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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1717

RIN 0572-AC40

Streamlining Electric Program Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Rural Utilities Service (RUS or Agency) published a final rule in the **Federal Register** on July 9, 2019, entitled “Streamlining Electric Program Procedures,” to make revisions to several regulations to streamline its procedures for Electric Program borrowers, including its loan application requirements, approval of work plans and load forecasts, use of approved contracts and system design procedures. The Agency found an error in this publication, after the published rule became effective. This document will correct the final regulation.

DATES: Effective on July 31, 2019.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Team Lead, Rural Development Innovation Center—Regulatory Team, USDA, 1400 Independence Avenue SW, Stop 1522, Room 4266, South Building, Washington, DC 20250-1522. Telephone: (202) 690-1078. Email michele.brooks@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

On July 9, 2019 (84 FR 32607), the Rural Utilities Services (RUS) issued a final rule entitled “Streamlining Electric Program Procedures,” to revise several regulations to streamline its procedures for Electric Program borrowers, including its loan application requirements, approval of work plans and load forecasts, use of approved contracts and system design procedures.

Inadvertently, revisions were made to the entire paragraph (c) of section

1717.856, which resulted in eliminating paragraphs (c)(1) through (4) instead of revising the introductory text only of paragraph (c). This document corrects the final regulation to add those portions that were removed by mistake.

List of Subject in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric Utilities, Intergovernmental relations, Investments, Loan program-energy, Reporting and recordkeeping requirements, Rural areas.

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 1. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

■ 2. Amend § 1717.856 by adding paragraph (c)(1) through (c)(4), to read as follows:

§ 1717.856 Application contents: Normal review—100 percent private financing.

* * * * *

(c) * * *

(1) The borrower is current on all of its financial obligations and is in compliance with all requirements of its mortgage and loan agreement with RUS;

(2) In RUS’s judgment, granting a lien accommodation or subordination for the proposed loan will not adversely affect the repayment and security of outstanding debt of the borrower owed to or guaranteed by RUS;

(3) The borrower has achieved the TIER and DSC and any other coverage ratios required by its mortgage or loan contract in each of the two most recent calendar years; and

(4) The amount of the proposed loan does not exceed the lesser of \$10 million or 10 percent of the borrower’s current net utility plant;

* * * * *

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2019-15859 Filed 7-30-19; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 406

Office of the Secretary

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33 CFR Part 401

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Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, and 190

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Federal Motor Carrier Safety Administration

49 CFR Part 386

National Highway Traffic Safety Administration

49 CFR Part 578

RIN 2105-AE80

Revisions to Civil Penalty Amounts

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2019 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.

DATES: Effective July 31, 2019.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101–410, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114–74, 129 Stat. 599, codified at 28 U.S.C. 2461 note. The FCPIAA and the 2015 Act require federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. The 2015 Act amended the formula and frequency of inflation adjustments. It required an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of civil penalty amounts using a statutorily mandated formula. Section 4(b)(2) of the 2015 Act specifically directs that the annual adjustment be accomplished through final rule without notice and comment. This rule is effective immediately.

The Department's authorities over the specific civil penalty regulations being amended by this rule are provided in the preamble discussion below.

I. Background

On November 2, 2015, the President signed into law the 2015 Act, which amended the FCPIAA, to improve the

effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires federal agencies to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation.

The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance on implementing the required annual inflation adjustment no later than December 15 of each year.¹ On December 14, 2018, OMB released this required guidance, in OMB Memorandum M–19–04, which provides instructions on how to calculate the 2019 annual adjustment. To derive the 2019 adjustment, the Department must multiply the maximum or minimum penalty amount by the percent change between the October 2018 Consumer Price Index for All Urban Consumers (CPI–U) and the October 2017 CPI–U. In this case, as explained in OMB Memorandum M–19–04, the percent change between the October 2018 CPI–U and the October 2017 CPI–U is 1.02522.

