposed § 1.1297–1(c)(3)(iii). Comments are specifically requested regarding any concerns about the availability of information and alternative methods of determining the portion of rents and royalties treated as properly allocable to income of a related person that would address any such concerns.

D. Asset Test

1. Methodology of Application of Asset Test

Section 1297(a)(2) provides that a Tested Foreign Corporation is a PFIC if the average percentage of assets held by the corporation during a taxable year that produce passive income or are held for the production of passive income is at least 50 percent. Notice 88–22 provides that the average percentage of assets of a Tested Foreign Corporation is calculated by averaging the value of the assets of the corporation, determined as of the end of each quarterly period of the corporation's taxable year.

These regulations clarify that the average percentage of a Tested Foreign Corporation's assets is determined using the average of the gross values (or adjusted bases) at the end of each quarter of the foreign corporation's taxable year. *See* proposed § 1.1297–1(d)(1)(i) and (d)(1)(ii)(A). Alternatively, the assets of a Tested Foreign Corporation can be measured for purposes of the Asset Test more frequently than quarterly (for example, weekly or monthly). The quarter or shorter interval used by a Tested Foreign Corporation is referred to as its ''measuring period.'' Applying the Asset Test based on a period that recurs more frequently than a quarter provides a more precise measurement of ''average,'' but the more frequently recurring basis is not required because of the potential administrative burden that it could impose on a shareholder of a Tested Foreign Corporation. The same measuring period must be used for the Tested Foreign Corporation for the initial year (including a short year) that for which the shareholder elects to use the alternative measuring period and any and all subsequent years unless the election to use the more frequently recurring measuring period is revoked. *See* proposed § 1.1297–1(d)(1)(ii)(B).

If a Tested Foreign Corporation has a short taxable year, the quarterly measuring dates for purposes of the Asset Test are the same as they would be for a full taxable year, except that the final quarterly measuring date will be the final day of the short taxable year. *See* proposed § 1.1297–1(d)(1)(ii)(C). Thus, for instance, if a Tested Foreign Corporation for which the election for a shorter period has not been made has a short year of eight months, the corporation would have two quarters ending on the foreign corporation's normal quarterly measuring dates and a third quarter ending on the final day of the short taxable year. The asset amounts for those three quarterly measuring dates would be averaged to determine the average percentage of a Tested Foreign Corporation's assets that are passive for the year. The Treasury Department and the IRS have determined that applying the Asset Test based on the taxable year quarters that ended during the short year properly accounts for the administrative difficulties of calculating quarterly measurements with respect to a short year.

Under section 1297(e), the assets of a Tested Foreign Corporation are required to be measured based on (i) value, pursuant to section 1297(e)(1), if it is a publicly traded corporation for the taxable year, or if section 1297(e)(2) does not apply to it for the taxable year; or (ii) adjusted basis, pursuant to section 1297(e)(2), if it is a CFC, or elects the application of section 1297(e)(2). The statute does not specify whether a corporation that is publicly traded during only part of the taxable year is publicly traded ''for the taxable year,'' and thus whether such a corporation's assets should be measured for the taxable year based on value or on adjusted basis or whether, if the corporation is a CFC for the remainder of the year, a combination of the two should be used. For instance, a Tested Foreign Corporation that is a CFC at the beginning of its taxable year and became publicly traded during the last month of its taxable year could be required under section 1297(e) to have its assets measured based on either adjusted basis or value for all four quarterly measuring periods or based on adjusted basis for its first three quarterly measuring periods and value for its fourth quarterly measuring period. The proposed regulations provide that the Asset Test should apply on the basis of value for the entire year if the corporation was publicly traded on the majority of days during the year or section 1297(e)(2) did not apply to the corporation on the majority of days of the year. Otherwise, the Asset Test should apply on the basis of adjusted basis for the entire year. *See* proposed § 1.1297–1(d)(1)(v). The Treasury Department and the IRS have determined that allowing a shareholder the option of choosing either method with respect to a Tested Foreign Corporation could facilitate the avoidance of the PFIC rules, and that the rule in the proposed regulation imposes the least administrative burden. The Treasury Department and the IRS welcome comments on these rules.

Under the proposed regulations, the rules described in this Part I.D.1 for making or revoking an election for an alternative measuring period also apply for purposes of the election provided in section 1297(e)(2)(B) to use adjusted bases of assets for purposes of the Asset Test. *See* proposed § 1.1297–1(d)(1)(iii)(B) and (d)(1)(iv). Both elections may be made by a United States person that is eligible under § 1.1295–1(d) with respect to the Tested Foreign Corporation or that would be eligible if the Tested Foreign Corporation were a PFIC. *See* proposed § 1.1297–1(d)(1)(iv)(A). Thus, in the case of a Tested Foreign Corporation owned by a domestic partnership in which U.S. individuals are partners, only the domestic partnership and not its partners may make the elections, ensuring that the Tested Foreign Corporation is treated consistently for all of the partners, which would facilitate reporting by the partnership if the Tested Foreign Corporation were a PFIC. However, the Treasury Department and the IRS request comments as to whether either election should be available to any United States person that is a shareholder (within the meaning of § 1.1291–1(b)(7) or (8)) of the Tested Foreign Corporation or that would be a shareholder of the Tested Foreign Corporation if it were a PFIC.

If the person is required to file the Form 8621 (or successor form) with respect to the Tested Foreign Corporation, the elections may be made in the manner provided in the instructions to the Form 8621; until such instructions are provided, the elections may be made by attaching a written statement to the Form 8621

providing for the election to a return for the year for which the election is made. If the person is not required to file the Form 8621 with respect to the Tested Foreign Corporation (for example, because the Tested Foreign Corporation is not a PFIC), the person may make the elections by attaching a written statement providing for the election to a return for the year for which the election is made. *Id.* The elections are revoked in a similar manner. *See* proposed § 1.1297–1(d)(1)(iv)(B). A new election for an alternative measuring period or under section 1297(e)(2)(B) may not be made until the sixth taxable year following the year for which the previous such election was revoked, and such subsequent election may not be revoked until the sixth taxable year following the year for which the subsequent election was made. *See id.*

2. Characterization of Dual-Character Assets

Pursuant to section 1297(a), an asset is considered passive for purposes of the Asset Test if it produces passive income or is held for the production of passive income. Notice 88–22 states that an asset that produces both passive income and non-passive income during a Tested Foreign Corporation's taxable year is treated partly as a passive asset and partly as a non-passive asset in proportion to the relative amounts of income generated by the asset during the year. Proposed § 1.1297–1(d)(2) generally adopts the rule set forth in Notice 88–22, and provides that an asset that produces both passive income and non-passive income during a taxable year is treated as two assets, one of which is passive and one of which is non-passive. Consistent with the rule in Notice 88–22, for purposes of applying the Asset Test, the value (or adjusted basis) of the asset is allocated between the passive assets and non-passive assets based on the ratio of passive income produced by the asset during the taxable year to non-passive income.

The proposed regulation also provides a specific rule for stock of a related person with respect to which no dividends are received or accrued, as applicable based on the recipient's method of accounting, during a taxable year but that previously generated dividends that were characterized as non-passive income, in whole or in part, under section 1297(b)(2)(C). *See* proposed § 1.1297–1(d)(2)(iii). The stock is characterized based on the dividends received or accrued, as applicable based on the recipient's method of accounting, with respect thereto for the prior two years. *Id.*

The Treasury Department and the IRS have determined that it may also be appropriate to bifurcate an asset that in part produces income and in part does not produce income between a passive and a non-passive asset for purposes of the Asset Test in order to provide a more accurate measure of the Tested Foreign Corporation's passive assets. For example, if a Tested Foreign Corporation uses a portion of a building, which is depreciable real property, in its trade or business that generates non-passive income, while renting a portion of the building in exchange for rents that are treated as passive, it would be appropriate for the portions of the building to be considered separately as non-passive and passive assets, respectively. Accordingly, the proposed regulations provide that for purposes of applying the Asset Test, if an asset in part produces income and in part does not produce any income, the asset must be bifurcated pursuant to the method that most reasonably reflects the uses of the property. *See* proposed § 1.1297–1(d)(2)(ii). A similar approach applies to characterize gain for subpart F purposes. *See* § 1.954–2(e)(1)(iv).

The Treasury Department and the IRS welcome comments on these rules, including suggestions for how to minimize the burden associated with determining how to bifurcate the relevant assets.

3. Characterization of Partnership Interests

The proposed regulations provide guidance on the characterization of a partnership interest for purposes of the Asset Test. As discussed in Part I.C.4 of this Explanation of Provisions, the Treasury Department and the IRS have determined that it is appropriate to treat a partnership in a manner similar to a corporate subsidiary for purposes of determining whether a Tested Foreign Corporation is a PFIC. Accordingly, the proposed regulations provide that for purposes of the Asset Test, a Tested Foreign Corporation that directly or indirectly owns an interest in a partnership is treated as if it held its proportionate share of the assets of a partnership, provided the Tested Foreign Corporation owns, directly or indirectly, at least 25 percent, by value, of the interests in the partnership. *See* proposed § 1.1297–1(d)(3)(i). A corporation's proportionate share of a partnership asset is treated as producing passive income, or being held to produce passive income, to the extent the asset produced, or was held to produce, passive income in the partnership's hands, taking into account only the partnership's activities, unless the rules described in Part I.F.5 of this Explanation of Provisions apply to allow the character of the income to be determined at the level of the Tested Foreign Corporation, taking into account activities performed by certain subsidiaries of the Tested Foreign Corporation. If a Tested Foreign corporation owns less than 25 percent of the value of the partnership, its interest in the partnership is treated as a passive asset. *See* proposed § 1.1297–1(d)(3)(ii).

4. Characterization of Dealer Property

For purposes of the Asset Test, an asset is considered passive if it produces passive income or is held for the production of passive income. Under the dealer exception in section 954(c)(2)(C), gain from the disposition of certain dealer property is treated as non-passive income for purposes of the Income Test. However, certain other income derived with respect to the dealer property (such as dividends and interest) is treated as passive income. The exception from passive income for dealer property in section 954(c)(2)(C) is predicated on the fact that a dealer holds the property as part of its trade or business and not for the production of passive income. Accordingly, the Treasury Department and the IRS have determined that, given that the PFIC regime is concerned with whether the asset is part of an active business, it is appropriate to characterize dealer property for purposes of the Asset Test based solely on the character of the gain derived from the disposition of the property. Accordingly, the proposed regulations provide that property that is subject to the dealer exception is characterized as a non-passive asset for purposes of the Asset Test, notwithstanding the dual-character asset rules discussed in Part I.D.2 of this Explanation of Provisions. *See* proposed § 1.1297–1(d)(4).

E. Treatment of Stapled Entities

The Treasury Department and the IRS understand that, in certain situations, equity interests in two or more foreign entities must be sold together as stapled interests within the meaning of section 269B(c)(3). Stapled entities (as defined in section 269B(c)(2)) may be structured in such a way that income and the assets generating the income are in one entity, while the activities generating the income are engaged in by the other entity. For example, two stapled entities might jointly carry on a real estate business, with one stapled entity owning real property that is leased to third parties to generate rental income, while the other stapled entity provides management services with respect to the

real property that, if engaged in by the first stapled entity, would allow the rental income received by it to be characterized as non-passive income pursuant to section 954(c)(2)(A) and these proposed regulations. However, if the PFIC status of the stapled entity receiving the rental income were determined on a stand-alone basis, the income might be treated as passive income. Given that stapled interests represent a single economic interest to their shareholders, the Treasury Department and the IRS have determined that it is appropriate, for purposes of determining whether a stapled entity is a PFIC, to treat them as such. This is consistent with the treatment of stapled entities in section 269B(a)(3) for purposes of determining whether a stapled entity is a regulated investment company (''RIC'') or a real estate investment trust (''REIT''). Accordingly, the proposed regulations provide that for purposes of determining whether any stapled entity is a PFIC, all entities that are stapled entities with respect to each other are treated as one entity. *See* proposed § 1.1297–1(e). Comments are requested as to whether similar treatment should be provided for purposes of the subpart F rules.

F. Look-Through Rule for 25-Percent-Owned Subsidiaries

As noted in Part I.C.4 of this Explanation of Provisions, in determining PFIC status, section 1297(c) applies when a Tested Foreign Corporation owns, directly or indirectly, at least 25 percent of the value of the stock of another corporation, a Look-Through Subsidiary. In such instance, the Tested Foreign Corporation is treated as if it directly held its proportionate share of the assets and directly received its proportionate share of the income of the Look-Through Subsidiary. Section 1297(c) was enacted to prevent ''foreign corporations owning the stock of subsidiaries engaged in active businesses [from being] classified as PFICs.'' H.R. Rep. No. 99–841, at II–644 (1986) (Conf. Rep.).

1. Determining a Tested Foreign Corporation's Ownership of a Look-Through Subsidiary and Proportionate Share of a Look-Through Subsidiary's Assets and Income

Neither the statute nor the regulations provide guidance on how to calculate a Tested Foreign Corporation's indirect ownership in another corporation for purposes of determining whether the corporation is a Look-Through Subsidiary under section 1297(c). In addition, the statute and regulations do not provide a methodology for determining a Tested Foreign Corporation's proportionate share of a Look-Through Subsidiary's income and assets for purposes of section 1297(c).

Under section 1297(c), the determination of whether a Tested Foreign Corporation owns, directly or indirectly, at least 25 percent of the stock of another corporation is based on value. The proposed regulations provide that indirect stock ownership for purposes of section 1297(c) is determined under the principles of section 958(a) applicable for determining ownership by value. *See* proposed § 1.1297–2(b)(1). The section 958(a) principles apply without regard to whether entities are domestic or foreign, and thus indirect ownership includes corporate ownership through intermediate corporations, partnerships, trusts, and estates, regardless of whether such intermediate entities are foreign or domestic. *Id.* In addition, stock considered owned by reason of applying the section 958(a) indirect ownership rules is generally considered actually owned for purposes of reapplying the indirect ownership rules. *See* § 1.958–2(f)(1).

Section 1297(c) provides that a Tested Foreign Corporation is treated as holding its proportionate share of the assets of the Look-Through Subsidiary, and receiving its proportionate share of the income of the Look-Through Subsidiary. The proposed regulations provide guidance on the meaning of ''proportionate share'' for purposes of section 1297(c). Specifically, proposed § 1.1297–2(b)(2) provides that a Tested Foreign Corporation is treated as owning a share of each asset, and receiving a proportionate share of each item of income, of a Look-Through Subsidiary proportionate to the Tested Foreign Corporation's percentage ownership (by value) of the Look-Through Subsidiary. Comments are requested concerning alternative methods that might better determine a Tested Foreign Corporation's proportionate share of income of a Look-Through Subsidiary that has multiple classes of stock outstanding.

Changes in stock ownership may cause fluctuations in a Tested Foreign Corporation's ownership in a Look-Through Subsidiary during a taxable year. For purposes of the Asset Test, ownership of a Look-Through Subsidiary is determined on each measuring date. *See* proposed § 1.1297–2(b)(2)(i). If the requisite 25-percent ownership is not met with respect to a corporation on the last day of a measuring period, as defined in Part I.D.1 of this Explanation of Provisions, the stock of the corporation would be a passive asset for purposes of that measuring period, absent the application of a special rule, such as the new rule for dealer property in proposed § 1.1297–1(d)(4), described in Part I.D.4 of this Explanation of Provisions. For purposes of the Income Test, a subsidiary is considered a Look-Through Subsidiary if the Tested Foreign Corporation owns an average of 25 percent of the value of the subsidiary for the year, taking into account its ownership on the last day of each measuring period of the Tested Foreign Corporation's taxable year. *See* proposed § 1.1297–2(b)(2)(ii)(A). If the Tested Foreign Corporation does not maintain, on average, at least 25-percent ownership of the subsidiary for the taxable year, the Tested Foreign Corporation is not, under the general rule in the proposed regulations, treated as receiving its proportionate share of the income of the subsidiary for that year under section 1297(c). However, the Tested Foreign Corporation may be treated as receiving directly its proportionate share of the income of the subsidiary for each measuring period in a taxable year for which the 25-percent ownership requirement is met on the relevant measuring date, provided the taxpayer can establish gross income for each of those measuring periods. *See* proposed § 1.1297–2(b)(2)(ii)(B). Comments are requested concerning appropriate methods for a taxpayer to establish gross income for a measuring period.

2. Overlap Between Section 1297(c) and Section 1298(b)(7)

Section 1298(b)(7) provides a special characterization rule that applies when a Tested Foreign Corporation owns at least 25 percent of the value of the stock of a domestic corporation and is subject to the accumulated earnings tax under section 531 (or waives any benefit under a treaty that would otherwise prevent imposition of such tax). In such instance, section 1298(b)(7) treats the qualified stock held by the domestic corporation as a non-passive asset, and the related income as non-passive income. By its terms, the section 1297(c) look-through rule also could apply to the qualified stock, which is stock in a domestic C corporation that is not a RIC or REIT, and look through to the assets of the corporation that issued the qualified stock for purposes of the Income Test and Asset Test. For example, assume a Tested Foreign Corporation owns 50 percent of the value of the stock in a domestic corporation, US1, which, in turn, owns 50 percent of the stock of a lower tier domestic corporation, US2 (which is not

a RIC or a REIT). US2 wholly owns the stock of a foreign corporation, FC. The section 1297(c) look-through rule applies to treat the Tested Foreign Corporation as if it held its proportionate share of the assets, and received a proportionate share of the income, of US1. Both the section 1297(c) look-through rule and the section 1298(b)(7) characterization rule, by their terms, would apply to the stock of US2. The section 1297(c) rule would look through to the assets of US2 and FC. The section 1298(b)(7) characterization rule would treat the stock of US2 as a non-passive asset, and the income derived from the stock as income as non-passive income.

The Treasury Department and the IRS have determined that the special characterization rule of section 1298(b)(7) should generally take precedence over the section 1297(c) look-through rule when both rules would apply simultaneously because the characterization rule of section 1298(b)(7) is the more specific rule where the Tested Foreign Corporation owns a domestic corporation. Thus, the proposed regulations provide that the look-through rule of section 1297(c) does not apply to a domestic corporation, and any subsidiaries of the domestic corporation, if the stock of the domestic corporation is characterized, under section 1298(b)(7), as a non-passive asset producing non-passive income. *See* proposed § 1.1297–2(b)(2)(iii). However, these proposed regulations provide certain limitations on the application of section 1298(b)(7), including a new anti-abuse rule, in which case section 1297(c) would apply. The limitations and anti-abuse rule are described in Part I.H of this Explanation of Provisions. The Treasury Department and the IRS welcome comments on these rules.

3. Elimination of Certain Assets and Income for Purposes of Applying Section 1297(a)

Section 1297(c) aggregates the income and assets of a Tested Foreign Corporation and a Look-Through Subsidiary for purposes of testing the PFIC status of the Tested Foreign Corporation. However, there are no statutory or regulatory rules that prevent the double counting of income and assets arising from contracts and other transactions among a Tested Foreign Corporation and one or more Look-Through Subsidiaries. Intercompany items that are not eliminated for purposes of determining a Tested Foreign Corporation's PFIC status may result in a duplication of passive income or passive assets attributed to the Tested Foreign Corporation. For instance, if a wholly-owned Look-Through Subsidiary earned $100x of passive income during a taxable year, and distributed the $100x as a dividend to a Tested Foreign Corporation, the Tested Foreign Corporation would have a total of $200x of passive income ($100x of passive income under section 1297(c) and a $100x dividend) for purposes of the Income Test, even though only $100 of passive income was earned economically. Any double-counting of intercompany income and assets distorts the effect of section 1297(c) on the Income Test and Asset Test.

The legislative history to the PFIC rules provides an approach that would eliminate certain assets and income in order to prevent double-counting. *See* H.R. Rep. No. 100–795, at 268 (1988) (''Under this look-through rule, a foreign corporation that owns at least 25 percent of the stock of another corporation is treated as owning a proportionate part of the other corporation's assets and income. Thus, amounts such as interest and dividends received from foreign or domestic subsidiaries are eliminated from the shareholder's income in applying the income test and the stock or debt investment is eliminated from the shareholder's assets in applying the asset test.''); Staff, Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, JCS–10–87, at 1026 (1987). The Treasury Department and the IRS have determined that it is appropriate to follow that approach. Thus, the proposed regulations provide that intercompany payments of dividends and interest between a Look-Through Subsidiary and the Tested Foreign Corporation and stock and debt receivables are eliminated in applying the Income Test and the Asset Test. *See* proposed § 1.1297–2(c)(1) and (2). In the case of dividends, in order to qualify for elimination, the payment must be attributable to income of a Look-Through Subsidiary that was included in gross income by the Tested Foreign Corporation for purposes of determining its PFIC status. *See* proposed § 1.1297–2(c)(2). Thus, dividends attributable to income of the Look-Through Subsidiary earned in a year before the Tested Foreign Corporation owned, on average, at least 25% by value of the Look-Through Subsidiary would generally not qualify for elimination. As a result of the elimination rule, for example, interest and dividends received by a Tested Foreign Corporation from a wholly owned Look-Through Subsidiary are eliminated from the Tested Foreign Corporation's gross income for purposes of applying section 1297(a)(1), except to the extent that dividend amounts are attributable to income that has not been treated as received directly by the Tested Foreign Corporation under the section 1297(c) look-through rule. Additionally, the proposed regulations extend this treatment to intercompany payments between two Look-Through Subsidiaries of a Tested Foreign Corporation and the associated stock and debt receivables. Similarly, stock and debt investments in a lower-tier Look-Through Subsidiary are eliminated for purposes of applying the Income Test and Asset Test to the Tested Foreign Corporation. In the case of a Tested Foreign Corporation that owns less than 100 percent of a Look-Through Subsidiary, the proposed regulations provide that while stock and dividends are eliminated in their entirety, eliminations of debt receivables and interest are made in proportion to the shareholder's direct and indirect ownership (by value) in the Look-Through Subsidiary. The proposed regulations also provide for eliminations under these principles for ownership interests in a Look-Through Partnership, as well as intercompany debt receivables and interest paid or accrued thereon between a Tested Foreign Corporation and a Look-Through Partnership. *See* proposed § 1.1297–2(c)(3). Comments are requested on the application of the elimination rule if the Tested Foreign Corporation owns less than 100 percent of the Look-Through Subsidiary or Partnership. Comments are also requested as to whether the Treasury Department and the IRS should consider the elimination of rents, royalties, or any other types of intercompany income, and any related assets, and if so, how to effectuate the elimination.

4. Section 1297(b)(2)(C) Related Person Determination With Respect to Interest, Dividends, Rents, and Royalties Received by Look-Through Subsidiaries and Certain Partnerships

Section 1297(c) provides that a Tested Foreign Corporation is treated as receiving directly its proportionate share of the income of a Look-Through Subsidiary for purposes of applying the Income Test to the Tested Foreign Corporation. Section 1297(b)(2)(C) provides that, for purposes of the Income Test, passive income does not include interest, dividends, rents or royalties received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable to income of the related person that is not passive

income. The statute and current regulations do not address the level at which the ''related person'' determination is made if a Look-Through Subsidiary receives or accrues an item of income that is treated as directly received by a Tested Foreign Corporation pursuant to section 1297(c). Thus, the interaction and application of the two rules is unclear in cases in which the payor of an item of income is a ''related person'' with respect to either the Look-Through Subsidiary or the Tested Foreign Corporation, but not with respect to both.

The Treasury Department and the IRS have determined that, because section 1297(c) generally applies by classifying an item at the level of Look-Through Subsidiary and then carrying that classification up to the Tested Foreign Corporation, it is appropriate to determine whether the section 1297(b)(2)(C) exception applies (and, thus, determine the passive or non-passive character of an item of income) at the Look-Through Subsidiary level, and then flow up the passive or non-passive character of the item to the Tested Foreign Corporation for purposes of applying the Income Test. Accordingly, proposed § 1.1297–2(d)(1) provides that, in applying section 1297(b)(2)(C), ''related person'' status is tested with respect to the payor of the item of income and the Look-Through Subsidiary. The same rule applies for items of income received by a partnership and treated as received directly by a Tested Foreign Corporation pursuant to proposed § 1.1297–1(c)(2). The Treasury Department and the IRS welcome comments on these rules.

5. Attribution of Activities of a Look-Through Subsidiary and Certain Partnerships

The interaction of section 1297(c) and certain exceptions from passive income also raises issues that require a threshold determination of whether an exception should apply at a Look-Through Subsidiary level or a Tested Foreign Corporation level. For instance, under proposed § 1.1296–4 in the notice of proposed rulemaking (INTL–0065–93) published in the **Federal Register** (60 FR 20922) on April 28, 1995, the banking exception in section 1297(b)(2)(A) applies only if a number of requirements are satisfied, including a deposit taking requirement, a lending requirement, and a license requirement. *See* proposed § 1.1296–4. In a bank holding company structure, in which a Tested Foreign Corporation wholly owns a Look-Through Subsidiary that separately satisfies the section 1297(b)(2)(A) requirements, the banking exception would apply to the income derived by the Look-Through Subsidiary in its banking business if an approach that applied the exception at the Look-Through Subsidiary level were adopted, but would not apply if an approach that applied the exception at the Tested Foreign Corporation level were adopted because the Tested Foreign Corporation would not literally meet all of the banking exception requirements. Similarly, the character of assets held by a Look-Through Subsidiary that is a dealer in property in the ordinary course of its trade or business as a dealer would depend on whether an approach that applied the exception in section 954(c)(2)(C) at the Look-Through Subsidiary level were adopted, or whether an approach were applied that determined the character at the level of a Tested Foreign Corporation that was not itself a dealer.

A corollary issue arises with respect to the application of other exceptions to passive income under section 954(c). For instance, under § 1.954–2(c)(1)(ii), the active rental income exception in section 954(c)(2)(A) applies if certain activities are performed with respect to real property by the lessor's own employees. In a structure in which a Tested Foreign Corporation holds real estate assets directly and employees of its Look-Through Subsidiary conduct the activities related to the Tested Foreign Corporation's real estate business necessary to satisfy the exception, the exception would apply if the character of the income were determined at the level of the Tested Foreign Corporation and the activities of the managers and employees of the Look-Through Subsidiary were attributed to the Tested Foreign Corporation. However, the exception would not apply if the activities were not attributed to the Tested Foreign Corporation, because in such case the relevant activities are not performed by employees of the Tested Foreign Corporation, as literally required in the regulation. Additional complexities arise when the Tested Foreign Corporation owns less than 100 percent of the Look-Through Subsidiary.

Under current law, the character of income or assets is determined at the level of the entity that directly earns the income or holds the assets based on the activities of that entity. However, the Treasury Department and the IRS understand that active businesses in foreign jurisdictions generating rent and royalty income are often organized with assets and income, on the one hand, and activities, on the other hand, contained in separate entities for various business reasons. The Treasury Department and the IRS have determined that if assets are held and activities undertaken in separate entities within a group of wholly-owned Look-Through Subsidiaries headed by a Tested Foreign Corporation, the activities of the Look-Through Subsidiaries should be taken into account for purposes of determining whether an item of rent or royalty income of the Tested Foreign Corporation is passive income, as they would if the Look-Through Subsidiaries were disregarded as separate from the Tested Foreign Corporation for U.S. Federal income tax purposes.

Accordingly, the proposed regulations provide that an item of rent or royalty income received or accrued by a Tested Foreign Corporation (or treated as received or accrued by the Tested Foreign Corporation pursuant to section 1297(c)) that would otherwise be passive income under the general rule is not passive income for purposes of section 1297 if the item would be excluded from passive income, determined by taking into account the activities performed by the officers and employees of the Tested Foreign Corporation as well as activities performed by the officers and employees of certain Look-Through Subsidiaries and certain partnerships in which the Tested Foreign Corporation or one of the Look-Through Subsidiaries is a partner. *See* proposed § 1.1297–2(e)(1). In some cases, a Look-Through Subsidiary or Look-Through Partnership may have more than one unrelated owner owning at least 25 percent of the entity's value. Activities, unlike income or expense, are qualitative in nature and cannot be easily allocated between owners based on their percentage ownership. If activities are attributed to any owner of 25 percent or more of the Look-Through Subsidiary or partnership, then up to four owners could potentially be able to take into account the same activities. Because it may be difficult to allocate activities among multiple entities but inappropriate to allow double-counting of the activities by attributing the activities of a Look-Through Subsidiary or a partnership to multiple unrelated entities, the proposed regulations provide that a Tested Foreign Corporation may take into account the activities performed only by those Look-Through Subsidiaries or partnerships with respect to which the Tested Foreign Corporation owns (directly or indirectly) more than 50 percent of the value, because at this level of ownership the activities of the Look-Through Subsidiary or Look-Through Partnership could be attributed to only another

foreign corporation within the same chain of ownership as the Tested Foreign Corporation and not an unrelated entity.

The Treasury Department and the IRS request comments on the application of the activity attribution rules to Look-Through Subsidiaries that are not wholly owned by a Tested Foreign Corporation, including whether it is appropriate for a Tested Foreign Corporation to take into account all activities of a Look-Through Subsidiary in which the Tested Foreign Corporation owns more than 50 percent of the value of the stock, and whether a different ownership threshold for attribution of activities would be appropriate.

The Treasury Department and the IRS also request comments on whether the ability to apply an exception to passive income at the Tested Foreign Corporation level taking into account the activities of certain subsidiaries should apply for purposes of other exceptions, such as for purposes of the exception in section 1297(b)(2)(A). Comments should consider the interaction of the rules for elimination of intercompany assets and income described in Part I.F.3 of this Explanation of Provisions with the rules for taking into account the activities of certain Look-Through Subsidiaries and Look-Through Partnerships.

6. Gain on the Disposition of Stock of a Look-Through Subsidiary

Section 1297(c) does not address the treatment of a Tested Foreign Corporation's gain from the disposition of stock of a Look-Through Subsidiary for purposes of the Income Test. Questions have been raised as to whether such a disposition should be treated as a disposition of stock or a deemed disposition of the assets of the Look-Through Subsidiary, and how gain on the disposition should be characterized for purposes of the Income Test.

The proposed regulations provide that, for purposes of the Income Test, the disposition of a Look-Through Subsidiary is treated as the disposition of stock, and gain is computed accordingly. However, the proposed regulations limit the amount of the gain taken into account for purposes of the Income Test in order to avoid double-counting any income that the Tested Foreign Corporation takes into account under section 1297(c) in determining the PFIC status of the Tested Foreign Corporation during the year of the disposition or took into account for such purpose in a prior year that has not been distributed as a dividend to the Tested Foreign Corporation. Thus, the amount of gain taken into account for purposes of the Income Test (''Residual Gain'') is equal to the total gain recognized by the Tested Foreign Corporation on the disposition, reduced (but not below zero) by the amount (if any) by which (A) the aggregate income (if any) of the Look-Through Subsidiary (and any other Look-Through Subsidiary, to the extent stock in such other Look-Through Subsidiary is owned indirectly through the Look-Through Subsidiary) taken into account by the Tested Foreign Corporation under section 1297(c)(2) with respect to the disposed Look-Through Subsidiary stock exceeds (B) the aggregate dividends (if any) received by the Tested Foreign Corporation from the Look-Through Subsidiary with respect to the disposed stock (including dividends attributable to stock of any other Look-Through Subsidiary owned indirectly through the Look-Through Subsidiary). The Residual Gain is computed on a share-by-share basis with respect to income of a Look-Through Subsidiary that was taken into account by the Tested Foreign Corporation and dividends received from a Look-Through Subsidiary. *See* proposed § 1.1297–2(f)(1). Comments are requested on the calculation of Residual Gain for purposes of section 1297(a).

Gain from the disposition of stock generally is treated as FPHCI under section 954(c)(1)(B)(i). However, section 954(c) does not contain a look-through rule comparable to section 1297(c). In order to comport with the policy underlying section 1297(c), the Treasury Department and the IRS have determined that the character of the gain from the disposition of a Look-Through Subsidiary should correspond to the character of the underlying assets of the Look-Through Subsidiary. Accordingly, proposed § 1.1297–2(f)(2) provides that the Residual Gain taken into account by the Tested Foreign Corporation will be characterized as passive income or non-passive income in proportion to the passive assets and non-passive assets of the disposed-of Look-Through Subsidiary (and any other Look-Through Subsidiary, to the extent owned indirectly through the Look-Through Subsidiary) treated as held by the Tested Foreign Corporation pursuant to section 1297(c) on the date of the disposition, measured using the method (value or adjusted bases) that is used to measure the assets of the Tested Foreign Corporation for purposes of the Asset Test.

Pursuant to proposed § 1.1297–1(c)(1)(i)(C), section 954(c)(4) applies with respect to the disposition of interests in a Look-Through Partnership. Comments are requested concerning whether any additional guidance is needed concerning the disposition of interests in a Look-Through Partnership.

G. Change-of-Business Exception (Including Dispositions of Stock of a Look-Through Subsidiary)

Section 1298(b)(3) provides an exception from PFIC status (the ''Change-of-Business Exception'') for a Tested Foreign Corporation that is ''in transition from one active business to another active business.'' H.R. Rep. No. 99–841, at II–644 (1986) (Conf. Rep.). Under section 1298(b)(3), the Change-of-Business Exception applies for a taxable year of the Tested Foreign Corporation if (i) neither the Tested Foreign Corporation nor a predecessor of the Tested Foreign Corporation was a PFIC in a prior taxable year; (ii) it is established to the satisfaction of the Secretary that (A) substantially all of the passive income of the Tested Foreign Corporation for the taxable year is attributable to proceeds from the disposition of one or more active trades or businesses, and (B) the Tested Foreign Corporation will not be a PFIC for either of the two taxable years following such taxable year; and (iii) the Tested Foreign Corporation is not, in fact, a PFIC for either of such two taxable years. Thus, notwithstanding the legislative history and the title of section 1298(b)(3), a Tested Foreign Corporation may qualify for the Change-of-Business Exception even if it does not engage in an active business after a disposition.

The proposed regulations provide general guidance with respect to the Change-of-Business Exception. First, the proposed regulations provide that for purposes of section 1298(b)(3)(B), the existence of an active trade or business and the determination of whether assets are used in an active trade or business is determined by reference to Treas. Reg. § 1.367(a)–2(d)(2), (3), and (5), except that officers and employees do not include the officers and employees of related entities as provided in § 1.367(a)–2(d)(3). *See* proposed § 1.1298–2(c)(3). If, however, the activity attribution rules described in Part I.F.5 of this Explanation of Provisions or section 954(h)(3)(E) would apply to cause the activities of another entity to be taken into account, they are taken into account for purposes of determining the applicability of the Change-of-Business Exception. *Id.* In addition, the proposed regulations provide that income attributable to proceeds from the disposition of an active trade or business means income

earned on investment of such proceeds but does not include the proceeds themselves. *See* proposed § 1.1298–2(c)(1). The regulations also provide that section 1298(b)(3) may apply to either a taxable year of the disposition of the active trade or business or the immediately succeeding taxable year, but in any event may apply to only one year with respect to a disposition. *See* proposed § 1.1298–2(e). Thus, a Tested Foreign Corporation that receives proceeds from a disposition in more than one taxable year may apply the Change-of-Business Exception to only one year. A Tested Foreign Corporation can choose which year it applies the Change-of-Business Exception if the exception can apply in more than one year.

Several comments have inquired regarding the application of the Change-of-Business Exception to the sale or exchange of stock of a Look-Through Subsidiary that conducts an active trade or business. Specifically, these comments have questioned whether, by reason of section 1297(c), the Tested Foreign Corporation should be treated as disposing of an active trade or business conducted by a Look-Through Subsidiary for purposes of the Change-of-Business Exception. The Treasury Department and the IRS have determined that, given that section 1297(c) applies ''for purposes of determining whether [a] foreign corporation is a [PFIC],'' the Change-of-Business Exception should, in appropriate circumstances, apply to a Tested Foreign Corporation's disposition of its interest in a Look-Through Subsidiary that is engaged in an active trade or business. Thus, the proposed regulations provide that, for purposes of the Change-of-Business Exception, a disposition of stock of a Look-Through Subsidiary is treated as a disposition of a proportionate share of the assets held by the Look-Through Subsidiary on the date of the disposition. *See* proposed § 1.1298–2(d). Therefore, the portion of the proceeds attributable to assets used by a Look-Through Subsidiary in an active trade or business is considered for purposes of the Change-of-Business Exception to be proceeds from the disposition of an active trade or business.

The Treasury Department and the IRS also understand that Tested Foreign Corporations may not be able to satisfy the requirements of the Change-of-Business Exception provided in section 1298(b)(3) in certain situations in which proceeds from the disposition of an active trade or business cause the Tested Foreign Corporation to qualify as a PFIC pursuant to the Asset Test. The Treasury Department and the IRS have determined that if a Tested Foreign Corporation has historically engaged in an active trade or business and proceeds from the disposition of such business cause it to qualify as a PFIC, it may be appropriate in certain circumstances to which section 1298(b)(3) does not apply to treat the Tested Foreign Corporation as not a PFIC. Accordingly, the proposed regulations expand the Change-of-Business Exception in section 1298(b)(3) to apply if, on the measuring dates that occur during the taxable year to which the Change-of-Business Exception is proposed to apply and after the disposition, on average, substantially all of the passive assets of a corporation are attributable to proceeds from the disposition of one or more active trades or businesses. *See* proposed § 1.1298–2(b)(2)(ii).

Furthermore, the Treasury Department and the IRS understand that in certain circumstances, the Change-of-Business Exception could apply to the liquidation of a Tested Foreign Corporation if it were not for the fact that foreign law restrictions make it difficult to complete the liquidation within the year for which the exception applies. The Treasury Department and the IRS have determined that it is appropriate to allow the Change-of-Business Exception to be relied upon when such a liquidation is completed within a reasonable period of time after the disposition. Accordingly, in the case of a corporation, substantially all of the passive assets of which are attributable to proceeds from the disposition of one or more active trades or businesses, proposed § 1.1298–2(c)(4) provides that a Tested Foreign Corporation will be deemed to satisfy the requirement that the Tested Foreign Corporation not be a PFIC for the two years following the year for which it relies on the Change-of-Business Exception if it completely liquidates by the end of the year following the year for which it relies on the Change-of-Business Exception. U.S. Federal income tax principles apply to determine whether a Tested Foreign Corporation has completely liquidated. *See* Rev. Rul. 54–518, 1954–2 C.B. 142 (concluding that if a corporation ceases business operations, has retained no assets, and has no income, the mere retention of a charter does not prevent it from being treated as completely liquidated).

The Treasury Department and the IRS request comments concerning whether any other guidance is necessary concerning the application of section 1298(b)(3), including concerning the conditions under which the requirements of section 1298(b)(3)(C) will be considered satisfied.

H. Domestic Subsidiary Stock Rule

As discussed in Part I.F.2 of this Explanation of Provisions, section 1298(b)(7) provides a special characterization rule that applies if a Tested Foreign Corporation owns at least 25 percent of the value of the stock of a domestic corporation and is subject to the accumulated earnings tax under section 531 (or waives any benefit under a treaty that would otherwise prevent imposition of such tax). The proposed regulations clarify that stock of the 25-percent-owned domestic corporation and the qualified stock generally must be owned by the Tested Foreign Corporation and the 25-percent-owned domestic corporation, respectively, either directly or indirectly through one or more partnerships. *See* proposed § 1.1298–4(b)(1) and (c).

The Treasury Department and the IRS have determined that the accumulated earnings tax need not actually be imposed on a foreign corporation in a taxable year in order for it to qualify for section 1298(b)(7). Furthermore, a Tested Foreign Corporation's ability to rely on section 1298(b)(7) in a given year should not depend on whether it has U.S. source income in that year, as it would if § 1.532–1(c) applied to determine whether the Tested Foreign Corporation was subject to tax under section 531. Accordingly, the regulations provide that a Tested Foreign Corporation is considered subject to the tax imposed by section 531 for purposes of section 1298(b)(7) regardless of whether the tax actually is imposed on the corporation and regardless of whether the requirements of § 1.532–1(c) are met. *See* proposed § 1.1298–4(d)(1). Additionally, comments have raised questions concerning the waiver of treaty benefits that would prevent imposition of the accumulated earnings tax. The proposed regulations provide that a Tested Foreign Corporation must waive any benefit under a treaty by attaching to its U.S. Federal income tax return for the taxable year for which it applies section 1298(b)(7) a statement that it irrevocably waives treaty protection against the imposition of the accumulated earnings tax, effective for all prior, current, and future taxable years. *See* proposed § 1.1298–4(d)(2)(i). If a Tested Foreign Corporation is not otherwise required to file a U.S. Federal income tax return, the waiver can be made in a resolution (or other governance document) to be kept in the entity's records or, in the case of a publicly traded corporation, in a statement in the corporation's public

filings. *See* proposed § 1.1298–4(d)(2)(ii).

The Treasury Department and the IRS understand that foreign corporations may be relying on section 1298(b)(7) to avoid being treated as PFICs notwithstanding their direct and indirect ownership of predominantly passive assets by ensuring that a sufficient amount of such assets are held indirectly through two tiers of domestic subsidiaries. For example, a Tested Foreign Corporation might hold stock of another foreign corporation that is PFIC, but rely on a two-tiered domestic chain holding passive assets to avoid being treated as a PFIC; as a result, a United States person holding stock of the Tested Foreign Corporation would generally not be treated as a shareholder of the PFIC stock owned by the Tested Foreign Corporation. Accordingly, the proposed regulations provide that, notwithstanding the general coordination rule between section 1297(c) and section 1298(b)(7) in proposed § 1.1297–2(b)(2)(iii), section 1298(b)(7) does not apply for purposes of determining if a foreign corporation is a PFIC for purposes of the ownership attribution rules in section 1298(a)(2) and Treas. Reg. § 1.1291–1(b)(8)(ii). *See* proposed § 1.1298–4(e). Thus, if a Tested Foreign Corporation would qualify as a PFIC if section 1298(b)(7) did not apply, either because section 1297(c) applied to treat the Tested Foreign Corporation as owning directly the assets of a domestic corporation in which it indirectly held qualified stock, or because the qualified stock was treated as a passive asset, then persons that held stock of a PFIC through the Tested Foreign Corporation would be considered under section 1298(a)(2)(B) and Treas. Reg. § 1.1291–1(b)(8)(ii)(B) to own a proportionate amount (by value) of the stock of the PFIC regardless of the level of their ownership interest in the Tested Foreign Corporation.

To address the possibility of passive assets—particularly non-stock assets that could not themselves be eligible for the special treatment of section 1298(b)(7)—being held through a two-tiered chain of domestic subsidiaries in order to avoid the PFIC rules, the proposed regulations further provide anti-abuse rules under the authority of section 1298(g), one of which provides that section 1298(b)(7) will not apply if the Tested Foreign Corporation would be a PFIC if the qualified stock or any income received or accrued with respect thereto were disregarded. *See* proposed § 1.1298–4(f)(1). Furthermore, under a second anti-abuse rule, section 1298(b)(7) will not apply if a principal purpose for the Tested Foreign Corporation's formation or acquisition of the 25-percent-owned domestic corporation is to avoid classification of the Tested Foreign Corporation as a PFIC. A principal purpose will be deemed to exist if the 25-percent-owned domestic corporation is not engaged in an active trade or business in the United States. *See* proposed § 1.1298–4(f)(2). No inference is intended as to the application of section 1298(b)(7) under prior law. The IRS may, where appropriate, challenge transactions under the Code, regulatory provisions under prior law, or judicial doctrines. The Treasury Department and the IRS welcome comments on these rules.

II. PFIC Insurance Exception Rules

The proposed regulations provide guidance regarding whether the income of a foreign corporation is excluded from passive income pursuant to section 1297(b)(2)(B) because the income is derived in the active conduct of an insurance business by a QIC. Part II.A of this Explanation of Provisions describes the rules in proposed § 1.1297–4 for determining whether a foreign corporation is a QIC. Part II.B of this Explanation of Provisions describes the rules in proposed § 1.1297–5(c)(2) defining the term insurance business. Part II.C of this Explanation of Provisions describes the rules in proposed § 1.1297–5(c) regarding the active conduct of an insurance business. Part II.D of this Explanation of Provisions describes the rules in proposed § 1.1297–5(f) regarding the application of the section 1297(b)(2)(B) exception to items of income treated as received or accrued or assets treated as held by a QIC pursuant to section 1297(c). Part II.E of this Explanation of Provisions describes the rules in proposed § 1.1297–5(d) regarding the treatment of income and assets of certain domestic insurance corporations owned by a QIC as active for purposes of 1297(a). Part II.F of this Explanation of Provisions describes the rule in proposed § 1.1297–5(g) prohibiting the double counting of any item for purposes of proposed §§ 1.1297–4 and 1.1297–5.

A. QIC Status Requirement

Generally, section 1297(f) provides that a QIC is a foreign corporation that (1) would be subject to tax under subchapter L if it were a domestic corporation and (2) has applicable insurance liabilities that constitute more than 25 percent of its total assets. Proposed § 1.1297–4 provides guidance regarding the requirements under section 1297(f)(1) that a foreign corporation must satisfy to qualify as a QIC.

1. Insurance Company Requirement

Proposed § 1.1297–4(b)(1) provides guidance regarding when a foreign corporation would be the type of corporation that would be taxable under subchapter L (that is, an insurance company) if the corporation were a domestic corporation. *See* section 1297(f)(1)(A). It provides that a foreign corporation would be subject to tax under subchapter L if it were a domestic corporation if it is an insurance company as defined in section 816(a) (generally requiring more than half of the corporation's business during the taxable year to be the issuing of insurance or annuity contracts, or the reinsuring of risks underwritten by insurance companies).

2. 25 Percent Test

In addition to the insurance company requirement, generally a foreign corporation's ''applicable insurance liabilities'' (defined in section 1297(f)(3)(A) and proposed § 1.1297–4(f)(2)) must exceed 25 percent of its ''total assets'' (defined in proposed § 1.1297–4(f)(7) to be a QIC. Section 1297(f)(1)(B); *see also* proposed § 1.1297–4(c). This determination is made on the basis of the foreign corporation's liabilities and assets as reported on the corporation's applicable financial statement for the last year ending with or within the taxable year. This test hereinafter is referred to as the ''25 percent test.'' Proposed § 1.1297–4(c) provides guidance regarding the application of the 25 percent test.

3. Alternative Facts and Circumstance Test

If a foreign corporation fails the 25 percent test, section 1297(f)(2) permits a United States person to elect to treat stock in the corporation as stock of a QIC under certain circumstances. Specifically, to make the election, the foreign corporation must be predominantly engaged in an insurance business, and its applicable insurance liabilities must constitute 10 percent or more of its total assets, hereinafter the ''10 percent test.'' A United States person may only make this election if the foreign corporation fails the 25 percent test solely due to runoff-related or rating-related circumstances involving its insurance business, as further described in Part II.A.3.b of this Explanation of Provisions.

a. Predominantly Engaged in an Insurance Business

Proposed § 1.1297–4(d)(2) provides guidance regarding the circumstances under which a foreign corporation is predominantly engaged in an insurance business. In the case of a foreign corporation that fails the 25-percent test, Congress included the predominantly engaged requirement as part of the alternative facts and circumstances test to ascertain whether a foreign corporation is truly engaged in an insurance business despite the low ratio of applicable insurance liabilities to assets. *See* H.R. Rep. No. 115–466, at 671 (2017) (Conf. Rep.) (''Facts and circumstances that tend to show the firm may not be predominantly engaged in an insurance business include a small number of insured risks with low likelihood but large potential costs; workers focused to a greater degree on investment activities than underwriting activities; and low loss exposure. Additional relevant facts for determining whether the foreign corporation is predominantly engaged in an insurance business include: Claims payment patterns for the current year and prior years; the foreign corporation's loss exposure as calculated for a regulator or for a rating agency, or if those are not calculated, for internal pricing purposes; the percentage of gross receipts constituting premiums for the current and prior years; and the number and size of insurance contracts issued or taken on through reinsurance by the foreign corporation. The fact that a foreign corporation has been holding itself out as an insurer for a long period is not determinative either way.''). The proposed regulations clarify that each of these factors is intended to be tested based on whether the particular facts and circumstances of the foreign corporation are comparable to commercial insurance arrangements providing similar lines of coverage to unrelated parties in arm's length transactions.

As noted in Part II.A.1 of this Explanation of Provisions, to qualify as an insurance company, more than one half of a corporation's business must be the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. *See* sections 816(a) and 831(c). Although such a corporation might otherwise be considered to be ''predominantly engaged'' in an insurance business (where predominantly means ''for the most part''), the predominantly engaged requirement of the alternative facts and circumstances test in section 1297(f) is separate from, and in addition to, the requirement that a corporation would be subject to tax under subchapter L if the foreign corporation were a domestic corporation. Therefore, in order to give effect to this predominantly engaged requirement, proposed § 1.1297–4(d)(2) incorporates the specific factors enumerated in the legislative history as a part of a foreign corporation's analysis of whether it is predominantly engaged in an insurance business under the alternative facts and circumstances test, while retaining the requirement that ''more than half'' of the business be of a certain type, because the foreign corporation must separately satisfy that threshold with respect to the character of its insurance business under section 1297(f)(1)(A).

The Treasury Department and the IRS request comments regarding whether this proposed test appropriately determines whether a foreign corporation is predominantly engaged in an insurance business and invite comments on whether the proposed test would have material effects upon the way in which entities engaged in the provision of insurance are structured.

b. Runoff-Related or Rating-Related Circumstances

To qualify for the alternative facts and circumstances test, proposed § 1.1297–4(d)(3) and (4) clarify the circumstances under which a foreign corporation fails to satisfy the 25 percent test solely due to runoff-related or rating-related circumstances involving its insurance business.

Proposed § 1.1297–4(d)(3) provides that runoff-related circumstances occur when a corporation has adopted a plan of liquidation or termination of operations under the supervision of its applicable insurance regulatory body. Additionally, the corporation may not issue or enter into any new insurance, annuity, or reinsurance contracts during the taxable year (other than contractually obligated renewals of existing insurance contracts or reinsurance contracts pursuant to and consistent with the corporation's plan of liquidation or termination of operations) and must make payments during the annual reporting period covered by the applicable financial statement to satisfy the claims under insurance, annuity, or reinsurance contracts issued or entered into before the corporation ceased entering into new business.

Proposed § 1.1297–4(d)(4) provides that rating-related circumstances occur when a generally recognized credit rating agency requires a foreign corporation to maintain a surplus of capital to receive or maintain a minimum credit rating for the foreign corporation to be classified as secure to write new insurance business for the current year. The Treasury Department and the IRS understand that it is possible that the minimum credit rating required to be classified as secure to write new insurance business may be higher for some lines of insurance business than for other lines of insurance business. For this purpose, the proposed rule is intended to apply to the highest minimum credit rating required to be classified as secure to write new insurance business for any line of insurance business.

The Treasury Department and the IRS understand that there may be certain lines of insurance business, such as financial guaranty insurance, where market realities require a credit rating in excess of the minimum credit rating for a foreign corporation to be classified as secure to write new insurance business in the relevant business line for the current year. The Treasury Department and the IRS request comments regarding this fact pattern and how best to address these lines of business in the context of the rating-related circumstances test.

c. Election To Apply the Alternative Facts and Circumstances Test

Proposed § 1.1297–4(d)(5)(i) generally requires that the foreign corporation with respect to which the election is made directly provide the United States person a statement or make a publicly available statement (such as in a public filing, disclosure statement, or other notice provided to United States persons that are shareholders of the foreign corporation) that it satisfied the requirements of section 1297(f)(2) and § 1.1297–4(d)(1) during the foreign corporation's taxable year and certain information relevant to that statement. A United States person, however, may not rely upon any statement by the foreign corporation to make the election under section 1297(f)(2) if the shareholder knows or has reason to know that the statement made by the foreign corporation was incorrect. Because the foreign corporation possesses the information necessary to make an election under the alternative facts and circumstances test, the Treasury Department and the IRS have determined that it is appropriate to require a United States person to obtain that information from the foreign corporation in order to make the election. Comments are requested regarding the form and content of the statement provided by the foreign corporation to United States persons as set forth in proposed § 1.1297–

4(d)(5)(i)–(ii), and whether there are alternative ways of satisfying the requirements of 1297(f)(2).