II. Dispensing With Notice and Comment

This final rule is being published without notice and comment and with an immediate effective date.

The 2015 Act provides clear direction for how to adjust the civil penalties, and clearly states at section 4(b)(2) that this adjustment shall be made “notwithstanding section 553 of title 5, United States Code.” By operation of the 2015 Act, DOT must publish an annual adjustment by January 15 of every year, and the new levels take effect upon publication of the rule. Accordingly, DOT is publishing this final rule without prior notice and comment, and with an immediate effective date.

III. Discussion of the Final Rule

In 2016, OST and DOT's operating administrations with civil monetary penalties promulgated the “catch up” IFR required by the 2015 Act. All DOT operating administrations have already finalized their “catch up” IFRs and this rule makes the annual inflation adjustment required by the 2015 Act.

The Department emphasizes that this rule adjusts penalties prospectively, and therefore the penalty adjustments made by this rule will apply only to violations that take place after this rule becomes effective. This rule also does not change previously assessed or enforced penalties that DOT is actively collecting or has collected.

A. OST 2019 Adjustments

OST's 2019 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
General civil penalty for violations of certain aviation economic regulations and statutes.	49 U.S.C. 46301(a)(1)	\$33,333	\$34,174
General civil penalty for violations of certain aviation economic regulations and statutes involving an individual or small business concern.	49 U.S.C. 46301(a)(1)	1,466	1,503
Civil penalties for individuals or small businesses for violations of most provisions of Chapter 401 of Title 49, including the anti-discrimination provisions of sections 40127 and 41705 and rules and orders issued pursuant to these provisions.	49 U.S.C. 46301(a)(5)(A)	13,333	13,669
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41719 and rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(C)	6,666	6,834
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41712 or consumer protection rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(D)	3,334	3,418

B. FAA 2019 Adjustments

The FAA's 2019 adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Violation of hazardous materials transportation law	49 U.S.C. 5123(a)(1)	\$79,976	\$81,993

¹ 28 U.S.C. 2461 note.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	49 U.S.C. 5123(a)(2)	186,610	191,316
Minimum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	481	493
Maximum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	79,976	81,993
Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	49 U.S.C. 46301(a)(1)	33,333	34,174
Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	49 U.S.C. 46301(a)(1)	1,466	1,501
Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	49 U.S.C. 46301(a)(1)	1,466	1,501
Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	49 U.S.C. 46301(a)(5)(A)	13,333	13,669
Violation by an individual or small business concern related to the transportation of hazardous materials.	49 U.S.C. 46301(a)(5)(B)(i)	13,333	13,669
Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	49 U.S.C. 46301(a)(5)(B)(ii)	13,333	13,669
Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	49 U.S.C. 46301(a)(5)(B)(iii)	13,333	13,669
Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	49 U.S.C. 46301(a)(5)(B)(iv)	13,333	13,669
Tampering with a smoke alarm device	49 U.S.C. 46301(b)	4,280	4,388
Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	49 U.S.C. 46302	23,246	23,832
Interference with cabin or flight crew	49 U.S.C. 46318	² 35,000	35,883
Permanent closure of an airport without providing sufficient notice.	49 U.S.C. 46319	13,333	13,669
Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort.	49 U.S.C. 46320	20,408	20,923
Violation of 51 U.S.C. 50901–50923, a regulation issued under these statutes, or any term or condition of a license or permit issued or transferred under these statutes.	51 U.S.C. 50917(c)	234,247	240,155

In addition to the civil penalties listed in the above chart, FAA regulations also provide for maximum civil penalties for violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels. Those civil penalties are

identical to the civil penalties imposed under 49 U.S.C. 46301(a)(1) and (a)(5), which are detailed in the above chart, and therefore, the noise-level civil penalties will be adjusted in the same

manner as the section 46301(a)(1) and (a)(5) civil penalties.

C. NHTSA 2019 Adjustments

NHTSA's 2019 civil penalty adjustments are summarized in the chart below.³

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Maximum penalty amount for each violation of the Safety Act	49 U.S.C. 30165(a)(1), 30165(a)(3).	\$21,780	\$22,329

² Congress amended § 46318 on October 5, 2018, to increase the statutory maximum from \$25,000 to \$35,000. FAA Reauthorization Act of 2018, Public Law 115–254, section 339, 132 Stat. 3186, 3282. Accordingly, the inflation adjustment is being applied to this statutory maximum.

³ On December 28, 2016, NHTSA published a final rule regarding some aspects of its IFR

provisions regarding Corporate Average Fuel Economy (CAFE) penalties. 81 FR 95489 (Dec. 28, 2016). On July 12, 2017, NHTSA announced that it was reconsidering that final rule. 82 FR 32140 (July 12, 2017). Accordingly, the CAFE civil penalty provisions at 49 U.S.C. 32912(b)–(c) and 49 CFR 578.6(h)(2), which are the subject of the reconsideration, are not being adjusted in the final

rule promulgated herein. Instead, they will be addressed in a separate final rule for which an NPRM has been issued. 83 FR 13904 (Apr. 2, 2018). The provision in 49 CFR 578.6(h)(1), establishing the maximum civil penalty for each violation of 49 U.S.C. 32911(a), will also be addressed in that separate notice.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Maximum penalty amount for a related series of violations of the Safety Act.	49 U.S.C. 30165(a)(1), 30165(a)(3).	108,895,910	111,642,265
Maximum penalty per school bus related violation of the Safety Act	49 U.S.C. 30165(a)(2)(A)	12,383	12,695
Maximum penalty amount for a series of school bus related violations of the Safety Act.	49 U.S.C. 30165(a)(2)(B)	18,574,064	19,042,502
Maximum penalty per violation for filing false or misleading reports	49 U.S.C. 30165(a)(4)	5,332	5,466
Maximum penalty amount for a series of violations related to filing false or misleading reports.	49 U.S.C. 30165(a)(4)	1,066,340	1,093,233
Maximum penalty amount for each violation of the reporting requirements related to maintaining the National Motor Vehicle Title Information System.	49 U.S.C. 30505	1,739	1,783
Maximum penalty amount for each violation of a bumper standard under the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513, 86 Stat. 953, (1972)).	49 U.S.C. 32507(a)	2,852	2,924
Maximum penalty amount for a series of violations of a bumper standard under the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513, 86 Stat. 953, (1972)).	49 U.S.C. 32507(a)	3,176,131	3,256,233
Maximum penalty amount for each violation of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	2,852	2,924
Maximum penalty amount for a series of violations of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	1,555,656	1,594,890
Maximum penalty for each violation related to the tire fuel efficiency information program.	49 U.S.C. 32308(c)	59,029	60,518
Maximum civil penalty for willfully failing to affix, or failing to maintain, the label requirement in the American Automobile Labeling Act (Pub. L. 102–388, 106 Stat. 1556 (1992)).	49 U.S.C. 32309	1,739	1,783
Maximum penalty amount per violation related to odometer tampering and disclosure.	49 U.S.C. 32709	10,663	10,932
Maximum penalty amount for a related series of violations related to odometer tampering and disclosure.	49 U.S.C. 32709	1,066,340	1,093,233
Maximum penalty amount per violation related to odometer tampering and disclosure with intent to defraud.	49 U.S.C. 32710	10,663	10,932
Maximum penalty amount for each violation of the Motor Vehicle Theft Law Enforcement Act of 1984 (Vehicle Theft Act), sec. 608, Public Law 98–547, 98 Stat. 2762 (1984).	49 U.S.C. 33115(a)	2,343	2,402
Maximum penalty amount for a related series of violations of the Motor Vehicle Theft Law Enforcement Act of 1984 (Vehicle Theft Act), sec. 608, Public Law 98–547, 98 Stat. 2762 (1984).	49 U.S.C. 33115(a)	585,619	600,388
Maximum civil penalty for violations of the Anti-Car Theft Act (Pub. L. 102–519, 106 Stat. 3393 (1992)) related to operation of a chop shop.	49 U.S.C. 33115(b)	173,951	178,338
Maximum civil penalty for a violation under the medium- and heavy-duty vehicle fuel efficiency program.	49 U.S.C. 32902	40,852	41,882