Proposed § 1.1297–4(d)(5)(iii) describes the time and manner for making the election. To make the election before final regulations are published, a United States person that owns stock of a foreign corporation electing to treat that stock as stock of a QIC under the alternative facts and circumstances test must file a limited-information Form 8621 (or successor form). For this purpose, a United States person must file a Form 8621 with the box checked regarding the QIC election and must provide the identifying information of the shareholder and the foreign corporation. The United States person is not required to complete any other part of Form 8621 if that person is only filing the Form 8621 to make the QIC election under the alternative facts and circumstances test.

The Treasury Department and the IRS request comments on ways to reduce burden on small shareholders with respect to the alternative facts and circumstances test.

4. Limitations on the Amount of Applicable Insurance Liabilities

When applying the 25 percent test to a foreign corporation, section 1297(f)(3)(B) provides that the amount of the foreign corporation's applicable insurance liabilities cannot exceed the lesser of (i) the amount that the foreign corporation reported to its ''applicable insurance regulatory body'' (defined in section 1297(f)(4)(B) and proposed § 1.1297–4(f)(3)), (ii) the amount required by applicable law or regulation, or (iii) the amount determined under regulations prescribed by the Treasury Department and the IRS.

Proposed § 1.1297–4(e) provides additional guidance regarding the limitation on the amount of applicable insurance liabilities for purposes of the 25 percent test and the 10 percent test. Specifically, the proposed regulations provide that the amount of applicable insurance liabilities may not exceed the lesser of (1) the amount shown on the most recent applicable financial statement; (2) the minimum amount required by applicable law or regulation of the jurisdiction of the applicable insurance regulatory body; and (3) the amount shown on the most recent financial statement made on the basis of U.S. generally accepted accounting principles (''US GAAP'') or international financial reporting standards (''IFRS'') if such financial statement was not prepared for financial reporting purposes. The Treasury Department and the IRS have determined that the additional limitations are necessary to clarify which financial statements are used to apply the 25 percent test and the 10 percent test, and that it is appropriate to limit the amount of applicable insurance liabilities to the minimum amount of liabilities required to be reported by an insurance regulator, even if the foreign corporation's regulator would accept a higher liability amount for regulatory purposes. In addition, under section 1297(f)(4), an applicable financial statement only includes financial statements made on the basis of US GAAP or IFRS if such a statement has been prepared for financial reporting purposes. If a foreign corporation prepares a financial statement on the basis of US GAAP or IFRS for a purpose other than financial reporting, the Treasury Department and the IRS have determined that the amount of applicable insurance liabilities under this financial statement, if lower than the amount on the applicable financial statement, is an appropriate limit on the amount of applicable insurance liabilities. This limitation is appropriate because Congress has expressed a preference for widely used standards of financial accounting through its references to such standards in section 1297(f)(4)(A).

Under the proposed regulations, a special rule applies with respect to applicable financial statements that are neither prepared under US GAAP nor IFRS. To the extent that such an applicable financial statement does not discount losses on an economically reasonable basis, the foreign corporation must reduce its applicable insurance liabilities to reflect discounting that would apply under either US GAAP or IFRS. The Treasury Department and the IRS have determined that a method of determining insurance liabilities that fails to provide for a reasonable discounting rate does not take into account a factor that is necessary to appropriately and accurately report the amount of applicable insurance liabilities. For this purpose, the question of whether losses are discounted on an economically reasonable basis is determined under the relevant facts and circumstances. However, in order for losses to be discounted on an economically reasonable basis, discounting must be based on loss and claim payment patterns for either the foreign corporation or insurance companies in similar lines of insurance business. In addition, a discount rate based on these loss and claim payment patterns of at least the risk free rate in U.S. dollars or in a foreign currency in which the foreign corporation conducts some or all of its insurance business must be used. A loss discounting methodology consistent with that used for US GAAP or IFRS purposes is considered reasonable for this purpose.

Finally, a special rule applies for certain foreign corporations that change their method of preparing their applicable financial statement by ceasing to prepare this statement under either US GAAP or IFRS and have no non-Federal tax business purpose for preparing a statement that is not consistent with US GAAP or IFRS. Under the proposed regulations, absent a non-Federal Tax business purpose, a foreign corporation must continue to prepare its applicable financial statement under either US GAAP or IFRS. If the foreign corporation fails to do so, the foreign corporation will be treated as having no applicable insurance liabilities for purposes of the QIC test. Absent this proposed rule, the Treasury Department and the IRS are concerned that a foreign corporation may change its method for preparing its financial statement to benefit from certain elements of a local regulatory accounting regime, such as a more expansive definition of insurance liability or a method of calculating a larger amount of insurance liabilities, solely for purposes of qualifying as a QIC. Comments are requested on this proposed rule.

B. Insurance Business

For purposes of the PFIC insurance exception, proposed § 1.1297–5(c)(2) defines an insurance business as the business of issuing insurance and annuity contracts or reinsuring risks underwritten by other insurance companies (or both). Under the proposed regulations, an insurance business also includes the investment activities and administrative services required to support (or that are substantially related to) those insurance, annuity, or reinsurance contracts issued or entered into by the QIC. Proposed § 1.1297–5(h)(2) provides that investment activities are any activities that generate income from assets that a QIC holds to meet its obligations under insurance and annuity contracts issued or reinsured by the QIC.

C. Active Conduct

To give effect to the active conduct requirement, the 2015 proposed regulations differentiated between activities performed by a corporation through its officers and employees and activities performed by other persons (for example, employees of other

entities or independent contractors) for the corporation. The 2015 proposed regulations accomplished this separation by defining the term ''active conduct'' in section 1297(b)(2)(B) to have the same meaning as in § 1.367(a)–2T(b)(3) (now § 1.367(a)–2(d)(3)), except that officers and employees would not have included the officers and employees of related entities. Hence, under the 2015 proposed regulations, only insurance investment business activities performed by a corporation's officers and employees would be included in the corporation's active conduct of its insurance business. Accordingly, under the 2015 proposed regulations, investment income would have qualified for the PFIC insurance exception only if the corporation's own officers and employees performed the insurance business activities that produce the income.

Proposed § 1.1297–5(c)(3)(i) provides that the term active conduct is based on all of the facts and circumstances and that, in general, a QIC actively conducts an insurance business only if the officers and employees of the QIC carry out substantial managerial and operational activities. For this purpose, active conduct is intended to be interpreted consistently with the active conduct standard in § 1.367(a)–2(d)(5). The proposed regulation further provides that a QIC's officers and employees are considered to include the officers and employees of another corporation if the QIC satisfies the control test set forth in proposed § 1.1297–5(c)(3)(ii). Generally, to satisfy the control test, (i) the QIC must either own, directly or indirectly more than 50 percent of the vote and value (for a corporation) or capital and profits interest (for a partnership) of the entity whose officers or employees are performing services for the QIC or (ii) a common parent must own, directly or indirectly, more than 80 percent of the vote and value or capital and profits interest of both the QIC and the entity performing services for the QIC. In addition, the QIC must exercise regular oversight and supervision over the services performed by the other entity's officers and employees for the QIC. The QIC must also either (i) pay directly all the compensation of the other entity's officers and employees attributable to services performed for the QIC for the production or acquisition of premiums and investment income on assets held to meet obligations under insurance, annuity, or reinsurance contracts issued or entered into by the QIC; (ii) reimburse the other entity for the portion of its expenses, including compensation and related expenses (determined in accordance with section 482, taking into account all expenses that would be included in the total services costs under § 1.482–9(j) and § 1.482–9(k)(2)) and add a profit markup, as appropriate, for these services performed for the QIC by the other entity's officers and employees; or (iii) otherwise pay arm's length compensation in accordance with section 482 on a fee-related basis to the other entity for the services provided to the QIC. For example, it is common to charge for investment advisory or management services via a fee calculated as a percentage of the underlying assets under management (AUM), and a fee calculated on this basis may be arm's length under section 482 principles.

Under proposed § 1.1297–5(c)(4), a QIC determines the annual amount of its income that is derived in the active conduct of an insurance business (the active conduct test) and excluded from passive income under section 1297(b)(2)(B) for purposes of section 1297(a). To make this determination, the QIC must determine its active conduct percentage.

If the QIC's active conduct percentage is greater than or equal to 50 percent, then all of the QIC's passive income (as defined in § 1.1297–1, taking into account the exceptions in section 1297(b)(2) other than section 1297(b)(2)(B) and § 1.1297–5) is excluded from passive income pursuant to the exception in section 1297(b)(2)(B) for the active conduct of an insurance business. If the QIC's active conduct percentage is less than 50 percent, then none of its income is excluded from passive income pursuant to the exception in section 1297(b)(2)(B) for the active conduct of an insurance business. In response to comments made to the 2015 proposed regulations, the active conduct percentage is based on the QIC's expenses to provide a bright-line test for measuring the QIC's active conduct. The Treasury Department and the IRS determined that the amount of expenses for insurance activities performed by the QIC (or by a related party) as compared to the total expenses of the QIC indicates the extent to which the QIC conducts the business itself and therefore, actively engages in an insurance business.

The Treasury Department and the IRS request comments on the following topics:

1. Whether the relative amount of expenses for insurance activities performed by the QIC accurately assesses whether a QIC is engaged in the active conduct of an insurance business.

2. The contours of the control test, which allow for a QIC to benefit from a higher active conduct percentage based on activities (paid for by the QIC) of an entity in which a common parent, but not the QIC itself, owns more than 80 percent of the interests. The Treasury Department and IRS propose this standard based on an understanding of common ownership structures in the insurance industry, and note that the attribution of activities described in Part I.F.5 of this Explanation of Provisions (regarding the active rent or royalty exception) is more limited as it provides that a Tested Foreign Corporation may take into account the activities performed only by those Look-Through Subsidiaries or partnerships with respect to which the Tested Foreign Corporation owns (directly or indirectly) more than 50 percent of the value.

3. The active conduct percentage calculation in general, including whether this test should be the only test for determining whether income is derived in the active conduct of an insurance business or whether such a percentage would better serve as an objective safe harbor alongside a facts and circumstances test.

D. Treatment of Income and Assets of Certain Look-Through Subsidiaries and Look-Through Partnerships Held by a QIC

Proposed § 1.1297–5(f) provides that certain items of income and assets that are passive in the hands of a look-through subsidiary or look-through partnership may be treated as active by a QIC. Under this provision, a Tested Foreign Corporation is treated as if it directly holds its proportionate share of the assets and as if it directly receives its proportionate share of the income of the Look-Through Subsidiary or Look-Through Partnership. Generally, if the income or assets are passive in the hands of the Look-Through Subsidiary or Look-Through Partnership, the income or assets are treated as passive income and passive assets of the Tested Foreign Corporation. However, if the Tested Foreign Corporation is a QIC, the income and assets are tested under section § 1.1297–5(c) and (e) to determine if they qualify for the section 1297(b)(2)(B) insurance exception to passive income. However, for this rule to apply, the Look-Through Subsidiary or Look-Through Partnership, as the case may be, must have its assets and liabilities included in the applicable financial statement of the foreign corporation for purposes of the 25 percent test and the 10 percent test. This rule does not change the character of the items of income or assets as passive income or passive assets to the Look-Through Subsidiary or Look-Through Partnership.

E. Qualifying Domestic Insurance Corporations

Proposed § 1.1297–5(d) provides that income of a qualifying domestic insurance corporation is not treated as passive income. Similarly, proposed § 1.1297–5(e)(2) provides that assets of a qualifying domestic insurance corporation are not treated as passive assets. A qualifying domestic insurance corporation is a domestic corporation that is subject to tax as an insurance company under subchapter L of chapter 1 of subtitle A of the Code and is subject to Federal income tax on its net income. This rule is intended to address situations where a Tested Foreign Corporation owns a domestic insurance corporation through a structure to which section 1298(b)(7) does not apply.

F. No Double Counting Rule

Proposed § 1.1297–5(g) provides that nothing in proposed § 1.1297–4 or § 1.1297–5 permits any item to be counted more than once (for example, for determining a reserve or an applicable insurance liability for purposes of the 25 percent test and the 10 percent test). Including this general principle is consistent with subchapter L provisions that do not allow double counting. For example, section 811(c)(2) provides that the same item may not be counted more than once for reserve purposes, section 811(c)(3) provides that no item may be deducted (either directly or as an increase in reserves) more than once, and section 832(d) prohibits the same item from being deducted more than once.

Applicability Dates

These regulations are proposed to apply to taxable years of United States persons that are shareholders in certain foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, until these regulations are finalized, taxpayers may choose to apply these proposed regulations (other than the proposed regulations under §§ 1.1297–4 and 1.1297–5) in their entirety to all open tax years as if they were final regulations provided that taxpayers consistently apply the rules of these proposed regulations. Until finalization, United States persons that are shareholders in certain foreign corporations may apply the rules of §§ 1.1297–4 and 1.1297–5 for taxable years beginning after December 31, 2017, provided those United States persons consistently apply the rules of §§ 1.1297–4 and 1.1297–5 as if they were final regulations. In addition, taxpayers may continue to rely on Notice 88–22 until these regulations are finalized.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Executive Order 13771 designation for any final rule resulting from the proposed regulation will be informed by comments received. The preliminary Executive Order 13771 designation for this proposed rule is regulatory.

The proposed regulation has been designated by the Office of Information and Regulatory Affairs (OIRA) as significant under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

A. Background

Various provisions of the tax code allow tax on certain sources of income to be deferred, which means that the income is not taxed when it is earned but at some later date, based on specific events or conditions. Tax deferral is advantageous to taxpayers because the taxpayer can in the meantime earn a return on the amount that would otherwise have been paid as tax. Prior to the Act, income earned abroad generally was not taxed until it was repatriated to the United States. After the Act, income earned abroad by a CFC is generally taxed immediately to the United States shareholders of the CFC, but income earned by foreign corporations that are not CFCs, particularly where the owners of the foreign corporations are individuals or other entities not eligible for the dividends received deduction under section 245A, may still be eligible for deferral. However, deferral is not available with respect to income of foreign corporations that earn primarily certain kinds of passive income, which in general includes dividends, interest, royalties, rents, and certain gains on the exchange of property, commodities, or foreign currency. Limiting deferral of foreign source income discourages U.S. taxpayers from holding mobile, passive investments, such as stock, in a foreign corporation in order to defer U.S. tax.

A particular set of rules limiting deferral applies to U.S. persons who own interests in passive foreign investment companies (''PFICs''). In general, a PFIC is a foreign corporation that, in a given year, has income that is 75 percent or more passive income or that owns, on average, assets that are 50 percent or more passive-income-producing. Taxpayers subject to another set of rules limiting deferral, the subpart F rules, are not subject to the PFIC rules.

Long-standing sections 1291 through 1298 provide rules regarding the tax treatment of income from PFICs. The PFIC itself is not subject to U.S. tax under the PFIC regime; rather, only the U.S. owner of the PFIC is required to determine whether he or she has invested in a PFIC, and if so, what tax is due as a result. The U.S. owner is responsible for getting the appropriate information from the foreign corporation to determine if the corporation is a PFIC.

Before its amendment by the Act, the PFIC provisions provided an exception from passive income for any income (including investment income) earned in the active conduct of an insurance business by a foreign corporation that (i) was predominantly engaged in an insurance business and (ii) would be taxed as an insurance company if it were a domestic corporation. Congress determined that this exception enabled U.S. owners of some foreign insurance companies to escape the PFIC regime. This exception, (the ''PFIC insurance exception''), was established because insurance companies must hold significant amounts of investment assets (which generate income that would otherwise be classified as passive under the PFIC rules) in the normal course of business to fund obligations under the insurance contracts they issue. Staff, Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, JCS–10–87, at 1025 (1987); IRS, Corporate Income Tax Returns Complete Report, 2013, Table 1).

The Act modified and narrowed the PFIC insurance exception by requiring that the excepted income be derived in the active conduct of an insurance business by a ''qualifying insurance corporation'' (''QIC''). To be a QIC, a foreign insurance corporation must be an entity that would be taxed as an insurance company if it were a domestic corporation (consistent with prior-law

requirements) and, in addition, be able to show that its ''applicable insurance liabilities'' constitute more than 25 percent of its total assets. The Act specifically defines applicable insurance liabilities for this purpose as including a set of enumerated types of insurance-related loss and expense items. Failing this test, the Code provides that U.S. owners of the foreign corporation may elect to treat their stock in the corporation as stock of a QIC, provided the corporation can satisfy an ''alternative facts and circumstances test.'' However, once a corporation has been identified as a QIC, only income that is derived in the active conduct of an insurance business qualifies as income eligible for the PFIC insurance exception.

Congress modified section 1297 under the Act out of concern that the active insurance company exception to the PFIC rules lacked clarity and precision. This lack of clarity with respect to how much insurance business the company must do to qualify under the exception raised concerns that certain companies with U.S. shareholders were structuring themselves to take advantage of the exception but conducting a token insurance business while focusing primarily on investment activities. Such strategies erode the U.S. tax base, and reflect inefficient investment incentives for U.S. taxpayers. As a result, the Act adopted a more formulaic rule that is easier to enforce and apply, while still allowing a facts and circumstances approach for showing insurance activity. *See* Senate Budget Explanation of the Bill (2017–11–20) at p. 397.

B. Need for the Proposed Regulations

The Treasury Department and the IRS view the Act modifications regarding PFIC determination as generally self-executing (although regulatory guidance is needed in order for U.S. owners to elect QIC status under the facts and circumstances test), which means that the statute is binding on taxpayers and the IRS without further regulatory action. The Treasury Department and the IRS recognize, however, that the statute provides interpretive latitude for taxpayers and the IRS that could, without further guidance, prompt inefficient investment patterns due to divergent interpretations. Consequently, many of the details behind the relevant terms and necessary calculations required for the determination of PFIC status would benefit from greater specificity. The proposed regulations provide details and specifics for the definitions and concepts described in sections 1291, 1297, and 1298 so that taxpayers can readily and accurately determine if their investment is in a PFIC, given the significant consequences of owning a PFIC, which may continue to be treated as such even after the foreign corporation ceases to satisfy the Income Test or Asset Test. *See* section 1298(b)(1). The regulations further resolve ambiguities in determining ownership of a PFIC and in the application of the Income Test and Asset Test under the statutory provisions that existed prior to the Act.

The Treasury Department and the IRS have also identified actions that foreign companies might take to qualify for QIC designation even though the nature of their active insurance business would not merit QIC designation under the intents and purposes of the statute. The proposed regulations are needed to avoid the inefficient economic decisions that would arise from those tax avoidance actions. For example, in the absence of the proposed regulations, taxpayers may be incentivized to adopt accounting methods that inappropriately inflate applicable insurance liabilities or exaggerate the degree to which income of a QIC is derived in the active conduct of an insurance business.

C. Overview of the Proposed Regulations

The proposed regulations can be divided into two parts. The rules described in Part I of the Explanation of Provisions section of this preamble provide general guidance regarding PFICs (the ''General Rules''). *See* Part I.D.2 of this Special Analyses section. The rules described in Part II of the Explanation of Provisions section of this preamble relate specifically to the implementation of the PFIC insurance exception (the ''PFIC Insurance Exception Rules''). *See* Part I.D.3 of this Special Analyses section. Among other things, the General Rules (1) describe and clarify how assets are measured for the asset test; and (2) clarify attribution rules for determining some forms of active income. The PFIC Insurance Exception Rules provide guidance regarding qualification for the PFIC insurance exception, define statutory terms relevant to QIC status, and provide instructions on electing QIC status under the alternative facts and circumstances test.

D. 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. Summary of Economic Effects

The proposed regulations provide certainty and consistency in the application of sections 1291, 1297, and 1298 with respect to PFICs and QICs by providing definitions and clarifications regarding the statute's terms and rules. In the absence of such guidance, the chances that different U.S. owners (or potential owners) of foreign companies would interpret the statute differentially, either from each other or from the intents and purposes of the statute, would be exacerbated. This divergence in interpretation could cause U.S. investors to choose investment vehicles based on different interpretations of, for example, whether particular income would avoid qualifying as passive income and thus avoid the less favorable tax treatment applied by the PFIC regime. If economic investment is not guided by uniform incentives across otherwise similar investors and across otherwise similar investments, the resulting pattern of investment is generally inefficient, conditional on the Code's provisions governing passive income.[1] In the context of U.S. investment in foreign insurance corporations, the proposed regulations help to ensure that similar economic activities, representing similar passive and non-passive attributes, are taxed similarly. Thus, the Treasury Department and the IRS expect that the definitions and guidance provided in the proposed regulation will lead to an improved allocation of investment among taxpayers contingent on the overall Code.

The Treasury Department and the IRS have not quantified the expected economic benefits or the costs to the U.S. economy, or the scope of taxpayers benefitting from or burdened by the proposed regulations. The Treasury Department and the IRS request comment on these issues and particularly solicit comments that provide data, evidence, or models that would enhance the rigor by which the non-revenue economic effects might be determined and quantified for the final regulations.

[1] General economic principles do not clearly prescribe the efficient relative tax treatment of passive income versus non-passive income and therefore do not indicate whether a shift in investment from passive-income-producing activities to non-passive-income-producing activities is economically beneficial. This economic analysis draws conclusions about the efficient tax treatment of different investments by evaluating incentives in light of the intents and purposes of the underlying statutes.

The following sections describe the economic effects of specific major provisions of these proposed regulations relative to possible alternative provisions. The Treasury Department and IRS solicit comments on each of the items discussed subsequently and on any other provisions of the proposed regulations not discussed in this section. The Treasury Department and the IRS particularly solicit comments that provide data, other evidence, or models that could enhance the rigor of the process by which these or further provisions might be developed for the final regulations.

3. Economic Analysis of Specific Provisions of the General Rules

a. Averaging Period for the Asset Test

A foreign corporation is considered a PFIC if it satisfies either of the following tests: (i) 75 percent or more of the corporation's gross income for a taxable year is passive (''Income Test''); or (ii) the average percentage of assets held by the corporation during the year producing passive income is at least 50 percent (''Asset Test''). If a foreign corporation is a PFIC, the U.S. owner of the PFIC is subject to tax under the PFIC regime. Regarding the Asset Test, section 1297(e) provides rules for how to determine the value of assets using either the fair market value or the adjusted basis, but does not indicate what period should be used to determine the ''average percentage.'' Notice 88–22, which was issued following the enactment of the PFIC regime to provide guidance on a number of issues related to the Income and Asset Tests pending regulations, required taxpayers to determine value at the end of each quarter and average those numbers on an annual basis for the test. *See* Part I.D.1 of the Explanation of Provisions section of this preamble. Notice 88–22 announced the intention of the Treasury Department and IRS to issue regulations addressing this and other issues under the PFIC regime; however, no regulations addressing the Asset Test were issued until the proposed regulations.

To remedy this omission and specify the period over which the average percentage would be calculated, the Treasury Department and the IRS considered three alternatives: (i) Semi-annual measurement, (ii) quarterly measurement, and (iii) daily measurement.[2] The Treasury Department and the IRS also considered, once a default measuring period was set, offering flexibility to shareholders to determine their own measurement period as long as the period was shorter than the default period. In each respective case, the Asset test would be based on the annual average of the semi-annual, quarterly, or daily asset values.

The first option, to require taxpayers to determine the average value of assets that produce passive income on a semi-annual basis, has lower costs than the other suggested approaches since calculations have to be done just twice a year and these costs (or cost-savings) are borne directly or indirectly by the owners of the corporation. The benefit of these lower costs to U.S. taxpayers must be balanced against the projected accuracy of semi-annual measurement. Because the period examined is long, semi-annual amounts are relatively easy for the corporation to manipulate so as to avoid having 50 percent or more passive-income producing assets as measured by value over the averaging period discussed here (the Asset Test) and therefore avoid PFIC treatment, even in cases where the company held significant amounts of passive-income-producing assets during the year.

The third option, to require taxpayers to average daily asset values for the asset test, provides a more exact measure of the assets of the company but the costs for the company to provide such information to their owners can be significant and some companies might choose not to provide such calculations to their small U.S. owners.[3] On the other hand, daily measurement would make it costly for the entity to avoid PFIC determination by ''removing'' assets generating passive income at measurement times.

The proposed regulations, consistent with the second option, require at least quarterly measurement and further allow taxpayers to elect to use a shorter period, such as monthly or daily measurement of asset values. Shorter period alternatives (relative to a semi-annual period) curtail the ability of foreign corporations to avoid PFIC designation through asset management strategies that would be tax-driven rather than market-driven. The Treasury Department and the IRS project that the increase in compliance costs of quarterly measurement over semi-annual measurement would be minor, because quarterly measurement aligns with general accounting practices, and because many taxpayers were likely already relying on the provision in Notice 88–22 that provided for quarterly measurement. The election to choose monthly or daily measurement allows U.S. persons who own interests in foreign corporations to use even more precise measurement of asset holdings if, based on business-specific accounting practices and the availability of that information to the U.S. person, the U.S. person deems that any higher compliance costs they might incur are warranted.

The Treasury Department and IRS solicit comments on this proposal, particularly comments that provide data, other evidence, or models that could enhance the rigor of the process by which the average percentage period might be developed for the final regulations.

b. Attribution of Activities

For purposes of determining whether a corporation is a PFIC, section 1297(c) treats a foreign corporation (FC1) that owns 25 percent or more of another foreign corporation (FC2) as owning and earning the proportional amount of FC2's income and assets under the so called Look-Through Subsidiary rules.[4] However, the statute is silent on whether the activities of FC2 can be attributed to FC1 for purposes of determining whether the income of FC1 qualifies as being treated as non-passive income. Under current practice, some businesses structure their organization for legal or commercial reasons to have all employees for a business in one corporation, say FC2, while the rents and royalties are received by FC1. Without attribution of activities, FC1 could not qualify for an exception that treats these rents and royalties as active, as opposed to passive, income. This could result in FC1 being treated as a PFIC even though, on the whole, its income and economic activities were related to active business operations and not comparable to the passive income generating activities generally undertaken by PFICs.

To address the attribution of activities in foreign businesses in structures similar to those described, the Treasury Department and the IRS considered three alternatives: (1) Do not allow any attribution of activities; (2) allow attribution of activities to multiple U.S. owners; or (3) allow attribution only if there is greater than a 50 percent ownership percentage; that is, if the

[2] Other units could have been considered, such as months or weeks, but these three options span the reasonable possibilities.

[3] It would further generally be difficult for a U.S. owner to calculate, on his or her own, the value of PFIC assets on a daily basis, especially if the owner were a minority shareholder.

[4] For purposes of the rest of this discussion, FC1 can be considered the parent corporation with U.S. owners that is tested as to whether it is a PFIC or not. FC2 is a subsidiary of FC1.

foreign corporation owns more than 50 percent of the other foreign corporation.

Under the first alternative (no attribution), a foreign corporation that separated activities and income could satisfy the passive income exception only if it reorganized such that the entity being tested as a PFIC received both the active rents and royalties as well as had the employees that performed the related activities. This is potentially costly or even infeasible, depending on local requirements. The Treasury Department and the IRS determined that this alternative would potentially lead to costly reorganization, a cost that would either be passed on to U.S. investors or that, in the absence of such reorganization, would inhibit U.S. investment in a foreign corporation that was otherwise similar to corporations that were not PFICs. These are economically undesirable outcomes in light of the intents and purposes of the statute, relative to the proposed regulations.

Under the second alternative, activities could be attributed similarly to how the Look-Through Rule attributes income and assets. In general, because the Look-Through Rule requires ownership of only 25 percent of a foreign corporation in order to apply, the income and assets of a foreign corporation may be attributed to multiple owners. The statute specifies that this be done on a pro rata basis—for example, if a U.S. person owns 100 percent of foreign corporation (FC1) that owns 60 percent of FC2, 60 percent of the income and assets of FC2 could be attributed to FC1 for purposes of applying the Income and Asset tests, and 40 percent of the income and assets could be allocated to another shareholder of FC2. This alternative generates significant difficulties, however, in the context of attribution of activities. While income and assets can be allocated between owners based on percentage ownership, activities are not measured by a numerical amount and thus are not easily separated between two owners. Additionally, allowing multiple shareholders to use the activities of a single corporation to treat income as non-passive could result in double counting of activities (*i.e.,* attributing the same activity to multiple parent companies). The Treasury Department and the IRS determined that potential double counting of activities could result in less tax revenue being raised than intended by Congress.

Under the third alternative, the activities of a foreign corporation could only be attributed to one shareholder. The proposed regulations adopt this third alternative, specifically by allowing attribution if there is an ownership percentage greater than 50 percent. Thus, where FC1 owns 60 percent of FC2 and another shareholder owns the remaining 40 percent, only FC1 could get credit for the activities of FC2 for purposes of applying the active rents and royalties test. No other shareholder of FC2 would qualify for attribution. The Treasury Department and the IRS project that this proposed regulation would allow entities to satisfy the passive income exception under conditions consistent with the intents and purposes of the statute without requiring potentially substantial reorganization costs.

The Treasury Department and the IRS solicit comments on this proposal and in particular solicit data, evidence, or models that could enhance the rigor of the process by which the ownership percentage might be developed for the final regulations.

c. Look-Through Partnerships

As discussed in Part I.D.3.b of this Special Analyses, for purposes of determining whether a corporation is a PFIC, section 1297(c) treats a foreign corporation (FC1) that owns 25 percent or more of another foreign corporation (FC2) as owning and earning the proportional amount of FC2's income and assets under the so called Look-Through Subsidiary rules. Absent this rule, any distributions from FC2 to FC1 would generally be treated as passive income to FC1 for purposes of the Income Test, and the stock of FC2 would generally be treated as a passive income-producing asset for purposes of the Asset Test. The statute does not provide any specific rule for the treatment of a partnership interest owned by a foreign corporation for purposes of determining whether the foreign corporation is a PFIC.

In order to provide guidance on the treatment of partnership interests owned by foreign corporations for purposes of the Income and Asset Tests, the Treasury Department and the IRS considered three principal alternative thresholds regarding when to treat the income and assets of a partnership as earned or held directly by the foreign corporation. These thresholds are: (1) Apply no threshold; (2) apply a 10 percent threshold; or (3) apply the same 25 percent ownership threshold to partnership interests as is applied to interests in corporations.

Under the first alternative, a proportionate share (based on the foreign corporation's capital or profits interest in the partnership) of the income and assets of the partnership would be considered as earned or held directly by the foreign corporation for purposes of determining whether the foreign corporation is a PFIC, no matter how much of the partnership was owned by the foreign corporation. A similar rule to this applies for purposes of the subpart F regime, and thus there could be benefits in applying consistent rules across the two regimes. However, the purpose of the Income and Asset Tests is to determine whether the foreign corporation has a primarily active or passive business. An ownership interest of less than 10 percent is unlikely to give the foreign corporation significant control over the partnership activities such that it represents an active business interest. Additionally, providing a lower threshold for partnership interests, by contrast to the threshold applicable to corporate interests, creates incentives for foreign corporations to hold minority interests in partnerships rather than corporations, and in some cases, because of the U.S. entity classification rules, the classification of the entity as a partnership may be solely for U.S. tax purposes. This means that the same investment that Congress determined could only be active if it accounted for 25 percent of the value of the entity would now qualify as active even though the nature of the investment has not substantially changed. This latter case is economically undesirable since it can result in differential tax treatment of corporations and partnerships. Moreover, this outcome is less consistent with the intents and purposes of the statute, than the approach taken in the proposed regulations. Under the second alternative, a proportionate amount of the income and assets of the partnership would be considered as earned or held directly by the foreign corporation only if the foreign corporation owned 10 percent or more of the partnership. Existing rules under section 904, which relates to the foreign tax credit limitation, utilize a 10 percent threshold for purposes of determining whether to characterize income and assets of a partnership as passive category income and assets. There could be benefits in applying an existing threshold from the foreign tax credit regime to PFICs since taxpayers would be familiar with this regime. However, similar to the no threshold option, because section 1297(c)(2) requires a 25 percent ownership for corporations to apply for the Look-Through Subsidiary rules, this alternative would still lead to differing treatment of minority interests in subsidiary corporations as opposed to partnerships. Again, this could lead to similarly situated entities being treated

differently and resultant economic distortions.

Under the third alternative, the same 25 percent ownership threshold is applied to partnership interests as is applied to interests in corporations. The Treasury Department and IRS project this will maintain parity between the treatment of minority interests in corporations and partnership interest for purposes of the Income and Asset test, and it gives effect to the 25 percent limitation in section 1297(c)(2). The Treasury Department and the IRS project that this proposed regulation would achieve consistent treatment across entity types as well as the appropriate treatment of minority interests in corporations and partnerships under conditions consistent with the intents and purposes of the statute.

The Treasury Department and the IRS solicit comments on this proposal and in particular solicit data, evidence, or models that could enhance the rigor of the process by which the treatment of partnership interests might be developed for the final regulations.

4. Economic Analysis of PFIC Insurance Exception Rules

Under the statute, the income of a qualifying insurance corporation (QIC) derived in the active conduct of its insurance business is not treated as passive income for purposes of deciding whether the corporation is a PFIC. The test for a QIC under section 1297(f) is based on the ratio of the foreign insurance company's ''applicable insurance liabilities'' to its total assets. The statute limits the applicable insurance liabilities to the smallest of: (1) The insurance liabilities shown on the company's most recent applicable financial statement (''AFS''); (2) the amount of such liabilities required by applicable local law or regulation, and (3) as provided under Treasury regulations.

Under the statute, the AFS is the financial statement used by the foreign corporation for financial reporting purposes that is: (i) Made on the basis of U.S. generally accepted accounting principles (''US GAAP''); (ii) made on the basis of international financial reporting standards (''IFRS''), if there is no statement that is made on the basis of US GAAP; or (iii) the annual financial statement required to be filed with the applicable insurance regulatory body (''local accounting''), if the company does not prepare a statement for financial reporting purposes based on US GAAP or IFRS. Thus, the statute has a preference for financial statements prepared on the basis of US GAAP or IFRS, which are rigorous and widely-respected accounting standards, but will permit a foreign corporation to use a local accounting AFS if it does not do financial reporting based on US GAAP or IFRS.

The statute creates an incentive for foreign insurance companies (FCos) to inflate applicable insurance liabilities in order to qualify as QICs and avoid PFIC status. This strategy (inflating applicable insurance liabilities to qualify as a QIC) could make the FCo more attractive to U.S. investors relative to investing in a domestic company or a company that is a PFIC, which could potentially lead to investment patterns that are inefficient. Although the statutory caps on applicable insurance liabilities provide a check on this behavior, FCos (and thus their U.S. owners) might look for options under their financial reporting rules to increase the amount of insurance liabilities reported on their AFS, or even shift to a different financial reporting standard with more favorable rules. The proposed regulations address this issue in a number of ways.

a. Change in Accounting Rules Used for an AFS

The statute may, in some circumstances, introduce an incentive for an FCo to change its method of preparing its AFS to benefit from certain elements of a local accounting regime, such as a more expansive definition of insurance liability or a method of calculating a larger amount of insurance liabilities, solely for purposes of increasing its applicable insurance liabilities in order to qualify as a QIC. This strategy, by allowing a company to avoid being characterized as a PFIC and thus providing an incentive for U.S. investors to route their investment dollars through foreign corporations that otherwise would fail the QIC test, yields a potential tax advantage to U.S. investors relative to other investments they might make, an outcome that is economically inefficient in light of the intents and purposes of the statute.

To address this issue, the proposed regulations provide a special rule for FCos that change their method of preparing their AFS by ceasing to prepare this statement under either US GAAP or IFRS without a non-Federal tax business purpose for the change. Under the proposed regulations, an FCo must continue to prepare its AFS under either US GAAP or IFRS and if it fails to do so, it will be treated as having no applicable insurance liabilities for purposes of the QIC test.

The Treasury Department and the IRS considered as an alternative not providing regulations to address a change in the method of preparing an AFS. The Treasury Department and the IRS do not have readily available data to allow estimation of the tax advantage or volume of investment that might be drawn to such companies (and away from others) in the absence of regulations to address a change in the method of preparing an AFS. The Treasury Department and the IRS further have not estimated the benefit that arises from the improved integrity of the tax system under the proposed regulations relative to not providing regulations to govern changes in the FCo's AFS method. The Treasury Department and the IRS solicit comments on all aspects of these proposed regulations, including comments on (1) the determination of a ''non-Federal tax business purpose,'' and (2) how an FCo that changes its AFS method should be treated. The Treasury Department and the IRS particularly solicit comments that would provide data, other evidence, or models that would enhance the rigor of evaluating FCos that change their AFS method, for purposes of developing the final regulations.

b. Cap on Applicable Insurance Liabilities

Under the statute, a foreign corporation that does not prepare an AFS using US GAAP or IFRS may use an AFS prepared under local accounting rules to determine the amount of its applicable insurance liabilities. However, it is possible that local accounting rules in some foreign jurisdictions may permit reporting of insurance liabilities in a way that is economically unreasonable and inconsistent with the intent of the QIC rules. For example, US GAAP and IFRS both require discounting of insurance liabilities to determine the present value of an insurance company's liabilities. However, the Treasury Department and the IRS understand that local accounting rules in some foreign jurisdictions might not require discounting or might not adequately discount reserves (or other applicable insurance liabilities). This would make it easier for a foreign corporation that uses local accounting to qualify as a QIC. This could provide an incentive for U.S. investors to route their investment dollars through foreign corporations that otherwise would fail the QIC test, yielding a potential tax advantage to U.S. investors relative to other investments they might make, an outcome that is economically inefficient.

To address this issue, the proposed regulations provide that, if a foreign insurance company prepares its AFS under a local accounting standard that does not require discounting of unpaid losses and other loss reserves on an economically reasonable basis, for purposes of the QIC test, the company's AFS insurance liabilities must be reduced using US GAAP or IFRS discounting principles. Local accounting rules will otherwise continue to apply for determining amounts relevant to the QIC test. Applicable insurance liabilities may not exceed the discounted amount. As a point of reference, the discounting of unpaid losses is required by all domestic insurance companies that are taxed on their underwriting income or that file US GAAP-based financial statements.

The question of whether losses are discounted on an economically reasonable basis is determined under the relevant facts and circumstances. However, in order for losses to be discounted on an economically reasonable basis, discounting must be based on loss and claim payment patterns for either the foreign corporation or insurance companies in similar lines of insurance business. In addition, a discount rate based on these loss and claim payment patterns of at least the risk free rate in U.S. dollars or in a foreign currency in which the foreign corporation conducts some or all of its insurance business must be used. A loss discounting methodology consistent with that used for US GAAP or IFRS purposes will be considered reasonable for this purpose.

The Treasury Department and the IRS considered as alternatives (i) issuing no regulations to govern discounting of insurance losses for purposes of determining whether applicable insurance liabilities exceed the statutory cap, and (ii) capping the amount of applicable insurance liabilities at the amount that would be permitted to an insurance company subject to the insurance reserve calculation rules under Subchapter L of the Code.

Under the first approach, U.S. investors would have an incentive to seek out those corporations that do not file US GAAP or IFRS statements, an outcome that would provide an economically inefficient tax advantage to U.S. investors in those companies.

The second approach would be considerably more burdensome to a foreign corporation because, as a practical matter, it would require foreign corporations to apply complex U.S. tax rules with which they are likely not familiar. An excessive compliance burden on foreign corporations not subject to U.S. taxation would make it less likely that they would do the work necessary to enable their minority U.S. owners to determine if the corporation is a PFIC. Thus, this alternative was rejected because it could unduly inhibit U.S. investors from placing their funds in profitable foreign corporations that are legitimate active insurance companies, an economically desirable activity in light of the intents and purposes of the statute, relative to the proposed regulations.

The Treasury Department and the IRS do not have data available and models sensitive enough to estimate the additional volume of U.S. investment that might be drawn under this alternative approach to QICs that did not discount insurance losses in an economically reasonable manner, relative to the proposed regulations. The Treasury Department and the IRS also do not have data available and models sensitive enough to estimate the benefit that arises from the improved integrity of the tax system arising from the proposed regulations relative to not issuing such regulations. Further, the Treasury Department and the IRS do not have data available to estimate the additional accounting burden that would fall on FCos under the proposed regulations, relative to not issuing such regulations, a cost that would potentially be passed on to U.S. investors.

The Treasury Department and the IRS also do not have data available to estimate the increased loss to minority U.S. shareholders if the second alternative approach (capping liabilities to the amount that would be permitted under Subchapter L) were adopted.

The Treasury Department and the IRS solicit comments on all aspects of these proposed regulations and particularly solicit comments that would provide data, other evidence, or models that would enhance the rigor by which conditions on the cap on applicable insurance liabilities will be developed for the final regulations.

II. Paperwork Reduction Act

The collections of information in these proposed regulations are in proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv), proposed § 1.1297–4(d)(5)(i) and (iii), and proposed § 1.1298–4(d)(2). The information in all of the collections of information provided will be used by the IRS for tax compliance purposes.

A. Collections of Information Under Existing Tax Forms

The collections of information in proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv) are required to be provided by taxpayers that make an election or revoke an election to use an alternative measuring period or adjusted bases to measure assets for purposes of the Asset Test with respect to a foreign corporation. These collections of information are satisfied by filing Form 8621 or attachments thereto. For purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (''PRA''), the reporting burden associated with the collection of information in the Form 8621 will be reflected in the Paperwork Reduction Act Submission associated with that form (OMB control number 1545–1002). If a Form 8621 is not required to be filed, the collections of information under proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv) are satisfied by attaching a statement to the taxpayer's return. For purposes of the Paperwork Reduction Act, the reporting burden associated with these collections of information will be reflected in the Paperwork Reduction Act Submissions associated with Forms 990–PF and 990–T (OMB control number 1545–0047); Form 1040 (OMB control number 1545–0074); Form 1041 (OMB control number 1545–0092); Form 1065 (OMB control number 1545–0123); and Forms 1120, 1120–C, 1120–F, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, and 1120–S (OMB control number 1545–0123).

The collection of information in proposed § 1.1297–4(d)(5)(iii) is required to be provided by taxpayers that make an election under section 1297(f)(2). This collection of information is satisfied by filing Form 8621. For purposes of the Paperwork Reduction Act, the reporting burden associated with the collection of information in the Form 8621 will be reflected in the Paperwork Reduction Act Submission associated with Form 8621 (OMB control number 1545–1002).

The following table displays the number of respondents estimated to be required to report on Form 8621 or, in the case of individual filers, on attachments to Form 1040, as applicable, with respect to the collections of information in these regulations. Due to the absence of available tax data, estimates of respondents required to attach a statement to other types of tax returns, as applicable, are not available.

	Number of respondents (estimated)
Form 1040	35,000–45,000
Form 8621	50,000–55,000

Source: RAAS:CDW.

The numbers of respondents in the table were estimated by the Research, Applied Analytics and Statistics Division (''RAAS'') of the IRS from the Compliance Data Warehouse (''CDW'').

Data for Form 1040 represents estimates of the total number of taxpayers that may attach a statement to their Form 1040 to make or revoke the elections in proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv). The lower bound estimate reflects the CDW-based estimate of unique individual taxpayers filing Form 8621 between 2014 and 2017. The upper bound estimate reflects the CDW-based estimate of unique individual taxpayers that filed Form 8938 between 2016 and 2017 indicating that they owned an interest in a foreign partnership or corporation.[5] Accordingly, the difference between the lower bound and upper bound estimates reflects an estimate of the possible change in the number of respondents as a result of the changes made by the Act and the proposed regulations.

Data for Form 8621 represent estimates of the total number of taxpayers that may be required to file Form 8621. The lower bound estimate reflects the CDW-based estimate of unique taxpayers filing Form 8621 between 2014 and 2017. The upper bound estimate reflects an estimated 10 percent increase in the amount of taxpayers that may file to make or revoke the elections in proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv) and proposed § 1.1297–4(d)(5)(iii). Accordingly, the difference between the lower bound and upper bound estimates reflect an estimate of the possible change in the number of respondents as a result of the changes made by the Act and the proposed regulations.

The current status of the PRA submissions related to the tax forms on which reporting under these regulations will be required is summarized in the following table. The burdens associated with the information collections in the forms are included in aggregated burden estimates for the OMB control numbers 1545–0047 (which represents a total estimated burden time for all forms and schedules for tax-exempt entities of 50.5 million hours and total estimated monetized costs of $3.59 billion ($2018)), 1545–0074 (which represents a total estimated burden time for all forms and schedules for individuals of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), 1545–0092 (which represents a total estimated burden time for all forms and schedules for trusts and estates of 307.8 million hours and total estimated monetized costs of $9.95 billion ($2016)), and 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)). The burden estimates provided in the OMB control numbers in the following table are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include, but not isolate, the estimated burden of only those information collections associated with these proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by these regulations. To guard against over-counting the burden that international tax provisions imposed prior to the Act, the Treasury Department and the IRS urge readers to recognize that these burden estimates have also been cited by regulations (such as the foreign tax credit regulations, 83 FR 63200) that rely on the applicable OMB control numbers in order to collect information from the applicable types of filers.

In 2018, the IRS released and invited comment on drafts of Forms 990–PF (Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation), 990–T (Exempt Organization Business Income Tax Return), 1040 (U.S. Individual Income Tax Return), (U.S. Income Tax Return for Estates and Trusts), 1065 (U.S. Return of Partnership Income), 1120 (U.S. Corporation Income Tax Return), and 8621 (Return by a Shareholder of a Passive Foreign Investment Co. or Qualified Electing Fund). The IRS received comments only regarding Forms 1040, 1065, and 1120 during the comment period. After reviewing all such comments, the IRS made the forms available on December 21, 2018 for use by the public.

No burden estimates specific to the forms affected by the proposed regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. In addition, drafts of IRS forms are posted for public review at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm.* Comments on these forms can be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications.* These forms will not be finalized until after they have been approved by OMB under the PRA.

Form	Type of filer	OMB Nos.	Status
Forms 990–PF, 990–T	Tax exempt entities (NEW Model).	1545–0047	Published 60-day **Federal Register** notice on 8/22/18.
	Link: *https://www.federalregister.gov/documents/2018/08/22/2018-18135/proposed-collection-comment-request-for-forms-990-990-ez-sch-b-br-br-990-ez-sch-l-lp-990-ez-990-pf.*		
Form 1040	Individual (NEW Model)	1545–0074	Limited Scope submission (1040 only) approved on 12/7/18. Full ICR submission for all forms in 3/2019. 60 Day **Federal Register** notice not published yet for full collection.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031.*		

[5] While PFICs are corporations, partnerships are included in our count given taxpayers may own an interest in a foreign corporation through a foreign partnership. More robust reporting on Form 8938 started in 2016 so we do not include prior years in our estimate.

Form	Type of filer	OMB Nos.	Status
Form 1041	Trusts and estates	1545–0092	Submitted to OMB for review on 9/27/18.
Form 1065	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1545-014.*		
	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 10/11/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
Forms 1120, 1120–C, 1120–F, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–S.	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 10/11/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
Form 8621	Share-holders	1545–1001	Approved by OMB on 12/19/2018.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1545-007.*		

B. Collections of Information Generally Not Included on Existing Forms

The collection of information in proposed § 1.1298–4(d)(2) is required for a foreign corporation that relies on the rule in section 1298(b)(7) and proposed § 1.1298–4(b)(1). This collection of information is satisfied by filing a statement attached to the foreign corporation's return. For purposes of the Paperwork Reduction Act, the reporting burden associated with this collection of information will be reflected in the Paperwork Reduction Act Submissions associated with Form 1120–F (OMB control number 1545–0123). The number of affected filers, burden estimates, and Paperwork Reduction Act status for this OMB control number are discussed in connection with the Form 1120 in Part II.A of the Special Analyses.

Alternatively, if a foreign corporation is not required to file a return, the collection of information in proposed § 1.1298–4(d)(2) is satisfied by the foreign corporation's maintaining a statement in its records or including it in its public filings.

The collection of information in proposed § 1.1297–4(d)(5)(i) is required for a foreign corporation for which a taxpayer makes an election under section 1297(f)(2). This collection of information is satisfied by a foreign corporation providing a statement to a shareholder.

The collection of information contained in proposed § 1.1298–4(d)(2) (for foreign corporations that are not required to file Form 1120–F) and proposed § 1.1297–4(d)(5)(i) will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act. Comments on the collections 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 September 9, 2019.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties 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 purchases of services to provide information for the collections discussed in Part II.B of this Special Analyses.

Estimated total annual reporting burden: 200 hours.

Estimated total annual monetized cost burden: $19,000.

Estimated average annual burden hours per respondent: One hour.

Estimated number of respondents: 200.

Estimated annual frequency of responses: Once.

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

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

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (''small entities'').

The statutory provisions in sections 1291 through 1298 (the ''PFIC regime'') generally affect U.S. taxpayers that have ownership interests in foreign corporations that are not controlled foreign corporations (''CFCs''). The reporting burdens in proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv) and proposed § 1.1297–4(d)(5)(iii) generally affect the described U.S. taxpayers that elect to make or revoke certain elections related to the PFIC regime. The reporting burdens in proposed § 1.1297–4(d)(5)(ii) and proposed § 1.1298–4(d)(2) affect only foreign corporations. In general, foreign corporations are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. Data estimating the number of filers for the PRA section indicate that individuals (Form 1040 filers) make up approximately 70 percent of those who report PFIC income while U.S.

businesses of all sizes make up approximately 20 percent of Form 8621 filers. Most of these U.S. businesses are partnerships that do not pay entity level taxes. Accordingly, only small entities that have ownership interests in foreign corporations that are not CFCs and that wish to make or revoke an election pursuant to proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv) and proposed § 1.1297–4(d)(5)(iii) are affected by the proposed regulations.

The data to assess the number of small entities potentially affected by proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv) and proposed § 1.1297–4(d)(5)(iii) are not readily available.

Regardless of the number of small entities potentially affected by the proposed regulations, the Treasury Department and the IRS have concluded that there is no significant economic impact on such entities as a result of the proposed regulations.

Data on U.S. businesses that invest in a PFIC is limited. To get a sense of the magnitude of the taxes currently collected by businesses that invest in PFICs, the ratio of PFIC regime tax to (gross) total income was calculated for 2012 through 2017 for C corporations that filed the Form 8621. Total income was determined by matching each C corporation filing the Form 8621 to its Form 1120. Ordinary QEF income was assumed to be taxed at 37 percent while QEF capital gains and mark-to-market income was assumed to be taxed at the lower 20 percent capital gains rate. The section 1291 tax and interest charge tax were included as reported. Only those corporations where a match was found and that had positive total income were included in the analysis.[6] While the number was small, approximately 150 to 250 C corporations per year, the ratio of the tax to total income was less than 0.01 percent even when $100 million of the additional tax estimated by the Joint Committee on Taxation was included each year. Looking only at the approximately 50 to 150 C corporations per year with $25 million or less of total income resulted in the tax to total income percentage increasing to at most 1.39 percent in 2017.

	($ millions)					
	2012	2013	2014	2015	2016	2017
All C corporations						
Tax	99	108	118	126	110	121
Total Income	6,487,867	4,205,127	14,154,789	19,935,845	16,443,073	16,888,107
Tax to Total Income	0.002%	0.003%	0.001%	0.001%	0.001%	0.001%
C corporations with total income of $25 million or less						
Tax	*	*	*	3	3	5
Total Income	302	463	563	627	562	348
Tax to Total Income	0.039%	0.068%	0.008%	0.516%	0.524%	1.390%

Source: RAAS, CDW. * indicates less than $1 million.

Thus, even if the economic impact of the proposed regulations is interpreted broadly to include the tax liability due under the PFIC regime, which small entities would be required to pay even if the proposed regulations were not issued, the economic impact should not be regarded as significant under the Regulatory Flexibility Act.

Additionally, the economic impact of the proposed regulations when considered alone should be minimal. Any economic impact of the final regulations stems from the collection of information requirements imposed by proposed § 1.1297–1(d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(1)(iv) and proposed § 1.1297–4(d)(5)(iii). The Treasury Department and the IRS have determined that the average burden is 1 hour per response. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $95 per hour. Thus, the annual burden per taxpayer from the collection of information requirement is $95. Furthermore, these requirements apply only if a taxpayer chooses to make an election or rely on a favorable rule.