D. FMCSA 2019 Adjustments

FMCSA's civil penalties affected by this rule are all located in Appendices

A and B to 49 CFR part 386. The 2019 adjustments to these civil penalties are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Appendix A II Subpoena	49 U.S.C. 525	\$1,066	\$1,093
Appendix A II Subpoena	49 U.S.C. 525	10,663	10,932
Appendix A IV (a) Out-of-service order (operation of CMV by driver).	49 U.S.C. 521(b)(7)	1,848	1,895
Appendix A IV (b) Out-of-service order (requiring or permitting operation of CMV by driver).	49 U.S.C. 521(b)(7))	18,477	18,943
Appendix A IV (c) Out-of-service order (operation by driver of CMV or intermodal equipment that was placed out of service).	49 U.S.C. 521(b)(7)	1,848	1,895
Appendix A IV (d) Out-of-service order (requiring or permitting operation of CMV or intermodal equipment that was placed out of service).	49 U.S.C. 521(b)(7)	18,477	18,943
Appendix A IV (e) Out-of-service order (failure to return written certification of correction).	49 U.S.C. 521(b)(2)(B)	924	947

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Appendix A IV (g) Out-of-service order (failure to cease operations as ordered).	49 U.S.C. 521(b)(2)(F)	26,659	27,331
Appendix A IV (h) Out-of-service order (operating in violation of order).	49 U.S.C. 521(b)(7)	23,426	24,017
Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties).	49 U.S.C. 521(b)(2)(A) and (b)(7))	15,040	15,419
Appendix A IV (j) (conducting operations during suspension or revocation).	49 U.S.C. 521(b)(7)	23,426	24,017
Appendix B (a)(1) Recordkeeping—maximum penalty per day.	49 U.S.C. 521(b)(2)(B)(i)	1,239	1,270
Appendix B (a)(1) Recordkeeping—maximum total penalty.	49 U.S.C. 521(b)(2)(B)(i)	12,383	12,695
Appendix B (a)(2) Knowing falsification of records	49 U.S.C. 521(b)(2)(B)(ii)	12,383	12,695
Appendix B (a)(3) Non-recordkeeping violations	49 U.S.C. 521(b)(2)(A)	15,040	15,419
Appendix B (a)(4) Non-recordkeeping violations by drivers.	49 U.S.C. 521(b)(2)(A)	3,760	3,855
Appendix B (a)(5) Violation of 49 CFR 392.5 (first conviction).	49 U.S.C. 31310(i)(2)(A)	3,096	3,174
Appendix B (a)(5) Violation of 49 CFR 392.5 (second or subsequent conviction).	49 U.S.C. 31310(i)(2)(A)	6,192	6,348
Appendix B (b) Commercial driver's license (CDL) violations.	49 U.S.C. 521(b)(2)(C)	5,591	5,732
Appendix B (b)(1): Special penalties pertaining to violation of out-of-service orders (first conviction).	49 U.S.C. 31310(i)(2)(A)	3,096	3,174
Appendix B (b)(1) Special penalties pertaining to violation of out-of-service orders (second or subsequent conviction).	49 U.S.C. 31310(i)(2)(A)	6,192	6,348
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (minimum penalty).	49 U.S.C. 521(b)(2)(C)	5,591	5,732
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (maximum penalty).	49 U.S.C. 31310(i)(2)(C)	30,956	31,737
Appendix B (b)(3) Special penalties pertaining to railroad-highway grade crossing violations.	49 U.S.C. 31310(j)(2)(B)	16,048	16,453
Appendix B (d) Financial responsibility violations	49 U.S.C. 31138(d)(1), 31139(g)(1)	16,499	16,915
Appendix B (e)(1) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (transportation or shipment of hazardous materials).	49 U.S.C. 5123(a)(1)	79,976	81,993
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—minimum penalty.	49 U.S.C. 5123(a)(3)	481	493
Appendix B (e)(2): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—maximum penalty.	49 U.S.C. 5123(a)(1)	79,976	81,993
Appendix B (e)(3) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (packaging or container).	49 U.S.C. 5123(a)(1)	79,976	81,993
Appendix B (e)(4): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (compliance with FMCSRs).	49 U.S.C. 5123(a)(1)	79,976	81,993
Appendix B (e)(5) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property).	49 U.S.C. 5123(a)(2)	186,610	191,316
Appendix B (f)(1) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (generally).	49 U.S.C. 521(b)(2)(F)	26,659	27,331
Appendix B (f)(2) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)—maximum penalty.	49 U.S.C. 5123(a)(1)	79,976	81,993
Appendix B (f)(2): Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)—maximum penalty if death, serious illness, severe injury to persons; destruction of property.	49 U.S.C. 5123(a)(2)	186,610	191,316
Appendix B (g)(1): Violations of the commercial regulations (CR) (property carriers).	49 U.S.C. 14901(a)	10,663	10,932
Appendix B (g)(2) Violations of the CRs (brokers)	49 U.S.C. 14916(c)	10,663	10,932
Appendix B (g)(3) Violations of the CRs (passenger carriers).	49 U.S.C. 14901(a)	26,659	27,331

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Appendix B (g)(4) Violations of the CRs (foreign motor carriers, foreign motor private carriers).	49 U.S.C. 14901(a)	10,663	10,932
Appendix B (g)(5) Violations of the CRs (foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)—maximum penalty for intentional violation.	49 U.S.C. 14901 note	14,664	15,034
Appendix B (g)(5) Violations of the CRs (foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)—maximum penalty for a pattern of intentional violations.	49 U.S.C. 14901 note	36,662	37,587
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—minimum penalty.	49 U.S.C. 14901(b)	21,327	21,865
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—maximum penalty.	49 U.S.C. 14901(b)	42,654	43,730
Appendix B (g)(7): Violations of the CRs (HHG carrier or freight forwarder, or their receiver or trustee).	49 U.S.C. 14901(d)(1)	1,604	1,644
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—minimum penalty for first violation.	49 U.S.C. 14901(e)	3,210	3,291
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services) subsequent violation.	49 U.S.C. 14901(e)	8,025	8,227
Appendix B (g)(10) Tariff violations	49 U.S.C. 13702, 14903	160,484	164,531
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—first violation.	49 U.S.C. 14904(a)	320	328
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—subsequent violations.	49 U.S.C. 14904(a)	401	411
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for first violation.	49 U.S.C. 14904(b)(1)	803	823
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for subsequent violations.	49 U.S.C. 14904(b)(1)	3,210	3,291
Appendix B (g)(13): Service from freight forwarder at less than rate in effect—maximum penalty for first violation.	49 U.S.C. 14904(b)(2)	803	823
Appendix B (g)(13): Service from freight forwarder at less than rate in effect—maximum penalty for subsequent violation(s).	49 U.S.C. 14904(b)(2)	3,210	3,291
Appendix B (g)(14): Violations related to loading and unloading motor vehicles.	49 U.S.C. 14905	16,048	16,453
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c))—minimum penalty.	49 U.S.C. 14901	1,066	1,093
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B—maximum penalty.	49 U.S.C. 14907	8,025	8,227
Appendix B (g)(17): Unauthorized disclosure of information.	49 U.S.C. 14908	3,210	3,291
Appendix B (g)(18): Violation of 49 U.S.C. subtitle IV, part B, or condition of registration.	49 U.S.C. 14910	803	823
Appendix B (g)(21)(i): Knowingly and willfully fails to deliver or unload HHG at destination.	49 U.S.C. 14905	16,048	16,453
Appendix B (g)(22): HHG broker estimate before entering into an agreement with a motor carrier.	49 U.S.C. 14901(d)(2)	12,383	12,695
Appendix B (g)(23): HHG transportation or broker services—registration requirement.	49 U.S.C. 14901 (d)(3)	30,956	31,737
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum penalty per day.	49 U.S.C. 521(b)(2)(E)	1,239	1,270
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum total penalty.	49 U.S.C. 521(b)(2)(E)	12,383	12,695
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—minimum penalty for first violation.	49 U.S.C. 524	2,133	2,187
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—maximum penalty for first violation.	49 U.S.C. 524	5,332	5,466
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—minimum penalty for subsequent violation(s).	49 U.S.C. 524	2,665	2,732