Accordingly, it is hereby certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public on both the number of entities affected (including whether specific industries are affected) and the economic impact of this proposed rule on small entities.

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

IV. 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.

V. 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.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any

[6] To be conservative, C corporations reporting more than $6 billion of total income are excluded since we suspect these amounts are improperly reported.

comments that are timely submitted to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS specifically request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

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

Drafting Information

The principal drafters of these regulations are Josephine Firehock, Rose E. Jenkins, and Jorge M. Oben of the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS also participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–108214–15) that was published in the **Federal Register** on April 24, 2015, (80 FR 50814) is withdrawn.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries for §§ 1.1297–1, 1.1297–2, 1.1297–4, 1.1298–2, and 1.1298–4 in numerical order to read in part as follows:

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

Section 1.1297–1 also issued under 26 U.S.C. 1298(g).

Section 1.1297–2 also issued under 26 U.S.C. 1298(g).

* * * * *

Section 1.1297–4 also issued under 26 U.S.C. 1297(b)(2)(B) and 1298(g).

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Section 1.1298–2 also issued under 26 U.S.C. 1298(b)(3) and (g).

Section 1.1298–4 also issued under 26 U.S.C. 1298(g).

* * * * *

■ **Par. 2.** Section 1.1291–0 is amended by revising the heading for § 1.1291–1 and adding entries for § 1.1291–1(b)(8)(iv)(A) and (B), (b)(8)(iv)(B)(*1*) and (*2*), (b)(8)(iv)(C), and (b)(8)(iv)(C)(*1*) and (*2*) to read as follows:

§ 1.1291–0 Treatment of shareholders of certain passive foreign investment companies; table of contents.

* * * * *

§ 1.1291–1 Taxation of United States persons that indirectly own PFIC stock.

* * * * *

(b) * * *
(8) * * *
(iv) * * *
(A) Example 1.
(B) Example 2.
(*1*) Facts.
(*2*) Results.
(C) Example 3.
(*1*) Facts.
(*2*) Results.

* * * * *

■ **Par. 3.** Section 1.1291–1 is amended by:

■ 1. Revising the section heading.
■ 2. Revising the second sentence of paragraph (b)(8)(ii)(B).
■ 3. Revising paragraphs (b)(8)(iii)(A), (B), and (C).
■ 4. Designating *Example 1* in paragraph (b)(8)(iv) as paragraph (b)(8)(iv)(A).
■ 5. Adding paragraphs (b)(8)(iv)(B) and (C).
■ 6. Revising paragraph (j)(3).
■ 7. Adding paragraph (j)(4).

The revision and additions read as follows:

§ 1.1291–1 Taxation of United States persons that indirectly own PFIC stock.

* * * * *

(b) * * *
(8) * * *
(ii) * * *

(B) * * * Sections 1297(d) and 1298(b)(7) and § 1.1297–4(b)(2) and (f)(2) do not apply in determining whether a foreign corporation is a PFIC for purposes of this paragraph (b)(8)(ii)(B).

* * * * *

(iii) *Ownership through pass-through entities*—(A) *Partnerships.* Except as otherwise provided in this paragraph (b)(8)(iii)(A), if a foreign or domestic partnership directly or indirectly owns stock, the partners of the partnership are considered to own such stock proportionately in accordance with their ownership interests in the partnership. Solely for purposes of determining whether a person satisfies the ownership threshold described in paragraph (b)(8)(ii)(A) of this section with respect to a foreign corporation that is not a PFIC (determined without applying sections 1297(d) and 1298(b)(7)), the first sentence of this paragraph (b)(8)(iii)(A) applies only in the case of a partner that owns 50 percent or more of the ownership interests in the partnership that directly or indirectly owns the stock of the foreign corporation.

(B) *S Corporations.* Except as otherwise provided in this paragraph (b)(8)(iii)(B), if an S corporation directly or indirectly owns stock, each S corporation shareholder is considered to own such stock proportionately in accordance with the shareholder's ownership interest in the S corporation. Solely for purposes of determining whether a person satisfies the ownership threshold described in paragraph (b)(8)(ii)(A) of this section with respect to a foreign corporation that is not a PFIC (determined without applying sections 1297(d) and 1298(b)(7)), the first sentence of this paragraph (b)(8)(iii)(B) applies only in the case of a S corporation shareholder that owns 50 percent or more of the ownership interests in the S corporation that directly or indirectly owns the stock of the foreign corporation.

(C) *Estates and nongrantor trusts.* Except as otherwise provided in this paragraph (b)(8)(iii)(C), if a foreign or domestic estate or nongrantor trust (other than an employees' trust described in section 401(a) that is exempt from tax under section 501(a)) directly or indirectly owns stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. For purposes of this paragraph (b)(8)(iii)(C), a nongrantor trust is any trust or portion of a trust that is not treated as owned by one or more persons under sections 671 through 679. Solely for purposes of determining whether a person satisfies the ownership threshold described in paragraph (b)(8)(ii)(A) of this section with respect to a foreign corporation that is not a PFIC (determined without applying sections 1297(d) and 1298(b)(7)), the first sentence of this paragraph (b)(8)(iii)(C) applies only in the case of a beneficiary whose proportionate share of the estate or trust that directly or indirectly owns the stock of the foreign corporation is 50 percent or more.

* * * * *

(iv) * * *

(B) *Example 2*—(*1*) *Facts.* A, a United States citizen, owns 50% of the interests in Foreign Partnership, a foreign partnership, the remaining interests in which are owned by an unrelated foreign person. Foreign Partnership owns 100% of the stock of FC1 and 50% of the stock of FC2, the remainder of which is owned by an unrelated foreign person. Both FC1 and FC2 are foreign corporations that are not PFICs (determined without applying sections 1297(d) and 1298(b)(7)). FC1 and FC2 each own 50% of the stock of FC3, a foreign corporation that is a PFIC.

(*2*) *Results.* Under paragraph (b)(8)(iii)(A) of this section, for purposes of determining whether A is a shareholder of FC3, A is considered to own 50% (50%x100%), or 50% or more, of FC1, because A owns 50% or more of Foreign Partnership, but 25% (50%x50%) of FC2. Thus, under paragraph (b)(8) of this section, A is considered to own 25% of the stock of FC3 (50%x100%x50%) indirectly through FC1, and thus is a shareholder of FC3 for purposes of the PFIC provisions, but is not considered to own any stock of FC3 indirectly through FC2.

(C) *Example 3*—(*1*) *Facts.* The facts are the same as in paragraph (b)(8)(iv)(B)(*1*) of this section (the facts in *Example 2*), except that A owns 40% of the interests in Foreign Partnership.

(*2*) *Results.* Under paragraph (b)(8)(iii)(A) of this section, for purposes of determining whether A is a shareholder of FC3, A is not considered to own 50% or more of FC1 or FC2 because it does not own 50% or more of the interests in Foreign Partnership. Thus, under paragraph (b)(8) of this section, A is not considered to own any stock of FC3 indirectly through FC1 or FC2.

* * * * *

(j) * * *

(3) Except as otherwise provided in paragraph (j)(4) of this section, paragraphs (b)(2)(ii) and (v), (b)(7) and (8), and (e)(2) of this section apply to taxable years of shareholders ending on or after December 31, 2013.

(4) Paragraphs (b)(8)(ii)(B), (b)(8)(iii)(A), (B), and (C), and (b)(8)(iv)(B) and (C) of this section apply to taxable years of shareholders beginning on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 4.** Section 1.1297–0 is amended by revising the introductory text and adding entries for §§ 1.1297–1, 1.1297–2, and 1.1297–4 in numerical order to read as follows:

§ 1.1297–0 Table of contents.

This section contains a listing of the headings for §§ 1.1297–1, 1.1297–2, 1.1297–3, 1.1297–4, and 1.1297–5.

§ 1.1297–1 Definition of passive foreign investment company.

(a) Overview.
(b) Dividends included in gross income.
(1) General rule.
(2) Example.
(i) Facts.
(ii) Results.
(c) Passive income.
(1) Foreign personal holding company income.
(i) General rule.
(ii) Determination of gross income or gain on a net basis for certain items of foreign personal holding company income.
(iii) Dividends.
(2) Treatment of share of partnership income.
(i) Look-through partnership.
(ii) Less-than-25-percent-owned partnership.
(3) Exception for certain interest, dividends, rents, and royalties received from a related person.
(i) Allocation of interest.
(ii) Allocation of dividends.
(iii) Allocation of rents and royalties.
(iv) Determination of whether amounts are received or accrued from a related person.
(d) Asset test.
(1) Calculation of average annual value (or adjusted bases).
(i) General rule.
(ii) Measuring period.
(A) General rule.
(B) Election to use alternative measuring period.
(C) Short taxable year.
(iii) Adjusted basis.
(A) [Reserved]
(B) Election.
(iv) Time and manner of elections and revocations.
(A) Elections.
(B) Revocations and subsequent elections.
(v) Change in method of measuring assets.
(A) General rule.
(B) Example.
(*1*) Facts.
(*2*) Results.
(2) Dual-character assets.
(i) General rule.
(ii) Special rule when only part of an asset produces income.
(iii) Special rule for stock that produced income that was excluded from passive income under section 1297(b)(2)(C).
(iv) Example.
(A) Facts.
(B) Results.
(3) Partnership interest.
(i) Look-through partnership.
(ii) Less-than-25-percent-owned partnership.
(4) Dealer property.
(e) Stapled stock.
(f) Definitions.
(1) Look-through partnership.
(2) Measuring date.
(3) Measuring period.
(4) Non-passive asset.
(5) Non-passive income.
(6) Passive asset.
(7) Passive income.
(8) Tested foreign corporation.
(g) Applicability date.
(1) [Reserved]
(2) In general.

§ 1.1297–2 Special rules regarding look-through subsidiaries.

(a) Overview.
(b) General rules.
(1) Tested foreign corporation's ownership of a corporation.
(2) Tested foreign corporation's proportionate share of the assets and income of a look-through subsidiary.
(i) Proportionate share of assets.
(ii) Proportionate share of income.
(A) General rule.
(B) Special rule.
(iii) Coordination of section 1297(c) with section 1298(b)(7).
(3) Examples.
(i) Example 1.
(A) Facts.
(B) Results.
(ii) Example 2.
(A) Facts.
(B) Results.
(iii) Example 3.
(A) Facts.
(B) Results.
(c) Elimination of certain intercompany assets and income.
(1) General rule for asset test.
(2) General rule for income test.
(3) Partnerships.
(4) Examples.
(i) Example 1.
(A) Facts.
(B) Results.
(ii) Example 2.
(A) Facts.
(B) Results.
(iii) Example 3.
(A) Facts.
(B) Results.
(d) Related person determination for purposes of section 1297(b)(2)(C).
(1) General rule.
(2) Example.
(i) Facts.
(ii) Results.
(e) Treatment of activities of certain look-through subsidiaries and look-through partnerships for purposes of section 954(c)(2)(A) active rents and royalties exception.
(1) General rule.
(2) Examples.
(i) Example 1.
(A) Facts.
(B) Results.
(ii) Example 2.
(A) Facts.
(B) Results.
(f) Gain on disposition of stock in a look-through subsidiary.
(1) Amount of gain taken into account.
(2) Characterization of residual gain as passive income.
(3) Examples.
(i) Example 1.
(A) Facts.
(B) Results.
(ii) Example 2.
(A) Facts.
(B) Results.
(iii) Example 3.
(A) Facts.
(B) Results.
(g) Definitions.
(1) Look-through subsidiary.
(2) LTS debt.
(3) LTS stock.
(4) Residual gain.
(5) Unremitted earnings.

(h) Applicability date.

* * * * *

§ 1.1297–4 Qualifying insurance corporation.

(a) Scope.

(b) Qualifying insurance corporation.

(c) 25 percent test.

(d) Election to apply the alternative facts and circumstances test.

(1) In general.

(2) Predominantly engaged in an insurance business.

(i) In general.

(ii) Facts and circumstances.

(iii) Examples of facts indicating a foreign corporation is not predominantly engaged in an insurance business.

(3) Runoff-related circumstances.

(4) Rating-related circumstances.

(5) Election.

(i) In general.

(ii) Information provided by foreign corporation.

(iii) Time and manner for making the election.

(e) Rules limiting the amount of applicable insurance liabilities.

(1) In general.

(2) General limitation on applicable insurance liabilities.

(3) Additional limitation on amount of applicable insurance liabilities for a foreign corporation that does not prepare a financial statement based on a financial reporting standard.

(i) In general.

(ii) Choice of accounting method.

(4) Changes to financial statements prepared.

(f) Definitions.

(1) Applicable financial statement.

(2) Applicable insurance liabilities.

(3) Applicable insurance regulatory body.

(4) Financial reporting standard.

(5) Generally accepted accounting principles or GAAP.

(6) Insurance business.

(7) Total assets.

(g) Applicability date.

§ 1.1297–5 Exception from the definition of passive income for active insurance income.

(a) Scope.

(b) Exclusion from passive income of active insurance income.

(c) Income derived by a QIC in the active conduct of an insurance business.

(1) In general.

(2) Insurance business.

(3) Active conduct of an insurance business.

(i) In general.

(ii) Control test.

(A) Ownership.

(*1*) Ownership by or of a corporation.

(*2*) Ownership of a partnership.

(B) Control and supervision.

(C) Compensation.

(4) Active conduct percentage.

(i) In general.

(ii) Related expense determination.

(iii) Ceding commission.

(d) Income of qualifying domestic insurance corporation.

(e) Exclusion of assets for purposes of the passive asset test under section 1297(a)(2).

(f) Treatment of income and assets of certain look-through subsidiaries and look-through partnerships for purposes of the section 1297(b)(2)(B) exception.

(1) General rule.

(2) Applicable statement for tested foreign corporations applying paragraph (g)(1) of this section.

(g) No double counting.

(h) Definitions.

(1) Insurance services.

(2) Investment activity.

(3) Qualifying insurance corporation or QIC.

(i) Applicability date.

■ **Par. 5.** Sections 1.1297–1 and 1.1297–2 are added to read as follows:

§ 1.1297–1 Definition of passive foreign investment company.

(a) *Overview.* This section provides rules concerning the income test set forth in section 1297(a)(1) and the asset test set forth in section 1297(a)(2). Paragraph (b) of this section provides a rule relating to the definition of gross income for purposes of section 1297. Paragraph (c) of this section sets forth rules relating to the definition of passive income for purposes of section 1297. Paragraph (d) of this section provides rules relating to the asset test of section 1297. See §§ 1.1297–2 and 1.1298–4 for additional rules concerning the treatment of the income and assets of a corporation subject to look-through treatment under section 1297(c). Paragraph (e) of this section sets forth rules relating to the determination of passive foreign investment company (PFIC) status for stapled entities. Paragraph (f) of this section sets forth definitions applicable for this section, and paragraph (g) of this section sets forth the applicability date of this section.

(b) *Dividends included in gross income*—(1) *General rule.* For purposes of section 1297, gross income includes dividends that are excluded from gross income under section 1502 and § 1.1502–13.

(2) *Example*—(i) *Facts.* USP is a domestic corporation that owns 30% of TFC, a foreign corporation. The remaining 70% of TFC is owned by FP, a foreign corporation that is unrelated to USP. TFC owns 25% of the value of USS1, a domestic corporation. USS1 owns 80% of the value of USS2, a domestic corporation. USS1 and USS2 are members of an affiliated group (as defined in section 1504(a)) filing a consolidated return. USS2 distributes a dividend to USS1 that is excluded from USS1's income pursuant to § 1.1502–13 for purposes of determining the U.S. Federal income tax liability of the affiliated group of which USS1 and USS2 are members.

(ii) *Results.* Although the dividend received by USS1 from USS2 is excluded from USS1's income for purposes of determining the U.S. Federal income tax liability of the affiliated group of which USS1 and USS2 are members, pursuant to paragraph (b)(1) of this section, for purposes of section 1297, USS1's gross income includes the USS2 dividend. Accordingly, for purposes of section 1297, TFC's gross income includes 25% of the dividend received by USS1 from USS2 pursuant to section 1297(c) and § 1.1297–2(b)(2)(ii). See section 1298(b)(7) and § 1.1298–4 for rules concerning the characterization of the USS2 dividend.

(c) *Passive income*—(1) *Foreign personal holding company income*—(i) *General rule.* For purposes of section 1297, except as otherwise provided in section 1297(b)(2), this section, and § 1.1297–4, the term passive income means income of a kind that would be foreign personal holding company income as defined under section 954(c)(1). For the purpose of this paragraph (c)(1)—

(A) The exceptions to foreign personal holding company income in section 954(c)(1), 954(c)(2)(A) (relating to active rents and royalties), 954(c)(2)(B) (relating to export financing income), 954(c)(2)(C) (relating to dealers), and 954(h) (relating to entities engaged in the active conduct of a banking, financing, or similar business) are taken into account;

(B) The exceptions in section 954(c)(3) (relating to certain income received from related persons), 954(c)(6) (relating to certain amounts received from related controlled foreign corporations), and 954(i) (relating to entities engaged in the active conduct of an insurance business) are not taken into account;

(C) The rules in section 954(c)(4) (relating to sales of certain partnership interests) and 954(c)(5) (relating to certain commodity hedging transactions) are taken into account; and

(D) An entity is treated as a controlled foreign corporation within the meaning of section 957(a) for purposes of applying an exception to foreign personal holding company income in section 954(c) and (h) and for purposes of identifying whether a person is a related person with respect to such entity within the meaning of section 954(d)(3).

(ii) *Determination of gross income on a net basis for certain items of foreign personal holding company income.* For purposes of section 1297, the excess of gains over losses from property transactions described in section 954(c)(1)(B), the excess of gains over losses from transactions in commodities described in section 954(c)(1)(C), the excess of foreign currency gains over foreign currency losses described in section 954(c)(1)(D), and positive net

income from notional principal contracts described in section 954(c)(1)(F) are taken into account as gross income. The excess of gains over losses and positive net income is calculated separately with respect to the tested foreign corporation and each look-through subsidiary (as defined in § 1.1297–2(g)(1)).

(iii) *Dividends.* For purposes of section 1297, the term dividend includes all amounts treated as dividends for purposes of this chapter, including amounts treated as dividends pursuant to sections 302, 304, 356(a)(2), 964(e), and 1248.

(2) *Treatment of share of partnership income*—(i) *Look-through partnership.* A tested foreign corporation is treated as if it received directly its share of any item of income of a look-through partnership, and the exceptions to passive income in section 1297(b)(2) and the relevant exceptions to foreign personal holding company income in section 954(c) and (h) that are based on whether income is derived in the active conduct of a business or whether a corporation is engaged in the active conduct of a business apply to such income only if the exception would have applied to exclude the income from passive income or foreign personal holding company in the hands of the partnership, determined by taking into account only the activities of the partnership. See § 1.1297–2(e) for rules that allow the activities of certain other entities to be taken into account for purposes of determining the characterization of a tested foreign corporation's share of partnership income. See also § 1.1297–2(d) for rules determining whether a person is a related person for purposes of applying section 1297(b)(2)(C) in the case of income received or accrued by a partnership that is treated as received directly by a tested foreign corporation pursuant to this paragraph (c)(2).

(ii) *Less-than-25-percent-owned partnership.* For purposes of section 1297, a tested foreign corporation's share of any item of income of a partnership in which the corporation owns, directly or indirectly, less than 25 percent of the value is treated as passive income.

(3) *Exception for certain interest, dividends, rents, and royalties received from a related person*—(i) *Allocation of interest.* For purposes of section 1297(b)(2)(C), interest that is received or accrued, as applicable based on the recipient's method of accounting, from a related person (as defined in section 1297(b)) is allocated to income of the related person that is not passive income in proportion to the ratio of the portion of the related person's non-passive income for its taxable year to the total amount of the related person's income for the taxable year that ends with or within the taxable year of the recipient.

(ii) *Allocation of dividends.* For purposes of section 1297(b)(2)(C), dividends that are received or accrued, as applicable based on the recipient's method of accounting, from a related person are allocated to income of the related person that is not passive income based on the relative portion of the related person's current earnings and profits for its taxable year that ends with or within the taxable year of the recipient that are attributable to non-passive income.

(iii) *Allocation of rents and royalties.* For purposes of section 1297(b)(2)(C), rents and royalties that are received or accrued, as applicable based on the recipient's method of accounting, from a related person are allocated to income of the related person that is not passive income to the extent the related person's deduction for the rent or royalty is allocated to non-passive income of the related person under the principles of §§ 1.861–8 through 1.861–14T.

(iv) *Determination of whether amounts are received or accrued from a related person.* For purposes of section 1297(b)(2)(C), the determination of whether interest, dividends, rents, and royalties were received or accrued from a related person is made on the date of the receipt or accrual, as applicable based on the recipient's method of accounting, of the interest, dividend, rent, or royalty.

(d) *Asset test*—(1) *Calculation of average annual value (or adjusted bases)*—(i) *General rule.* For purposes of section 1297, the calculation of the average percentage of assets held by a tested foreign corporation during its taxable year that produce passive income or that are held for the production of passive income is determined based on the average of the fair market values (or the average of the adjusted bases) of the passive assets and total assets held by the foreign corporation on the last day of each measuring period (*measuring date*) of the foreign corporation's taxable year. The average of the fair market values (or the average of the adjusted bases) of the foreign corporation's passive assets or total assets for the taxable year is equal to the sum of the values (or adjusted bases) of the passive assets or total assets, as applicable, on each measuring date of the foreign corporation's taxable year, divided by the number of measuring dates in the taxable year.

(ii) *Measuring period*—(A) *General rule.* Except as otherwise provided in paragraph (d)(1)(ii)(B) of this section, the measuring periods for a tested foreign corporation are the four quarters that make up the foreign corporation's taxable year.

(B) *Election to use alternative measuring period.* The average percentage of assets held by a tested foreign corporation during its taxable year that produce passive income or that are held for the production of passive income may be calculated using a period that is shorter than a quarter (such as a week or month). The same period must be used to measure the assets of the foreign corporation for the first year (including a short taxable year) that this alternative measuring period is used, and for any and all subsequent years, unless a revocation is made. An election to use an alternative measuring period or a revocation of such an election must be made in accordance with the rules of paragraph (d)(1)(iv) of this section.

(C) *Short taxable year.* For purposes of applying section 1297 to a tested foreign corporation that has a taxable year of less than twelve months (short taxable year), the average values (or adjusted bases) are determined based on the measuring dates of the foreign corporation's taxable year (determined as if the taxable year were not a short taxable year), and by treating the last day of the short taxable year as a measuring date.

(iii) *Adjusted basis.* (A) [Reserved]

(B) *Election.* An election under section 1297(e)(2)(B) with respect to an eligible tested foreign corporation or a revocation of such an election must be made in accordance with the rules of paragraph (d)(1)(iv) of this section.

(iv) *Time and manner of elections and revocations*—(A) *Elections.* An owner (as defined in this paragraph (d)(1)(iv)) of a foreign corporation makes an election described in paragraph (d)(1)(ii)(B) or (d)(1)(iii)(B) of this section for a taxable year in the manner provided in the Instructions to Form 8621 (or successor form), if the owner is required to file a Form 8621 (or successor form) with respect to the foreign corporation for the taxable year of the owner in which or with which the taxable year of the foreign corporation for which the election is made ends. If the owner is not required to file Form 8621 (or successor form) with respect to the foreign corporation for the taxable year, the owner makes such an election by filing a written statement providing for the election and attaching the statement to an original or amended Federal income tax return for the

taxable year of the owner in which or with which the taxable year of the foreign corporation for which the election is made ends clearly indicating that such election has been made. An election can be made by an owner only if the owner's taxable year for which the election is made, and all taxable years that are affected by the election, are not closed by the period of limitations on assessments under section 6501. Elections described in in paragraphs (d)(1)(ii)(B) and (d)(1)(iii)(B) of this section are not eligible for relief under § 301.9100–3 of this chapter. For purposes of this paragraph (d)(1)(iv), an owner of a foreign corporation is a United States person that is eligible under § 1.1295–1(d) to make a section 1295 election with respect to the foreign corporation, or would be eligible under § 1.1295–1(d) to make a section 1295 election if the foreign corporation were a PFIC.

(B) *Revocations and subsequent elections.* An election described in paragraph (d)(1)(ii)(B) or (d)(1)(iii)(B) of this section made pursuant to paragraph (d)(1)(iv)(A) of this section is effective for the taxable year of the foreign corporation for which it is made and all subsequent taxable years of such corporation unless revoked by the Commissioner or the owner (as defined in paragraph (d)(1)(iv)(A) of this section) of the foreign corporation. The owner of a foreign corporation may revoke such an election at any time. If an election described in paragraph (d)(1)(ii)(B) or (d)(1)(iii)(B) of this section has been revoked under this paragraph (d)(1)(iv)(B), a new election described in paragraph (d)(1)(ii)(B) or (d)(1)(iii)(B) of this section, as applicable, cannot be made until the sixth taxable year following the year for which the previous such election was revoked, and such subsequent election cannot be revoked until the sixth taxable year following the year for which the subsequent election was made. The owner revokes the election for a taxable year in the manner provided in the Instructions to Form 8621 (or successor form), if the owner is required to file a Form 8621 (or successor form) with respect to the foreign corporation for the taxable year of the owner in which or with which the taxable year of the foreign corporation for which the election is revoked ends, or by filing a written statement providing for the revocation and attaching the statement to an original or amended Federal income tax return for the taxable year of the owner in which or with which the taxable year of the foreign corporation for which the election is revoked ends clearly indicating that such election has been revoked, if the owner is not required to file Form 8621 (or successor form) with respect to the foreign corporation for the taxable year.

(v) *Change in method of measuring assets*—(A) *General rule.* For purposes of section 1297, when stock of a foreign corporation is not publicly traded for an entire taxable year, the assets of the foreign corporation must be measured for all measuring periods of the taxable year on the basis of value if the corporation was publicly traded on the majority of days during the year or section 1297(e)(2) did not otherwise apply to the corporation on the majority of days of the year, and on the basis of adjusted basis otherwise.

(B) *Example.* The following example illustrates the application of this paragraph (d)(1)(v).

(*1*) *Facts.* TFC is a controlled foreign corporation, 90% of the stock of which is wholly owned by USP at the beginning of its taxable year ending December 31 and throughout the year. The remaining 10% of its stock has historically been regularly traded on a national securities exchange that is registered with the Securities and Exchange Commission and continues to be until September 1 of the taxable year, when USP acquires all of it pursuant to a tender offer.

(*2*) *Results.* Because TFC was publicly traded on the majority of days during the year, the assets of the foreign corporation must be measured for all measuring periods of the taxable year on the basis of value.

(2) *Dual-character assets*—(i) *General rule.* Except as otherwise provided in paragraph (d)(2)(ii) of this section, for purposes of section 1297, an asset (or portion of an asset) that produces both passive income and non-passive income during a taxable year (dual-character asset) is treated as two assets for each measuring period in the taxable year, one of which is a passive asset and one of which is a non-passive asset. The value (or adjusted basis) of the dual-character asset is allocated between the passive asset and the non-passive asset in proportion to the relative amounts of passive income and non-passive income produced by the asset (or portion of an asset) during the taxable year. See paragraph (d)(2)(iii) of this section for a special rule concerning stock that has previously produced dividends subject to the exception provided in section 1297(b)(2)(C).

(ii) *Special rule when only part of an asset produces income.* For purposes of section 1297, when only a portion of an asset produces income during a taxable year, the asset is treated as two assets, one of which is characterized as a passive asset or a non-passive asset based on the income that it produces, and one of which is characterized based on the income that it is held to produce. The value (or adjusted basis) of the asset is allocated between the two assets pursuant to the method that most reasonably reflects the uses of the property. In the case of real property, an allocation based on the physical use of the property generally is the most reasonable method.

(iii) *Special rule for stock that produced income that was excluded from passive income under section 1297(b)(2)(C).* Stock with respect to which no dividends are accrued or received, as applicable based on the recipient's method of accounting, during a taxable year but with respect to which dividends accrued or received, as applicable based on the recipient's method of accounting, during a prior taxable year were in whole or in part excluded from passive income under section 1297(b)(2)(C) and paragraph (c)(3)(ii) of this section is treated as two assets, one of which is a passive asset and one of which is a non-passive asset. The value (or adjusted basis) of the asset is allocated between the two assets in proportion to the average percentage of dividends that were characterized as passive income, and the average percentage of dividends characterized as non-passive income, for the previous two taxable years pursuant to section 1297(b)(2)(C) and paragraph (c)(3)(ii) of this section.

(iv) *Example.* The following example illustrates the application of this paragraph (d)(2).

(A) *Facts.* (*1*) USP is a domestic corporation that owns 30% of TFC, a foreign corporation. The remaining 70% of TFC is owned by FP, a foreign corporation that is unrelated to USP. TFC owns 20% of the value of FS1, a foreign corporation, and FP owns the remaining 80% of the value of FS1. FP, TFC, and FS1 are not controlled foreign corporations within the meaning of section 957(a), and each has a calendar year taxable year. For purposes of section 1297(b)(2)(C), FP is a ''related person'' with respect to TFC because FP owns more than 50% of the vote or value of TFC, and FS1 is a ''related person'' with respect to TFC because FP owns more than 50% of the vote or value of both TFC and of FS1.

(*2*) During Year 3, FP has only passive income, and FS1 has passive income of $200x and non-passive income of $800x. FS1 does not pay dividends during Year 3, but did pay $100x of dividends in Year 2 and $300x of dividends in Year 1. In Year 2, FS1 had current earnings and profits of $1000x, attributable to passive income of $100x and non-passive income of $900x; and, in Year 1, FS1 had current earnings and profits of $1000x, attributable to passive income of $500x and non-passive income of $500x. Throughout Year 3, TFC holds an obligation of FS1 with respect to which FS1 pays $100x of interest.

(*3*) In addition to the stock in FS1 and the FS1 obligation, TFC holds an office building, 40% of which is rented to FP throughout Year 3 for $100x per quarter. For the first two quarters of Year 3, 60% of the office building is used by TFC in a trade or business generating non-passive income. For the last two quarters of Year 3, 60% of the office building is rented to an unrelated person for $300x per quarter, and TFC's own officers or staff of employees regularly perform active and substantial management and operational functions while the property is leased.

(B) *Results.* (*1*) Under paragraph (c)(3)(ii) of this section, the dividends paid by FS1 in Year 2 were characterized as 10% passive income and 90% non-passive income. Under paragraph (c)(3)(ii) of this section, the dividends paid by FS1 in Year 1 were characterized as 50% passive income and 50% non-passive income. Accordingly, the average percentage of dividends for the previous two taxable years that were characterized as passive income is 40% (((10% × $100x) + (50% × $300x))/($100 × + $300x)), and the average percentage of dividends characterized as non-passive income is 60% (((90% × $100x) + (50% × $300x))/($100x + $300x)). Thus, under paragraph (d)(2)(iii) of this section, 60% of each share of stock of FS1 is characterized as a non-passive asset and 40% is characterized as a passive asset for each quarter of Year 3 for purposes of applying section 1297(a)(2) to determine whether TFC is a PFIC.

(*2*) Under paragraph (c)(3)(i) of this section, the interest received by TFC from FS1 is characterized as 20% ($200x/($200x+$800x)) passive income and thus 80% non-passive income for purposes of applying section 1297(a)(1) to determine whether TFC is a PFIC. Accordingly, under paragraph (d)(2)(i) of this section, 20% of the obligation of FS1 is characterized as a passive asset and 80% as a non-passive asset for each quarter of Year 3 for purposes of applying section 1297(a)(2) to determine whether TFC is a PFIC.

(*3*) Under paragraph (c)(3)(iii) of this section, the rent received from FP throughout Year 3 is characterized as 100% passive income. Under paragraph (c)(1)(i)(A) of this section and section 954(c)(2)(A), the rent received from the unrelated person during the last two quarters is characterized as 100% non-passive income. Accordingly, under paragraph (d)(2)(i) of this section, 40% (($100x × 4)/(($100x × 4) + ($300x × 2))) of the office building is a passive asset, and 60% (($300x × 2)/(($100x × 4) + ($300x × 2))) is a non-passive asset for purposes of applying section 1297(a)(2) to determine whether TFC is a PFIC. Paragraph (d)(2)(ii) of this section does not apply because both portions of the office building generate income during Year 3.

(3) *Partnership interest*—(i) *Look-through partnership.* A tested foreign corporation is treated as holding directly its proportionate share of the assets held by a look-through partnership. The rules and principles of sections 701 through 761 apply to determine the corporate partner's proportionate share of the value of the partnership assets, as well as the proportionate share of the partnership's adjusted basis in the partnership's assets (taking into account any adjustments to such basis with respect to such partner under section 743). A tested foreign corporation's proportionate share of a partnership asset is treated as producing passive income, or being held to produce passive income, to the extent the asset produced, or was held to produce, passive income in the hands of the partnership under the rules in paragraph (c)(2) of this section.

(ii) *Less-than-25-percent-owned partnership.* For purposes of section 1297, a tested foreign corporation's interest in a partnership in which the corporation owns, directly or indirectly, less than 25 percent of the value is treated as a passive asset.

(4) *Dealer property.* For purposes of section 1297(a)(2), an asset that produces, or would produce upon disposition, income or gain that is, or would be, excluded from passive income pursuant to section 954(c)(2)(C) is treated as a non-passive asset.

(e) *Stapled stock.* For purposes of determining whether stapled entities (as defined in section 269B(c)(2)) are a PFIC, all entities that are stapled entities with respect to each other are treated as a single entity that holds all of the assets of the stapled entities, conducts all of the activities of the stapled entities, and derives all of the income of the stapled entities.

(f) *Definitions.* The following definitions apply for purposes of this section:

(1) *Look-through partnership.* The term *look-through partnership* means, with respect to a tested foreign corporation—

(i) For purposes of section 1297(a)(2), a partnership at least 25 percent of the value of which is owned (as determined under § 1.1297–2(b)(1) as if the partnership were a corporation) by the tested foreign corporation on the measuring date; and

(ii) For purposes of section 1297(a)(1), a partnership for which the value owned (as determined under § 1.1297–2(b)(1) as if the partnership were a corporation) by the tested foreign corporation on the date on which income is received or accrued by the partnership is at least 25 percent of the value of the partnership.

(2) *Measuring date.* The term *measuring date* has the meaning provided in paragraph (d)(1)(i) of this section.

(3) *Measuring period.* The term *measuring period* means a quarter or an alternative measuring period, as determined in accordance with paragraph (d)(1)(ii) of this section.

(4) *Non-passive asset.* The term *non-passive asset* means an asset other than a passive asset.

(5) *Non-passive income.* The term *non-passive income* means income other than passive income.

(6) *Passive asset.* The term *passive asset* means an asset that produces passive income, or which is held for the production of passive income, taking into account the rules in paragraphs (c) and (d) of this section.

(7) *Passive income.* The term *passive income* has the meaning provided in paragraph (c)(1) of this section.

(8) *Tested foreign corporation.* The term *tested foreign corporation* means a foreign corporation the PFIC status of which is being tested under section 1297(a).

(g) *Applicability date.* (1) [Reserved]

(2) *In general.* The rules of this section apply to taxable years of shareholders beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 1.1297–2 Special rules regarding look-through subsidiaries.

(a) *Overview.* This section provides rules concerning the treatment of income and assets of a look-through subsidiary for purposes of determining whether a tested foreign corporation (as defined in § 1.1297–1(f)(8)) is a passive foreign investment company (PFIC) under section 1297(a). Paragraph (b) of this section provides guidance for purposes of section 1297(c) on how to determine a tested foreign corporation's ownership in a corporation and how to determine a tested foreign corporation's proportionate share of a look-through subsidiary's assets and income. Paragraph (c) of this section provides rules that eliminate certain income and assets related to look-through subsidiaries and look-through partnerships (as defined in § 1.1297–1(f)(1)) for purposes of determining a tested foreign corporation's PFIC status. Paragraph (d) of this section sets forth a rule to determine whether certain income received or accrued by look-through subsidiaries and look-through partnerships is received or accrued from a related person for purposes of section 1297(b)(2)(C). Paragraph (e) of this section sets forth rules concerning the attribution of activities from a look-through subsidiary or look-through partnership. Paragraph (f) of this section provides rules for determining the amount of gain from the sale or exchange of stock of a look-through subsidiary that is taken into account

under section 1297(a) and for determining the passive or non-passive character of the gain. Paragraph (g) of this section sets forth definitions applicable for this section, and paragraph (h) of this section sets forth the applicability date of this section.

(b) *General rules*—(1) *Tested foreign corporation's ownership of a corporation.* For purposes of section 1297(c) and the regulations in this section, the principles of section 958(a) and the regulations in this chapter under that section applicable to determining direct or indirect ownership by value apply to determine a tested foreign corporation's percentage ownership (by value) in the stock of another corporation. These principles apply whether an intermediate entity is domestic or foreign.

(2) *Tested foreign corporation's proportionate share of the assets and income of a look-through subsidiary*—(i) *Proportionate share of assets.* For each measuring period (as defined in § 1.1297–1(f)(3)), a tested foreign corporation is treated as if it held its proportionate share of each asset of a look-through subsidiary, determined based on the tested foreign corporation's percentage ownership (by value) (as determined under paragraph (b)(1) of this section)) of the look-through subsidiary on the measuring date (as defined in § 1.1297–1(f)(2)).

(ii) *Proportionate share of income*—(A) *General rule.* A tested foreign corporation is treated as if it received directly its proportionate share of each item of gross income of a corporation for a taxable year if the corporation is a look-through subsidiary with respect to the tested foreign corporation for the taxable year of the tested foreign corporation. In such case, a tested foreign corporation's proportionate share of a look-through subsidiary's gross income is determined based on the corporation's average percentage ownership (by value) of the look-through subsidiary.

(B) *Special rule.* When a corporation is not a look-through subsidiary with respect to a tested foreign corporation for a taxable year of the tested foreign corporation, the tested foreign corporation may be treated as if it received directly its proportionate share of the gross income of the first corporation for each measuring period in the year for which the first corporation is a look-through subsidiary, provided that the gross income of the first corporation for each such measuring period can be established. In such case, a tested foreign corporation's proportionate share of a look-through subsidiary's gross income is determined based on the tested foreign corporation's percentage ownership (by value) (as determined under paragraph (b)(1) of this section) of the look-through subsidiary on the relevant measuring date.

(iii) *Coordination of section 1297(c) with section 1298(b)(7).* A tested foreign corporation is not treated under section 1297(c) and this paragraph (b) as holding its proportionate share of the assets of a domestic corporation, or receiving directly its proportionate share of the gross income of such corporation, if the stock of the corporation is treated as an asset that is not a passive asset (as defined in § 1.1297–1(f)(6)) that produces income that is not passive income (as defined in § 1.1297–1(f)(7)) under section 1298(b)(7) (concerning the treatment of certain foreign corporations owning stock in certain 25 percent owned domestic corporations). See § 1.1298–4 for rules governing the application of section 1298(b)(7).

(3) *Examples.* The following examples illustrate the rules of this paragraph (b). For purposes of the examples in this paragraph (b)(3), for TFC's and LTS's entire taxable years, USP is a domestic corporation; USP owns 30% of TFC; TFC owns the amount of stock of LTS provided in each example; LTS owns 25% of the only class of FS stock; and TFC, LTS, and FS are foreign corporations that are not controlled foreign corporations within the meaning of section 957(a).

(i) *Example 1*—(A) *Facts.* TFC directly owns 80% of the only class of LTS stock for TFC's and LTS's entire taxable year. Pursuant to the principles of section 958(a), TFC owns 80% of the value of LTS, LTS owns 25% of the value of FS, and TFC owns 20% of the value of FS.

(B) *Results.* Under paragraph (b) of this section, in determining whether LTS is a PFIC under section 1297(a), LTS is treated as if it held 25% of each of FS's assets on each of the measuring dates in its taxable year, and received directly 25% of the gross income of FS for the taxable year. In determining whether TFC is a PFIC under section 1297(a), TFC is treated as if it held an 80% interest in each of LTS's assets on each of the measuring dates in its taxable year, and received directly 80% of the income of LTS for the taxable year. However, TFC is treated as if it held a 20% interest in the stock of FS (and not the assets of FS), and received 80% of any dividends paid from FS to LTS (and not any income of FS).

(ii) *Example 2*—(A) *Facts.* TFC directly owns 25% of the only class of LTS stock on the last day of each of the first three quarters of its taxable year, but disposes of its entire interest in LTS during the fourth quarter of its taxable year. Pursuant to the principles of section 958(a), on each of its first three measuring dates, TFC owns 25% of the value of LTS and 6.25% of the value of FS.

(B) *Results.* Under paragraph (b) of this section, in determining whether TFC is a PFIC under section 1297(a), TFC is treated as if it held 25% of LTS's assets on each of the first three measuring dates in its taxable year. However, because it held an average of 18.75% of the value of LTS on the measuring dates in the taxable year, it is not treated as receiving directly the gross income of LTS for the taxable year. If information about the gross income for LTS for each of the first three quarters of its taxable year is available, TFC may be treated as receiving directly 25% of the income of LTS for each of those quarters, because it owned 25% of the value of LTS on the measuring dates with respect to those measuring periods. For each of its first three quarters, TFC is treated as if it held a 6.25% interest in the stock of FS (and not the assets of FS) and may, if information about the income for LTS for each of the first three quarters of its taxable year is available, be treated as receiving 25% of any dividends paid from FS to LTS (and not any income of FS).

(iii) *Example 3*—(A) *Facts.* TFC directly owns 100% of the only class of LTS stock for TFC's and LTS's entire taxable year. Pursuant to the principles of section 958(a), TFC owns 100% of the value of LTS, and TFC owns 25% of the value of FS. TFC earns $5x of rents from renting a building to LTS, a related person with respect to TFC within the meaning of section 954(d)(3). TFC also sells one item of property described in section 954(c)(1)(B)(i) for a gain of $25x and another for a loss of $10x, and no exception from passive income applies to either amount. LTS has $100x of revenues from selling property described in section 1221(a)(1) to unrelated persons, but $150x of cost of goods sold with respect to such property. None of LTS's deduction for the rent paid to TFC is allocated to non-passive income under the principles of §§ 1.861–8 through 1.861–14T. During the taxable year, FS sells one item of property described in section 954(c)(1)(B)(i) for a gain of $50x and another for a loss of $100x, and no exception from passive income applies to either amount.

(B) *Results.* Under paragraph (b) of this section, in determining whether TFC is a PFIC under section 1297(a), TFC is treated as if it held 100% of LTS's assets on each of the measuring dates in its taxable year, and received directly 100% of the gross income of LTS for the taxable year. Accordingly, TFC is treated as receiving directly $0x of gross income from the sale of property by LTS given that LTS revenues are fully offset by costs of goods sold. Furthermore, TFC is treated as if it held a 25% interest in FS's assets, and received directly 25% of the gross income of FS. Pursuant to § 1.1297–1(c)(1)(ii), only the excess of gains over losses from property transactions described in section 954(c)(1)(B) is taken into account as gross income for purposes of section 1297. Accordingly, TFC is treated as receiving directly $0x of gross income from the sales of property by FS. TFC's rental income constitutes passive income pursuant to § 1.1297–1(c) and section 954(c)(1)(A), the exception in section 954(c)(2)(A) does not apply, and, taking into account § 1.1297–1(c)(3)(iii), section 1297(b)(2)(c) does not

apply to characterize any of the rental income as non-passive income. TFC's income from its sales of property constitutes passive income pursuant to § 1.1297–1(c) and section 954(c)(1)(B), although, pursuant to § 1.1297–1(c)(1)(ii), only the excess of gains over losses is taken into account as gross income for purposes of section 1297. As a result, TFC's income, all of which is passive income, equals $20x ($5x + ($25x − $10x)) of gross income.

(c) *Elimination of certain intercompany assets and income*—(1) *General rule for asset test.* For purposes of section 1297, a tested foreign corporation does not take into account the value (or adjusted basis) of stock of a look-through subsidiary (*LTS stock*) or its proportionate share of an obligation of a look-through subsidiary (*LTS debt*) that it owns on a measuring date, including LTS stock and LTS debt that it is treated as owning pursuant to section 1297(c) and paragraph (b)(2) of this section or § 1.1297–1(c)(2). The tested foreign corporation's proportionate share of a LTS debt is the value (or adjusted basis) of the debt multiplied by the tested foreign corporation's percentage ownership (by value) in the debtor look-through subsidiary. Furthermore, for purposes of section 1297, a tested foreign corporation does not take into account the value (or adjusted basis) of stock or obligations of the tested foreign corporation that it is treated as owning pursuant to section 1297(c) and paragraph (b)(2) of this section or § 1.1297–1(c)(2).

(2) *General rule for income test.* For purposes of section 1297, a tested foreign corporation does not take into account dividends derived with respect to LTS stock or its proportionate share of interest derived with respect to LTS debt, including amounts that it is treated as receiving pursuant to section 1297(c) and paragraph (b)(2) of this section or § 1.1297–1(c)(2), other than dividends that are attributable to income that was not treated as received directly by the tested foreign corporation pursuant to paragraph (b)(2) of this section. The tested foreign corporation's proportionate share of interest is the amount of interest multiplied by the tested foreign corporation's percentage ownership (by value) in the debtor look-through subsidiary. Furthermore, for purposes of section 1297, a tested foreign corporation does not take into account dividends or interest with respect to stock or obligations of the tested foreign corporation that it is treated as receiving pursuant to section 1297(c) and paragraph (b)(2) of this section or § 1.1297–1(c)(2).

(3) *Partnerships.* For purposes of section 1297, the principles of paragraphs (c)(1) and (2) of this section apply with respect to ownership interests in and debt of a look-through partnership and with respect to distributions by a look-through partnership, other than distributions that are attributable to income that was not treated as received directly by the tested foreign corporation pursuant to § 1.1297–1(c)(2), and interest derived with respect to the debt of a look-through partnership.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c). For purposes of the examples in this paragraph (c)(4), USP is a domestic corporation; USP owns 30% of TFC; TFC, LTS1, and LTS2 are foreign corporations that are not controlled foreign corporations within the meaning of section 957(a); FPS is a foreign partnership; and TFC, LTS1, and LTS2 measure assets for purposes of section 1297(a)(2) based on value.

(i) *Example 1*—(A) *Facts.* TFC directly owns 40% of the value of LTS1 stock on each of the measuring dates, and thus is treated under paragraph (b)(1) of this section as owning 40% of LTS1 on each of the measuring dates. TFC's assets include a loan to LTS1 with a balance of $1,000x on each of the measuring dates. During the first quarter of the taxable year, TFC received $20x of dividends from LTS1, which were attributable to income of LTS1 treated as received directly by TFC pursuant to paragraph (b)(2) of this section, and $30x of interest on the loan, both of which were paid in cash.

(B) *Results.* Under paragraph (c) of this section, for purposes of applying section 1297(a), TFC's assets do not include the stock of LTS1, and TFC's income does not include the $20x of dividends received from LTS1. Similarly, TFC's assets include only $600x ($1,000x loan − (40% × $1,000x)) of the loan to LTS1, and TFC's income includes only $18x ($30x interest − (40% × $30x)) of the interest from LTS1. However, TFC's assets include the entire $50x of cash ($20x of dividends and $30x of interest) received from LTS1.

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (c)(4)(i)(A) of this section (the facts in *Example 1*), except that TFC also directly owns 30% of the value of LTS2 stock on each of the measuring dates, and thus is treated under paragraph (b)(1) of this section as owning 30% of LTS2, and LTS1's assets also include a loan to LTS2 with a balance of $200x on each of the measuring dates. During the first quarter of the taxable year, LTS1 received $5x of interest on the loan, which was paid in cash.

(B) *Results.* The results are the same as in paragraph (c)(4)(i)(B) of this section (the results in *Example 1*), except that TFC's assets also do not include the stock of LTS2. Similarly, although TFC would be treated under paragraph (b)(2) of this section as owning $80x (40% × $200x) of the LTS1 loan to LTS2, under paragraph (c) of this section, TFC does not take into account $60x (30% × $200x)) of the loan to LTS2, and accordingly, its assets include only $20x ($80 − $60x) of the loan to LTS1. Furthermore, although TFC would be treated under paragraph (b)(2) of this section as receiving $2x (40% × $5x) of the interest received by LTS1 from LTS2, under paragraph (c) of this section, TFC does not take into account $1.5x (30% × $5x) of the interest received by LTS1, and accordingly, its income includes only $0.5x ($2x − $1.5x) of the interest from LTS2. Furthermore, TFC's assets include $2x (40% × $5x) of LTS1's cash received from LTS2.

(iii) *Example 3*—(A) *Facts.* TFC directly owns 80% of the value of LTS1 stock on each of the measuring dates, and thus is treated under paragraph (b)(1) of this section as owning 80% of LTS1 on each of the measuring dates. TFC also directly owns 50% of the value in FPS on each of the measuring dates. LTS1's assets include the remaining 50% of the value in FPS and a loan to FPS with a balance of $500x on each of the measuring dates. FPS's assets include a loan to TFC with a balance of $1000x on each of the measuring dates. During the first measuring period of the taxable year, FPS received $30x of interest from TFC, and LTS1 received $15x of interest from FPS, both of which were paid in cash. During the last measuring period of the taxable year, FPS received $80x of income from an unrelated person in cash and distributed $60x of such income in cash to TFC and LTS1 in proportion to their interests in FPS.

(B) *Results.* Under paragraph (c) of this section, for purposes of applying section 1297(a), TFC's assets do not include the stock of LTS1, the interests in FPS owned by TFC directly and through LTS1, any of the loan by FPS to TFC, or any of the loan by LTS1 to FPS. Similarly, TFC's income does not include any of the $30x of interest received by FPS from TFC, any of the $15x of interest received by LTS1 from FPS, or any of the $60x of distributions received by TFC and LTS1 from FPS. However, on each of the measuring dates, TFC's assets include $27x ((50% × $30x) + (80% × 50% × $30x)) of the $30 of cash received by FPS from TFC and $12x (80% × $15x) of the $15 of cash received by LTS1 from FPS. Moreover, on the last measuring date of the taxable year, TFC's assets include $18x ((50% × $20x) + (80% × 50% × $20x)) of the $20x ($80x − $60x) of cash received by FPS from the unrelated person and retained and $54 ((50% × $60x) + (80% × 50% × $60x)) of the $60x cash received by FPS from the unrelated person and distributed. Furthermore, TFC's income includes $72x ((50% × $80x) + (80% × 50% × $80x)) of the $80x of income received by FPS from an unrelated person.

(d) *Related person determination for purposes of section 1297(b)(2)(C)*—(1) *General rule.* For purposes of section 1297(b)(2)(C), interest, dividends, rents, or royalties received or accrued by a look-through subsidiary (and treated as received directly by a tested foreign corporation pursuant to section 1297(c) and paragraph (b)(2) of this section) are

considered received or accrued from a related person only if the payor of the interest, dividend, rent or royalty is a related person (within the meaning of section 954(d)(3)) with respect to the look-through subsidiary, taking into account § 1.1297–1(c)(1)(i)(D). Similarly, for purposes of 1297(b)(2)(C), interest, dividends, rents, or royalties received or accrued by a look-through partnership (and treated as received directly by a tested foreign corporation pursuant to § 1.1297–1(c)(2)) are considered received or accrued from a related person only if the payor of the interest, dividend, rent or royalty is a related person (within the meaning of section 954(d)(3)) with respect to the look-through partnership, taking into account § 1.1297–1(c)(1)(i)(D).

(2) *Example.* The following example illustrates the rule of this paragraph (d).

(i) *Facts.* USP is a domestic corporation that owns 30% of TFC. TFC directly owns 30% of the value of FS1 stock, and thus under paragraph (b) of this section is treated as owning 30% of FS1. FS1 directly owns 60% of the vote of FS2 stock and 20% of the value of FS2 stock. The remaining vote and value of FS2 stock are owned by an unrelated foreign person. TFC, FS1, and FS2 are foreign corporations that are not controlled foreign corporations within the meaning of section 957(a). FS1 receives a $100x dividend from FS2.

(ii) *Results.* Pursuant to section 1297(c) and paragraph (b)(2) of this section, TFC is treated as receiving directly $30x of the dividend income received by FS1. FS2 is a ''related person'' with respect to FS1 for purposes of section 1297(b)(2)(C) because FS1 owns more than 50% of the vote of FS2. FS2 is not a ''related person'' with respect to TFC for purposes of section 1297(b)(2)(C). Under paragraph (d) of this section, for purposes of determining whether the dividend income received by FS1 is subject to the exception in section 1297(b)(2)(C) for purposes of testing the PFIC status of TFC, the dividend is treated as received from a related person because FS1 and FS2 are related persons within the meaning of section 1297(b)(2)(C). Therefore, to the extent the dividend income received by FS1 would be properly allocable to income of FS2 that is not passive income, the dividend income that TFC is treated as receiving under section 1297(c) is treated as non-passive income (as defined in § 1.1297–1(f)(5)).

(e) *Treatment of activities of certain look-through subsidiaries and look-through partnerships for purposes of section 954(c)(2)(A) active rents and royalties exception*—(1) *General rule.* An item of rent or royalty income received by a tested foreign corporation (including an amount treated as received or accrued pursuant to section 1297(c) and paragraph (b)(2) of this section or pursuant to § 1.1297–1(c)(2)) that would be passive income in the hands of the entity that actually received or accrued it is not passive income pursuant to § 1.1297–1(c)(1)(i)(A) and section 954(c)(2)(A) if the item would be excluded from foreign personal holding company income under section 954(c)(2)(A) and § 1.954–2(b)(6), (c), and (d), determined by taking into account the activities performed by the officers and staff of employees of the tested foreign corporation as well as activities performed by the officers and staff of employees of any look-through subsidiary in which the tested foreign corporation owns more than 50 percent by value (as determined under paragraph (b)(1) of this section) and any look-through partnership in which the tested foreign corporation owns, directly or indirectly, more than 50 percent.

(2) *Examples.* The following examples illustrate the rule of this paragraph (e).

(i) *Example 1*—(A) *Facts.* USP is a domestic corporation that directly owns 20% of the outstanding stock of FS1. The remaining 80% of the outstanding stock of FS1 is directly owned by a foreign person that is not related to USP. FS1 directly owns 100% of the value of the outstanding stock of FS2 and directly owns 80% of the value of the outstanding stock of FS3. The remaining 20% of the outstanding stock of the value of the FS3 is directly owned by a foreign person that is not related to USP. FS2 directly owns 80% of the value of the outstanding stock of FS4. The remaining 20% of the value of the outstanding stock of FS4 is directly owned by a foreign person that is not related to USP. FS1, FS2, FS3 and FS4 are all organized in Country A and are not controlled foreign corporations within the meaning of section 957(a). FS4 owns real property that is leased to a person that is not a related person, but does not perform any activities. FS1 and FS2 also do not perform any activities. Officers and employees of FS3 in Country A perform activities with respect to the real property of FS4 that, if performed by officers or employees of FS4, would allow the rental income in the hands of FS4 to qualify for the exception from foreign personal holding company income in section 954(c)(2)(A) and § 1.954–2(b)(6) and (c)(1)(ii).

(B) *Results.* Under this paragraph (e), for purposes of determining whether the rental income treated under section 1297(c) and paragraph (b)(2) of this section as received directly by FS1 with respect to the real property owned and rented by FS4 is passive income for purposes of section 1297, the activities of FS3 are taken into account as a result of FS1's ownership of 80% by value (as determined under paragraph (b)(1) of this section) of FS3. Thus, the exception in section 954(c)(2)(A) would apply, and the rental income treated as received by FS1 would be treated as non-passive income for purposes of determining whether FS1 is a PFIC. Because FS2 and FS4 do not own more than 50 percent by value (as determined under paragraph (b)(1) of this section) of FS3, the activities of FS3 are not taken into account for purposes of determining whether the rental income treated as received by FS2 and actually received by FS4 with respect to the real property owned and rented by FS4 is passive income for purposes of section 1297. Thus, the exception in section 954(c)(2)(A) would not apply, and the rental income treated as received by FS2 and actually received by FS4 would be treated as passive income for purposes of determining whether FS2 and FS4 are PFICs.

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (e)(2)(i)(A) of this section (the facts in *Example 1*), except that FS2 also owns real property that is leased to a person that is not a related person, and the officers and employees of FS2 in Country A engage in activities that would allow rental income received by FS2 with respect to its real property to qualify for the exception in section 954(c)(2)(A) and § 1.954–2(b)(6) and (c)(1)(iv), relying on the rule in § 1.954–2(c)(2)(ii) that provides that an organization is substantial in relation to rents if active leasing expenses equal or exceed 25 percent of adjusted leasing profit. However, the active leasing expenses of FS1 are less than 25 percent of its adjusted leasing profit, which includes the rental income of FS4 treated as received directly by FS1 as well as the rental income of FS2 treated as received directly by FS1.

(B) *Results.* Because FS2's rental income constitutes non-passive income as a result of the application of § 1.1297–1(c)(1)(i)(A) and section 954(c)(2)(A), it is treated as non-passive income treated as received by FS1 for purposes of determining whether FS1 is a PFIC, and accordingly, it is not necessary to rely on paragraph (e) of this section.

(f) *Gain on disposition of stock in a look-through subsidiary*—(1) *Amount of gain taken into account.* The amount of gain derived from a tested foreign corporation's direct disposition of stock of a look-through subsidiary, or an indirect disposition resulting from the disposition of stock of a look-through subsidiary by other look-through subsidiaries or by look-through partnerships, that is taken into account by the tested foreign corporation for purposes of section 1297(a)(1), section 1298(b)(3), and § 1.1298–2 is the residual gain. The residual gain equals the total gain recognized by the tested foreign corporation (including gain treated as recognized by the tested foreign corporation pursuant to section 1297(c) and paragraph (b)(2) of this section or § 1.1297–1(c)(2)) from the disposition of the stock of the look-through subsidiary reduced (but not below zero) by unremitted earnings. *Unremitted earnings* are the excess (if any) of the aggregate income (if any) taken into account by the tested foreign corporation pursuant to section 1297(c) and paragraph (b)(2) of this section or § 1.1297–1(c)(2) with respect to the stock of the disposed-of look-through subsidiary (including with respect to any other look-through subsidiary, to

the extent it is owned by the tested foreign corporation indirectly through the disposed-of look-through subsidiary) over the aggregate dividends (if any) received by the tested foreign corporation from the disposed-of look-through subsidiary with respect to the stock. For purposes of this paragraph (f)(1), the amount of gain derived from the disposition of stock of a look-through subsidiary and income of and dividends received from the look-through subsidiary is determined on a share-by-share basis.

(2) *Characterization of residual gain as passive income.* For purposes of section 1297(a)(1), section 1298(b)(3), and § 1.1298–2, the residual gain is characterized as passive income or non-passive income based on the relative amounts of passive assets and non-passive assets (as defined in § 1.1297–1(f)(6) and (4), respectively) of the disposed-of look-through subsidiary (and any other look-through subsidiary to the extent owned indirectly through the look-through subsidiary) treated as held by the tested foreign corporation on the date of the disposition of the look-through subsidiary. For the purpose of this paragraph (f)(2), the relative amounts of passive assets and non-passive assets held by the look-through subsidiary are measured under the same method (value or adjusted bases) used to measure the assets of the tested foreign corporation for purposes of section 1297(a)(2).

(3) *Examples.* The following examples illustrate the rules of this paragraph (f). For purposes of the examples in this paragraph (f)(3), USP is a domestic corporation, TFC and FS are foreign corporations that are not controlled foreign corporations within the meaning of section 957(a), and USP, TFC, and FS each has outstanding a single class of stock with 100 shares outstanding and a calendar taxable year.

(i) *Example 1*—(A) *Facts.* USP owned 30% of the outstanding stock of TFC throughout Years 1, 2, 3, and 4. In Year 1, TFC purchased 5 shares of FS stock, representing 5% of the stock of FS, from an unrelated person. On the first day of Year 3, TFC purchased 20 shares of FS stock, representing 20% of the stock of FS, from an unrelated person. TFC owned 25% of the outstanding stock of FS throughout Years 3 and 4. Prior to Year 3, TFC did not include any amount in income with respect to FS under section 1297(c)(2). During Years 3 and 4, for purposes of section 1297(a)(1), TFC included in income, in the aggregate, $40x of income with respect to FS under section 1297(c) and paragraph (b)(2) of this section. TFC did not receive dividends from FS during Year 1, 2, 3, or 4. For purposes of section 1297(a)(2), TFC measures its assets based on their fair market value as provided under section 1297(e). On the last day of Year 4, TFC recognizes a loss with respect to the sale of 5 shares of FS stock, and a $110x gain with respect to the sale of 20 shares of FS stock. On the date of the sale, FS owns non-passive assets with an aggregate fair market value of $150x, and passive assets with an aggregate fair market value of $50x.

(B) *Results.* For purposes of applying section 1297(a)(1) to TFC for Year 4, TFC must take into account $78x of residual gain, as provided by paragraph (f)(1) of this section, which equals the amount by which the $110x gain recognized on the sale of 20 shares exceeds the aggregate pro rata share of $32x income ($40x × 20/25) taken into account by TFC with respect to the 20 shares in FS under section 1297(c) and paragraph (b)(2) of this section during Years 3 and 4. There is zero residual gain on the sale of 5 shares of FS stock because they were sold at a loss. Under paragraph (f)(2) of this section, $58.50x of the residual gain is non-passive income ($78x × ($150x/$200x)) and $19.50x is passive income ($78x × ($50x/$200x)).

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (f)(3)(i)(A) of this section (the facts in *Example 1*), except that in Year 1, TFC purchased 15 shares of FS stock, representing 15% of the stock of FS, from an unrelated person, and on the first day of Year 3, TFC purchased an additional 15 shares of FS stock, representing 15% of the stock of FS, from an unrelated person, and on the last day of Year 4, TFC recognizes gain of $10x of the sale of 15 shares of FS stock purchased in Year 1, and gain of $60x on the sale of the other 15 shares of FS stock purchased in Year 3.

(B) *Results.* For purposes of applying section 1297(a)(1) to TFC for Year 4, TFC must take into account $40x of residual gain, as provided by paragraph (f)(1) of this section, which equals the amount by which the $60x gain recognized on the sale of the 15 shares acquired in Year 3 exceeds the pro rata aggregate share of $20x income ($40x × 15/30) taken into account by TFC with respect to the 15 shares in FS under section 1297(c)(2) during Years 3 and 4. There is zero residual gain on the sale of the other 15 shares of FS stock because the $10x of gain does not exceed the aggregate pro rata share of $20x income taken into account by TFC with respect to the other 15 shares of FS under section 1297(c) and paragraph (b)(2) of this section. Under paragraph (f)(2) of this section, $30x of the residual gain is non-passive income ($40x × ($150x/$200x)) and $10x is passive income ($40x × ($50x/$200x)).

(iii) *Example 3*—(i) *Facts.* The facts are the same as in paragraph (f)(3)(ii)(A) of this section (the facts in *Example 2*), except that TFC received, in the aggregate, $20x of dividends from FS during Year 2.

(B) *Results.* The results are the same as in paragraph (f)(3)(ii)(B) of this section (the results in *Example 2*), except that the residual gain is $50x, which equals the $40x of residual gain attributable to the 15 shares acquired in Year 3, as computed in paragraph (f)(3)(ii)(B) of this section (the results in *Example 2*), plus the $10x of gain recognized on the 15 shares acquired in Year 1 reduced by $0x, the amount by which the pro rata share of aggregate income ($20x) taken into account by TFC with respect to those 15 shares of FS stock under section 1297(c) and paragraph (b)(2) of this section exceeds the aggregate pro rata amount of dividends with respect to those 15 shares of FS stock ($20x) received by TFC from FS. Under paragraph (f)(2) of this section, $35x of the residual gain is non-passive income ($50x × ($150x/$200x)) and $15x is passive income ($50x × ($50x/$200x)).

(g) *Definitions.* The following definitions apply for purposes of this section:

(1) *Look-through subsidiary.* The term *look-through subsidiary* means, with respect to a tested foreign corporation—

(i) For purposes of section 1297(a)(2) and paragraph (b)(2)(i) of this section, a corporation at least 25 percent of the value of the stock of which is owned (as determined under paragraph (b)(1) of this section) by the tested foreign corporation on the measuring date;

(ii) For purposes of section 1297(a)(1)—

(A) For the taxable year, a corporation with respect to which the average percentage ownership (which is equal to the percentage ownership (by value) (as determined under paragraph (b)(1) of this section)) on each measuring date during the taxable year, divided by the number of measuring dates in the year) by the tested foreign corporation during the tested foreign corporation's taxable year is at least 25 percent; or

(B) For a measuring period, a corporation at least 25 percent of the value of the stock of which is owned (as determined under paragraph (b)(1) of this section) by the tested foreign corporation on the measuring date, provided all items of gross income of the corporation for each of the measuring periods in the taxable year for which the tested foreign corporation owns at least 25 percent of the value (as determined under paragraph (b)(1) of this section) on the relevant measuring dates can be established; and

(iii) For purposes of paragraph (f) of this section and § 1.1298–2, a corporation at least 25 percent of the value of the stock of which is owned (as determined under paragraph (b)(1) of this section) by the tested foreign corporation immediately before the disposition of stock of the corporation.

(2) *LTS debt.* The term *LTS debt* has the meaning provided in paragraph (c)(1) of this section.

(3) *LTS stock.* The term *LTS stock* has the meaning provided in paragraph (c)(1) of this section.

(4) *Residual gain.* The term *residual gain* has the meaning provided in paragraph (f)(1) of this section.

(5) *Unremitted earnings.* The term *unremitted earnings* has the meaning

provided in paragraph (f)(1) of this section.

(h) *Applicability date.* The rules of this section apply to taxable years of shareholders beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 6.** Sections 1.1297–4 and 1.1297–5 are added to read as follows:

§ 1.1297–4 Qualifying insurance corporation.

(a) *Scope.* This section provides rules for determining whether a foreign corporation is a qualifying insurance corporation for purposes of section 1297(f). Paragraph (b) of this section provides the general rule for determining whether a foreign corporation is a qualifying insurance corporation. Paragraph (c) of this section describes the 25 percent test in section 1297(f)(1)(B). Paragraph (d) of this section contains rules for applying the alternative facts and circumstances test in section 1297(f)(2). Paragraph (e) of this section contains rules limiting the amount of applicable insurance liabilities for purposes of the 25 percent test described in paragraph (c) of this section and the alternative facts and circumstances test described in paragraph (d) of this section. Paragraph (f) of this section provides definitions that apply for purposes of this section. Paragraph (g) of this section provides the applicability date of this section.

(b) *Qualifying insurance corporation.* For purposes of section 1297(b)(2)(B), this section and § 1.1297–5, a qualifying insurance corporation (QIC) is a foreign corporation that—

(1) Is an insurance company as defined in section 816(a) that would be subject to tax under subchapter L if the corporation were a domestic corporation; and

(2) Satisfies—

(i) The 25 percent test described in paragraph (c) of this section; or

(ii) The requirements for an election to apply the alternative facts and circumstances test as described in paragraph (d) of this section and a United States person has made an election as described in paragraph (d)(5) of this section.

(c) *25 percent test.* A foreign corporation satisfies the 25 percent test if the amount of its applicable insurance liabilities exceeds 25 percent of its total assets. This determination is made on the basis of the liabilities and assets reported on the corporation's applicable financial statement for the last year ending with or within the taxable year.

(d) *Election to apply the alternative facts and circumstances test*—(1) *In general.* A United States person that owns stock in a foreign corporation that fails to qualify as a QIC solely because of the 25 percent test may elect to treat the stock of the corporation as stock of a QIC if the foreign corporation—

(i) Is predominantly engaged in an insurance business as described in paragraph (d)(2) of this section;

(ii) Failed to satisfy the 25 percent test solely due to runoff-related circumstances, as described in paragraph (d)(3) of this section, or rating-related circumstances, as described in paragraph (d)(4) of this section; and

(iii) Reports an amount of applicable insurance liabilities that is at least 10 percent of the amount of the total assets on its applicable financial statement for the last annual reporting period ending with or within the corporation's taxable year (the *10 percent test*).

(2) *Predominantly engaged in an insurance business*—(i) *In general.* A foreign corporation is predominantly engaged in an insurance business in any taxable year during which more than half of the business of the foreign corporation is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. This determination is made based on whether the particular facts and circumstances of the foreign corporation are comparable to commercial insurance arrangements providing similar lines of coverage to unrelated parties in arm's length transactions. The fact that a foreign corporation has been holding itself out as an insurer for a long period is not determinative of whether the foreign corporation is predominantly engaged in an insurance business.

(ii) *Facts and circumstances.* Facts and circumstances to consider in determining whether a foreign corporation is predominantly engaged in an insurance business include—

(A) Claims payment patterns for the current year and prior years;

(B) The foreign corporation's loss exposure as calculated for a regulator or for a credit rating agency, or, if those are not calculated, for internal pricing purposes;

(C) The percentage of gross receipts constituting premiums for the current and prior years; and

(D) The number and size of insurance contracts issued or taken on through reinsurance by the foreign corporation.

(iii) *Examples of facts indicating a foreign corporation is not predominantly engaged in an insurance business.* Examples of facts that may indicate a foreign corporation is not predominantly engaged in an insurance business include—

(A) A small overall number of insured risks with low likelihood but large potential costs;

(B) Employees and agents of the foreign corporation focused to a greater degree on investment activities than underwriting activities; and

(C) Low loss exposure.

(3) *Runoff-related circumstances.* During the annual reporting period covered by the applicable financial statement, a foreign corporation fails to satisfy the 25 percent test solely due to runoff-related circumstances only if the corporation—

(i) Was actively engaged in the process of terminating its pre-existing, active insurance or reinsurance underwriting operations pursuant to an adopted plan of liquidation or a termination of operations under the supervision of its applicable insurance regulatory body;

(ii) Did not issue or enter into any insurance, annuity, or reinsurance contract, other than a contractually obligated renewal of an existing insurance contract or a reinsurance contract pursuant to and consistent with the plan of liquidation or a termination of operations; and

(iii) Made payments during the annual reporting period covered by the applicable financial statement to satisfy the claims under insurance, annuity, or reinsurance contracts, and the payments cause the corporation to fail to satisfy the 25 percent test.

(4) *Rating-related circumstances.* A foreign corporation fails to satisfy the 25 percent test solely due to rating-related circumstances only if—

(i) The 25 percent test is not met as a result of the specific requirements with respect to capital and surplus that a generally recognized credit rating agency imposes; and

(ii) The foreign corporation complies with the requirements of the credit rating agency in order to maintain the minimum credit rating required for the foreign corporation to be classified as secure to write new insurance business for the current year.

(5) *Election*—(i) *In general.* A United States person may make the election under section 1297(f)(2) if the foreign corporation directly provides the United States person a statement, signed by a responsible officer of the foreign corporation or an authorized representative of the foreign corporation, or the foreign corporation makes a publicly available statement (such as in a public filing, disclosure statement, or other notice provided to United States persons that are

shareholders of the foreign corporation) that it satisfied the requirements of section 1297(f)(2) and paragraph (d)(1) of this section during the foreign corporation's the taxable year. However, a United States person may not rely upon any statement by the foreign corporation to make the election under section 1297(f)(2) if the shareholder knows or has reason to know that the statement made by the foreign corporation was incorrect.

(ii) *Information provided by foreign corporation.* In addition to a statement that the foreign corporation satisfied the requirements of section 1297(f)(2) and paragraph (d)(1) of this section, the statement described in paragraph (d)(5)(i) of this section also must include:

(A) The ratio of applicable insurance liabilities to total assets for the taxable year; and

(B) A statement indicating whether the failure to satisfy the 25 percent test described in paragraph (c) of this section was the result of runoff-related or rating-related circumstances, along with a brief description of those circumstances.

(iii) *Time and manner for making the election.* The election described in paragraph (d)(1) of this section must be made by a United States person who owns stock in the foreign corporation (directly or indirectly) by completing the appropriate part of Form 8621 (or successor form) for each year in which the election applies. A United States person must attach the Form 8621 (or successor form) to its Federal income tax return for the taxable year to which the election relates on or before the due date (including extensions) for the filing of the return. The United States person must attach to the Form 8621 the statement provided by the foreign corporation described in paragraph (d)(1) of this section. If the foreign corporation makes a publicly available statement instead of providing a statement to the United States person, the United States person must attach a statement to the Form 8621 incorporating the information provided in the publicly available statement.

(e) *Rules limiting the amount of applicable insurance liabilities*—(1) *In general.* For purposes of determining whether a foreign corporation satisfies the 25 percent test described in paragraph (c) of this section or the 10 percent test described in paragraph (d)(1)(iii) of this section, the rules of this paragraph (e) apply to limit the amount of applicable insurance liabilities of the foreign corporation.

(2) *General limitation on applicable insurance liabilities.* The amount of applicable insurance liabilities may not exceed the lesser of:

(i) The amount of applicable insurance liabilities shown on the most recent applicable financial statement;

(ii) The minimum amount of applicable insurance liabilities required by the applicable law or regulation of the jurisdiction of the applicable regulatory body; or

(iii) For a foreign corporation that prepares a financial statement on the basis of a financial reporting standard for a purpose other than financial reporting, the amount of the applicable insurance liabilities on that financial statement.

(3) *Additional limitation on amount of applicable insurance liabilities for a foreign corporation that does not prepare a financial statement based on a financial reporting standard*—(i) *In general.* If a foreign corporation has an applicable financial statement described in paragraph (f)(1)(iii) of this section and the applicable financial statement does not discount incurred but unpaid losses and loss reserves on an economically reasonable basis, the amount of applicable insurance liabilities may not exceed the amount of applicable insurance liabilities on the applicable financial statement reduced in accordance with the discounting principles that would have applied under a financial reporting standard, if the foreign corporation had prepared a financial statement under a financial reporting standard for the last year ending with or within the taxable year.

(ii) *Choice of accounting method.* The foreign corporation may choose whether to apply generally accepted accounting principles or international financial reporting principles to calculate the discounted amount of its applicable insurance liabilities for purposes of paragraph (e)(3)(i)(B) of this section. If the foreign corporation does not choose between these financial reporting standards, generally accepted accounting principles will apply.

(4) *Changes to financial statements prepared.* Any foreign corporation that has prepared a financial statement on the basis of a financial reporting standard for an annual reporting period that included December 22, 2017, or any subsequent annual reporting period, must continue to prepare its applicable financial statement using a financial reporting standard unless the foreign corporation has a non-Federal tax business purpose for using the annual statement described in paragraph (f)(1)(iii) of this section. If a foreign corporation has no non-Federal tax business purpose for using the annual statement described in paragraph (f)(1)(iii) of this section and does not continue to prepare an applicable financial statement using a financial reporting standard, its applicable insurance liabilities are treated as $0 for purposes of this section.

(f) *Definitions.* For purposes of this section, the following terms have the meanings described in this paragraph (f).

(1) *Applicable financial statement.* The term *applicable financial statement* means the financial statement that is used by the foreign corporation for financial reporting purposes and that is—

(i) Made on the basis of generally accepted accounting principles;

(ii) Made on the basis of international financial reporting standards, if there is no statement that is made on the basis of generally accepted accounting principles; or

(iii) The annual statement required to be filed with the applicable insurance regulatory body, as defined in paragraph (f)(3) of this section, if there is no statement made on the basis of either general accounting principles or international financial reporting standards. The annual statement required to be filed with the applicable insurance regulatory body must provide complete information regarding the foreign corporation's operations and financial condition for the annual reporting period ending with or within the taxable year.

(2) *Applicable insurance liabilities.* With respect to any life or property and casualty insurance business of a foreign corporation, the term *applicable insurance liabilities* means—

(i) Occurred losses for which the foreign corporation has become liable but has not paid before the end of the last annual reporting period ending with or within the taxable year, including unpaid claims for death benefits, annuity contracts, and health insurance benefits;

(ii) Unpaid expenses (including reasonable estimates of anticipated expenses) of investigating and adjusted unpaid losses described in paragraph (f)(2)(i) of this section; and

(iii) The aggregate amount of reserves (excluding deficiency, contingency, or unearned premium reserves) held for future, unaccrued health insurance claims and claims with respect to contracts providing coverage for mortality or morbidity risks, including annuity benefits dependent upon the life expectancy of one or more individuals.

(3) *Applicable insurance regulatory body.* The term *applicable insurance regulatory body* means the entity that

has been established by law to license or authorize a corporation to engage in an insurance business, to regulate insurance company solvency and to which the applicable financial statement is provided.

(4) *Financial reporting standard.* The term *financial reporting standard* means either GAAP or international financial reporting standards.

(5) *Generally accepted accounting principles or GAAP.* The term *generally accepted accounting principles* or *GAAP* means United States generally accepted accounting principles.

(6) *Insurance business.* Solely for purposes of this section, *insurance business* has the meaning described in § 1.1297–5(c)(2).

(7) *Total assets.* For purposes of section 1297(f) and this section, a foreign corporation's *total assets* are the aggregate end-of-period value of the real property and personal property that the foreign corporation reports on its applicable financial statement for the last annual accounting period ending with or within the taxable year.

(g) *Applicability date.* This section applies to taxable years of United States persons that are shareholders in certain foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 1.1297–5 Exception from the definition of passive income for active insurance income.

(a) *Scope.* This section provides rules pertaining to the exception from passive income under section 1297(b)(2)(B) for income derived in the active conduct of an insurance business and rules related to certain income of a qualifying domestic insurance corporation. Paragraph (b) of this section provides a general rule that excludes from passive income certain income of a qualifying insurance corporation (QIC) and certain income of a qualifying domestic insurance corporation. Paragraph (c) of this section provides rules for determining the amount of income derived by a QIC in the active conduct of an insurance business. Paragraph (d) of this section defines income of a qualifying domestic insurance corporation that is not treated as passive for purposes of section 1297. Paragraph (e) of this section provides rules excluding certain assets for purposes of the passive asset test under section 1297(a)(2). Paragraph (f) of this section provides rules concerning the treatment of income and assets of certain look-through subsidiaries and look-through partnerships of a QIC. Paragraph (g) of this section provides a rule prohibiting the double counting of any item for purposes of this section. Paragraph (h) of this section provides definitions applicable to the rules of this section. Paragraph (i) of this section provides the applicability date of this section.

(b) *Exclusion from passive income of active insurance income.* For purposes of section 1297 and § 1.1297–1, passive income does not include—

(1) Income that a QIC derives in the active conduct of an insurance business as determined under paragraph (c) of this section; and

(2) Income from a qualifying domestic insurance corporation as determined under paragraph (d) of this section, except that this exclusion does not apply to determine whether a tested foreign corporation (as defined in § 1.1297–1(f)(8)) is a PFIC for purposes of section 1298(a)(2) and § 1.1291–1(b)(8)(ii).

(c) *Income derived by a QIC in the active conduct of an insurance business*—(1) *In general.* Income that a QIC derives in the active conduct of an insurance business is an amount equal to the QIC's passive income (as defined in § 1.1297–1(c) and taking into account the exceptions in section 1297(b)(2) other than the exception provided in section 1297(b)(2)(B) and this section) earned with respect to assets of a QIC that are available to satisfy liabilities of the QIC related to its insurance business (as described in paragraph (c)(2) of this section), multiplied by—

(i) 100 percent if the active conduct percentage determined under paragraph (c)(4) of this section equals or exceeds 50 percent; or

(ii) Zero if the active conduct percentage determined under paragraph (c)(4) of this section is less than 50 percent.

(2) *Insurance business.* Solely for purposes of § 1.1297–4 and this section, an insurance business is the business of issuing insurance and annuity contracts and the reinsuring of risks underwritten by insurance companies, together with those investment activities and administrative services that are required to support (or that are substantially related to) those insurance, annuity, or reinsurance contracts issued or entered into by the QIC.

(3) *Active conduct of an insurance business*—(i) *In general.* For purposes of determining whether a QIC engages in the active conduct of an insurance business, active conduct is determined based on all the facts and circumstances. In general, a QIC actively conducts an insurance business only if the officers and employees of the QIC carry out substantial managerial and operational activities. A QIC's officers and employees are considered to include the officers and employees of another entity only if the QIC satisfies the control test described in paragraph (c)(3)(ii) with respect to the officers and employees of the other entity. In determining whether the officers and employees of the QIC carry out substantial managerial and operational activities, however, the activities of independent contractors are disregarded.

(ii) *Control test.* A QIC's officers and employees are considered to include the officers and employees of another entity when the requirements of paragraphs (c)(3)(ii)(A) through (C) of this section are satisfied.

(A) *Ownership*—(*1*) *Ownership by or of a corporation.* If the other entity is a corporation—

(*i*) The QIC owns, or is considered to own within the meaning of section 958(a), determined without regard to whether an intermediate entity is domestic or foreign, more than 50 percent of the total combined voting power of all classes of stock of the other corporation entitled to vote, and more than 50 percent of the total value of the stock of the other corporation; or

(*ii*) A common parent owns, or is considered to own within the meaning of section 958(a), determined without regard to whether an intermediate entity is domestic or foreign, more than 80 percent of the total combined voting power of all classes of stock entitled to vote and more than 80 percent of the total value of the stock of each of the QIC and the other corporation.

(*2*) *Ownership of a partnership.* If the other entity is a partnership—

(*i*) The QIC owns, directly or indirectly, more than 50 percent of the interests in the capital and profits in the entity; or

(*ii*) A common parent owns, directly or indirectly, more than 80 percent of the interests in the capital and profits in the entity and owns, or is considered to own within the meaning of section 958(a), determined without regard to whether an intermediate entity is domestic or foreign, more than 80 percent of the total combined voting power of all classes of stock entitled to vote and more than 80 percent of the total value of the stock of the QIC.

(B) *Control and supervision.* The QIC exercises regular oversight and supervision over the services performed by the other entity's officers and employees for the QIC.

(C) *Compensation.* The QIC either—

(*1*) Pays directly all the compensation of the other entity's officers and employees attributable to services

performed for the production or acquisition of premiums and investment income on assets held to meet its obligations under the insurance, annuity, or reinsurance contracts issued or entered into by the QIC (*insurance services*);

(*2*) Reimburses the other entity for the portion of its expenses, including compensation and related expenses (determined in accordance with section 482 and taking into account all expenses that would be included in the total services costs under § 1.482–9(j) and (k)(2)) for the insurance services performed for the QIC or by the other entity's officers and employees; or

(*3*) Otherwise pays arm's length compensation in accordance with section 482 on a fee-related basis to the other entity for the insurance services provided.

(4) *Active conduct percentage*—(i) *In general.* A QIC's active conduct percentage for a taxable year is the percentage calculated (to the nearest percent) by dividing—

(A) The aggregate amount of expenses, including compensation (or reimbursement of compensation) and related expenses, for services of the officers and employees of the QIC (or another entity under an arrangement that satisfies the requirements of paragraph (c)(3)(ii) of this section) incurred by the QIC for the taxable year that are related to the production or acquisition of premiums and investment income on assets held to meet its obligations under the insurance, annuity, or reinsurance contracts issued or entered into by the QIC, by;

(B) The aggregate of—

(*1*) The amount described in paragraph (c)(4)(i)(A) of this section; and

(*2*) The amount of all expenses paid for the taxable year by the QIC to a person other than a person whose services for the QIC are covered by the expenses included in paragraph (c)(4)(i)(A) of this section for the production or acquisition of premiums and investment income on assets held to meet obligations under the insurance, annuity, or reinsurance contracts issued or entered into by the QIC.

(ii) *Related expense determination.* For purposes of determining the amount included in the numerator under paragraph (c)(4)(i)(A) of this section, the cost of compensation and related expenses include all costs in cash or in kind (including stock-based compensation) that, based on analysis of the facts and circumstances, are directly identified with, or reasonably allocated in accordance with the principles of § 1.482–9(k)(2) to, the services of the officers and employees of the insurance company (or related party, as appropriate). In general, costs for the purpose of this paragraph (c)(4)(ii) include all resources expended, used, or made available to achieve the specific objective for which the service of the officer or employee is rendered. For the purpose of this paragraph (c)(4)(ii), reference to generally accepted accounting principles or Federal income tax accounting rules may provide a useful starting point but will not necessarily be conclusive regarding inclusion of costs, and such costs do not include interest expense, foreign income taxes (as defined in § 1.901–2(a)), or Federal income taxes.

(iii) *Ceding commission.* For purposes of paragraph (c)(4)(i) of this section, ceding commissions are not taken into account in either the numerator or denominator of the active conduct percentage.

(d) *Income of qualifying domestic insurance corporation.* The income of a domestic corporation is income of a qualifying domestic insurance corporation if the domestic corporation is subject to—

(1) Tax as an insurance company under subchapter L of chapter 1 of subtitle A of the Internal Revenue Code; and

(2) Federal income tax on its net income.

(e) *Exclusion of assets for purposes of the passive asset test under section 1297(a)(2).* For purposes of section 1297 and § 1.1297–1, passive assets (as defined in § 1.1297–1(f)(6)), do not include—

(1) Assets of a QIC available to satisfy liabilities of the QIC related to its insurance business (as described in paragraph (c)(2) of this section), if the active conduct percentage of the QIC equals or exceeds 50 percent; and

(2) Assets of a qualifying domestic insurance corporation that meets the requirements described in paragraph (d) of this section, except that this exclusion does not apply to determine whether a tested foreign corporation (as defined in § 1.1297–1(f)(8)) is a PFIC for purposes of section 1298(a)(2) and § 1.1291–1(b)(8)(ii).

(f) *Treatment of income and assets of certain look-through subsidiaries and look-through partnerships for purposes of the section 1297(b)(2)(B) exception*—(1) *General rule.* An item of income treated as received or accrued or an asset treated as held by a QIC pursuant to section 1297(c) and § 1.1297–2(b)(2) or pursuant to § 1.1297–1(c)(2) or (d)(3) that would be passive income or a passive asset is treated as an item of income or an asset of the QIC for purposes of paragraphs (c) and (e) of this section.

(2) *Applicable statements for tested foreign corporations applying paragraph (f)(1) of this section.* For purposes of paragraph (f)(1) of this section, an item of passive income or passive asset in the hands of an entity other than a QIC (subsidiary entity) may only be treated as an item of income or an asset used in the active conduct of an insurance business by a foreign corporation treated as a QIC for purposes of paragraphs (c) and (e) of this section if the applicable financial statement used to test the QIC status of the foreign corporation includes the assets and liabilities of the subsidiary entity.

(g) *No double counting.* Nothing in this section or § 1.1297–4 permits any item to be counted more than once.

(h) *Definitions.* For purposes of this section, the following terms have the meanings described in this paragraph (h).

(1) *Insurance services.* The term *insurance services* has the meaning provided in paragraph (c)(3)(ii)(C)(*1*) of this section.

(2) *Investment activity.* The term *investment activity* means any activity engaged in by a QIC to produce income of a kind that would be passive income (as defined in § 1.1297–1(c)). Investment activities include those activities that are required to support or are substantially related to insurance and annuity contracts issued or reinsured by a QIC only to the extent that income produced by the activities is generated by assets available to satisfy liabilities of the QIC related to the insurance business, as described in paragraph (c)(2) of this section.

(3) *Qualifying insurance corporation* or *QIC.* The term *qualifying insurance corporation* or *QIC* has the meaning described in § 1.1297–4.

(i) *Applicability date.* This section applies to taxable years of United States persons that are shareholders in certain foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 7.** Section 1.1298–0 is amended by:

■ 1. Revising the introductory text.

■ 2. Adding entries for §§ 1.1298–2 and 1.1298–4 in numerical order.

The revision and additions read as follows:

§ 1.1298–0 Passive foreign investment company—table of contents.

This section contains a listing of the paragraph headings for §§ 1.1298–1, 1.1298–2, 1.1298–3, and 1.1298–4.

* * * * *

§ 1.1298–2 Rules for certain corporations changing businesses.

(a) Overview.
(b) Change of business exception.
(c) Special rules.
(d) Disposition of stock in a look-through subsidiary.
(e) Application of change of business exception.
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(1) Example 1.
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* * * * *

§ 1.1298–4 Rules for certain foreign corporations owning stock in 25-percent-owned domestic corporations.

(a) Overview.
(b) Treatment of certain foreign corporations owning stock in a 25-percent-owned domestic corporation.
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(c) Indirect ownership of stock through a partnership.
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(1) Subject to section 531 tax.
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(i) Tested foreign corporation that files, or is required to file, a Federal income tax return.
(ii) Tested foreign corporation that is not required to file a Federal income tax return.
(e) Interaction of section 1298(b)(7) and section 1298(a)(2).
(f) Anti-abuse rules.
(1) Classification as PFIC excluding qualified stock.
(2) Avoidance principal purposes.
(g) Applicability date.

■ **Par. 8.** Section 1.1298–2 is added to read as follows:

§ 1.1298–2 Rules for certain corporations changing businesses.

(a) *Overview.* This section provides rules under section 1298(b)(3) and 1298(g) that apply to certain foreign corporations that dispose of one or more active trades or businesses for purposes of determining whether a foreign corporation is treated as a passive foreign investment company (PFIC). Paragraph (b) of this section sets forth a rule that applies to certain foreign corporations that dispose of one or more active trades or businesses. Paragraph (c) of this section provides special rules. Paragraph (d) of this section sets forth a rule for the treatment of the disposition of the stock of a look-through subsidiary (as defined in § 1.1297–2(g)(1)). Paragraph (e) of this section provides guidance on the application of the rules in this section. Paragraph (f) provides examples illustrating the application of the rules in this section. Paragraph (g) sets forth the applicability date for this section.

(b) *Change of business exception.* A corporation is not treated as a PFIC for a taxable year if—

(1) Neither the corporation (nor any predecessor) was a PFIC for any prior taxable year;

(2) Either—

(i) Substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of one or more active trades or businesses; or

(ii) Following the disposition of one or more active trades or businesses, substantially all of the passive assets of the corporation on each of the measuring dates that occur during the taxable year and after the disposition are attributable to proceeds from the disposition; and

(3) The corporation is not a PFIC for either of the first two taxable years following the taxable year.

(c) *Special rules.* The rules in this paragraph (c) apply for purposes of section 1298(b)(3) and this section.

(1) Income is attributable to proceeds from the disposition of one or more active trades or businesses to the extent the income is derived from the investment of the proceeds from the disposition of assets used in the active trade or businesses.

(2) Assets are attributable to proceeds from the disposition of one or more active trades or businesses only to the extent the assets are the proceeds of the disposition of assets used in the active trade or businesses, or are derived from the investment of the proceeds.

(3) The determination of the existence of an active trade or business and whether assets are used in an active trade or business is made under § 1.367(a)–2(d)(2), (3), and (5), except that officers and employees do not include the officers and employees of related entities as provided in § 1.367(a)–2(d)(3). However, if activities performed by the officers and staff of employees of a look-through subsidiary of a corporation (including a look-through subsidiary with respect to which paragraph (d) of this section applies) or of a look-through partnership would be taken into account by the corporation pursuant to § 1.1297–2(e) if it applied, or if activities performed by a related person would be taken into account by the corporation pursuant to section 954(h)(3)(E), such activities are taken into account for purposes of the determination of the existence of an active trade or business and the determination of whether assets are used in an active trade or business.

(4) In the case of a corporation that satisfies the condition in paragraph (b)(2)(ii) of this section, the condition in paragraph (b)(3) of this section is deemed to be satisfied if the corporation completely liquidates by the end of the taxable year following the year with respect to which the shareholder applies the exception in paragraph (b) of this section.

(d) *Disposition of stock of a look-through subsidiary.* For purposes of paragraph (b) of this section, the proceeds from a tested foreign corporation's disposition of the stock of a look-through subsidiary are treated as proceeds from the disposition of a proportionate share of the assets held by the look-through subsidiary on the date of the disposition, based on the method (value or adjusted bases) used to measure the assets of the tested foreign corporation for purposes of section 1297(a)(2). The proceeds attributable to assets used by the look-through subsidiary in an active trade or business are treated as proceeds attributable to the disposition of an active trade or business.

(e) *Application of change of business exception.* A shareholder can apply the exception in paragraph (b) of this section with respect to a taxable year of a disposition of an active trade or business or an immediately succeeding taxable year, but cannot apply the exception with respect to more than one taxable year for a disposition.

(f) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples in this paragraph (f): USP is a domestic corporation; TFC and FS are foreign corporations that are not controlled foreign corporations (within the meaning of section 957(a)); each corporation has outstanding a single class of stock; USP has owned its interest in TFC since the formation of TFC; each of USP, TFC, and FS have a calendar taxable year; and for purposes of section 1297(a)(2), TFC measures the amount of its assets based on value.

(1) *Example 1*—(i) *Facts.* (A) USP owns 15% of the outstanding stock of TFC. TFC owns 30% of the outstanding stock of FS. FS operates an active trade or business and 100% of its assets are used in the active trade or business. The value of FS's non-passive assets (as defined in § 1.1297–1(f)) is $900x; the value of FS's passive assets (which include cash and accounts receivable) is $100x. TFC has not been treated as a PFIC for any taxable year prior to Year 1 and has no predecessor corporations. In addition to

holding the FS stock, TFC directly conducts its own active trade or business. The value of TFC's non-passive assets (other than FS stock) is $50x; the value of TFC's passive assets (other than FS stock and assets received during Year 1) is $30x. TFC earns $1x of non-passive income (as defined in § 1.1297–1(f)) from its directly conducted active trade or business.

(B) On January 1, Year 1, TFC sells all of its FS stock for $300x. The residual gain computed under § 1.1297–2(f)(1) on the sale of the FS stock is $10x. Under § 1.1297–2(f)(2), $9x of residual gain is characterized as non-passive income and $1x of residual gain is characterized as passive income. During the first quarter of Year 1 and apart from the sale of the FS stock, TFC earned $20x of passive income from the investment of the proceeds from the disposition of the FS stock, and TFC maintained such earnings as well as the disposition proceeds in cash for the remainder of the year. TFC reinvests the proceeds of the FS stock sale in an active trade or business during Year 2, and, thus, TFC is not a PFIC in Year 2 and Year 3. Less than 75% of TFC's gross income in Year 1 is passive income (($20x + $1x)/($10x + $20x + $1x) = 68%). However, subject to the application of section 1298(b)(3) and this section, TFC would be a PFIC in Year 1 under section 1297(a)(2) because the proceeds from the sale of the FS stock ($300x) together with TFC's other passive assets ($30x + $20x) exceed 50% of TFC's total assets ($300x + $30x + $20x + $50x).

(ii) *Results.* (A) Under paragraph (d) of this section, for purposes of applying section 1298(b)(3)(B)(i) in Year 1, TFC's proceeds from the disposition of the stock of FS that are attributable to assets used by FS in an active trade or business are considered as from the disposition of an active trade or business. Because 100% of FS's assets are used in its active trade or business, all of TFC's proceeds are considered as from the disposition of an active trade or business. Therefore, under paragraph (c)(1) of this section, the passive income considered attributable to proceeds from a disposition of one or more active trades or businesses is $20x (from investment of disposition proceeds). Because TFC reasonably does not expect to be a PFIC in Year 2 and Year 3, and TFC is not, in fact, a PFIC for those years, TFC will not be treated as a PFIC in Year 1 by reason of section 1298(b)(3) and paragraph (b) of this section, based on the satisfaction of the condition in paragraph (b)(2)(i) of this section, assuming that the 95% (($20x/($20x + $1x)) of TFC's passive income for Year 1 that is attributable to proceeds of the disposition of FS's active trade or business constitutes substantially all of its passive income.

(B) TFC would also not be treated as a PFIC in Year 1 by reason of section 1298(b)(3) and paragraph (b) of this section, based on the satisfaction of the condition in paragraph (b)(2)(ii) of this section, assuming that the 91% (($320x × 4)/(($320x + $30x) × 4)) of TFC's passive assets on the quarterly measuring dates during Year 1 following the disposition of the stock of FS that is attributable to proceeds of the disposition of FS's active trade or business constitutes substantially all of its passive assets.

(C) Under paragraph (e) of this section, TFC cannot claim the section 1298(b)(3) exception in relation to the income attributable to the proceeds of the FS stock sale in Year 2.

(2) *Example 2*—(i) *Facts.* The facts are the same as in paragraph (f)(1)(i) of this section (the facts in *Example 1*), except that during the first quarter of Year 1, TFC earned only $10x of passive income from the investment of the proceeds from the disposition of the FS stock and $10x of passive income from its other passive assets and maintained such earnings in cash for the remainder of the year.

(ii) *Results.* The results are the same as in paragraph (f)(1)(ii) of this section (the facts in *Example 1*), except that under paragraph (c)(1) of this section, the passive income considered attributable to proceeds from a disposition of one or more active trades or businesses is $10x. Because 48% ($10x/($10x + $10x + $1x)), and not substantially all, of TFC's passive income for Year 1 is attributable to proceeds of the disposition of FS's active trade or business, TFC does not qualify for the exception from treatment as a PFIC in section 1298(b)(3) for Year 1. However, under paragraphs (b)(2) and (d) of this section, $310x ($300x disposition proceeds + $10x from investment of disposition proceeds) of TFC's passive assets held on each quarterly measuring date after the disposition is considered attributable to the disposition of an active trade or business. Because TFC reasonably does not expect to be a PFIC in Year 2 and Year 3, and TFC is not, in fact, a PFIC for those years, TFC will not be treated as a PFIC in Year 1 by reason of paragraph (b) of this section, based on the satisfaction of the condition in paragraph (b)(2)(ii) of this section, assuming that the 89% (($310x × 4)/(($310x + $10x + $30x) × 4)) of TFC's passive assets on the quarterly measuring dates during Year 1 following the disposition of the stock of FS that is attributable to proceeds of the disposition of FS's active trade or business constitutes substantially all of its passive assets.

(g) *Applicability date.* The rules of this section apply to taxable years of shareholders beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 9.** Section 1.1298–4 is added to read as follows:

§ 1.1298–4 Rules for certain foreign corporations owning stock in 25-percent-owned domestic corporations.

(a) *Overview.* This section provides rules under section 1298(b)(7) that apply to certain foreign corporations that own stock in 25-percent-owned domestic corporations (as defined in paragraph (b) of this section) for purposes of determining whether a foreign corporation is a passive foreign investment company (PFIC). Paragraph (b) of this section provides the general rule. Paragraph (c) of this section sets forth rules concerning ownership of 25-percent-owned domestic corporations or qualified stock (as defined in paragraph (b)(2) of this section) through partnerships. Paragraph (d) of this section sets forth rules for determining whether a foreign corporation is subject to the tax imposed by section 531 (the section 531 tax) and for waiving treaty benefits that would prevent the imposition of such tax. Paragraph (e) of this section sets forth a rule governing the interaction of section 1298(b)(7) and section 1298(a)(2). Paragraph (f) of this section sets forth anti-abuse rules for the application of section 1298(b)(7). Paragraph (g) sets forth the applicability date for this section.

(b) *Treatment of certain foreign corporations owning stock in a 25-percent-owned domestic corporation*—(1) *General rule.* Except as otherwise provided in paragraphs (e) and (f) of this section, when a tested foreign corporation (as defined in § 1.1297–1(f)) is subject to the section 531 tax (or waives any benefit under any treaty that would otherwise prevent the imposition of the tax), and owns (directly or indirectly under the rules in paragraph (c) of this section) at least 25 percent (by value) of the stock of a domestic corporation (a *25-percent-owned domestic corporation*), for purposes of determining whether the foreign corporation is a PFIC, any qualified stock held directly or indirectly under the rules in paragraph (c) of this section by the 25-percent-owned domestic corporation is treated as an asset that does not produce passive income (and is not held for the production of passive income), and any amount included in gross income with respect to the qualified stock is not treated as passive income.

(2) *Qualified stock.* For purposes of paragraph (b)(1) of this section, the term *qualified stock* means any stock in a C corporation that is a domestic corporation and that is not a regulated investment company or real estate investment trust.

(c) *Indirect ownership of stock through a partnership.* For purposes of paragraph (b)(1) of this section, a tested foreign corporation that is a partner in a partnership is considered to own its proportionate share of any stock of a domestic corporation held by the partnership, and a domestic corporation that is a partner in a partnership is considered to own its proportionate share of any qualified stock held by the partnership. The rules and principles of sections 701 through 761 apply to determine the corporation's proportionate share of the stock of the domestic corporation or of the qualified stock. An upper-tier partnership's attributable share of the stock of a

domestic corporation or of qualified stock held by a lower-tier partnership is treated as held by the upper-tier partnership for purposes of applying the rule in this paragraph (c).

(d) *Section 531 tax*—(1) *Subject to section 531 tax.* For purposes of paragraph (b) of this section, a tested foreign corporation is considered subject to the section 531 tax regardless of whether the tax is imposed on the corporation and of whether the requirements of § 1.532–1(c) are met.

(2) *Waiver of treaty benefits*—(i) *Tested foreign corporation that files, or is required to file, a Federal income tax return.* For purposes of paragraph (b) of this section, a tested foreign corporation that files, or is required to file, a Federal income tax return waives the benefit under a treaty that would otherwise prevent the imposition of the section 531 tax by attaching to its original or amended return for the taxable year for which section 1298(b)(7) and paragraph (b)(1) of this section are applied or any prior taxable year a statement that it irrevocably waives treaty protection against the imposition of the section 531 tax, effective for all prior, current, and future taxable years, provided the taxable year for which the return is filed and all subsequent taxable years are not closed by the period of limitations on assessments under section 6501.

(ii) *Tested foreign corporation that is not required to file a Federal income tax return.* For purposes of paragraph (b) of this section, a tested foreign corporation that is not required to file a Federal income tax return waives the benefit under a treaty that would otherwise prevent the imposition of the section 531 tax by a date no later than nine months following the close of the taxable year for which section 1298(b)(7) and paragraph (b)(1) of this section are applied by—

(A) Adopting a resolution or similar governance document that confirms that it has irrevocably waived any treaty protection against the imposition of the section 531 tax, effective for all prior, current, and future taxable years, and maintaining a copy of the resolution (or other governance document) in its records; or

(B) In the case of a tested foreign corporation described in section 1297(e)(3), including in its public filings a statement that it irrevocably waives treaty protection against the imposition of the section 531 tax, effective for all prior, current, and future taxable years.

(e) *Interaction of section 1298(b)(7) and section 1298(a)(2).* Section 1298(b)(7) does not apply to determine whether a tested foreign corporation is a PFIC for purposes of section 1298(a)(2) and § 1.1291–1(b)(8)(ii).

(f) *Anti-abuse rules*—(1) *Classification as PFIC excluding qualified stock.* Paragraph (b) of this section does not apply when—

(i) 75 percent or more of the gross income of the tested foreign corporation for the taxable year (taking into account § 1.1297–2 and excluding any amount included in gross income with respect to qualified stock) is passive income (as defined in § 1.1297–1(c)(1)); or

(ii) The average percentage of assets held by the tested foreign corporation (taking into account § 1.1297–2 and excluding qualified stock) that are passive assets (as defined in § 1.1297–1(f)) is at least 50 percent.

(2) *Avoidance principal purpose.* Paragraph (b) of this section does not apply when a principal purpose for the tested foreign corporation's formation or acquisition of the stock of the 25-percent-owned domestic corporation that holds the qualified stock is to avoid classification of the tested foreign corporation as a PFIC. A principal purpose to avoid classification of the tested foreign corporation as a PFIC is deemed to exist when the 25-percent-owned domestic corporation is not engaged in an active trade or business in the United States. The existence of an active trade or business is determined under § 1.367(a)–2(d)(2) and (3), except that officers and employees of the 25-percent-owned domestic corporation do not include the officers and employees of related entities as provided in § 1.367(a)–2(d)(3). However, activities performed by the officers and staff of employees of a look-through subsidiary of the 25-percent-owned domestic corporation or a partnership that would be taken into account by the corporation pursuant to § 1.1297–2(e) if it applied are taken into account for purposes of the determination of the existence of an active trade or business.

(g) *Applicability date.* The rules of this section apply to taxable years of shareholders beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–12030 Filed 7–10–19; 8:45 am]

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