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—maximum penalty for subsequent violation(s).	49 U.S.C. 524	7,997	8,199
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for first violation.	49 U.S.C. 14906	2,133	2,187
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for subsequent violation(s).	49 U.S.C. 14906	5,332	5,466

E. FRA 2019 Adjustments

FRA's 2019 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Minimum rail safety penalty	49 U.S.C. ch. 213	\$870	\$892
Ordinary maximum rail safety penalty	49 U.S.C. ch. 213	28,474	29,192
Maximum penalty for an aggravated rail safety violation ..	49 U.S.C. ch. 213	113,894	116,766
Minimum penalty for hazardous materials training violations.	49 U.S.C. 5123	481	493
Maximum penalty for ordinary hazardous materials violations.	49 U.S.C. 5123	79,976	81,993
Maximum penalty for aggravated hazardous materials violations.	49 U.S.C. 5123	186,610	191,316

F. PHMSA 2019 Adjustments

PHMSA's 2019 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Maximum penalty for hazardous materials violation	49 U.S.C. 5123	\$79,976	\$81,993
Maximum penalty for hazardous materials violation that results in death, serious illness, or severe injury to any person or substantial destruction of property.	49 U.S.C. 5123	186,610	191,316
Minimum penalty for hazardous materials training violations.	49 U.S.C. 5123	481	493
Maximum penalty for each pipeline safety violation	49 U.S.C. 60122(a)(1)	213,268	218,647
Maximum penalty for a related series of pipeline safety violations.	49 U.S.C. 60122(a)(1)	2,132,679	2,186,465
Maximum penalty for liquefied natural gas pipeline safety violation.	49 U.S.C. 60122(a)(2)	77,910	79,875
Maximum penalty for discrimination against employees providing pipeline safety information.	49 U.S.C. 60122(a)(3)	1,239	1,270

G. MARAD 2019 Adjustments

MARAD's 2019 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Maximum civil penalty for a single violation of any provision under 46 U.S.C. Chapter 313 and all of Subtitle III related MARAD regulations, except for violations of 46 U.S.C. 31329.	46 U.S.C. 31309	\$20,521	\$21,038

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Maximum civil penalty for a single violation of 46 U.S.C. 31329 as it relates to the court sales of documented vessels.	46 U.S.C. 31330	51,302	52,596
Maximum civil penalty for a single violation of 46 U.S.C. 56101 as it relates to approvals required to transfer a vessel to a noncitizen.	46 U.S.C. 56101(e)	19,639	21,134
Maximum civil penalty for failure to file an AMVER report	46 U.S.C. 50113(b)	130	133
Maximum civil penalty for violating procedures for the use and allocation of shipping services, port facilities and services for national security and national defense operations.	50 U.S.C. 4513	25,928	26,582
Maximum civil penalty for violations in applying for or renewing a vessel's fishery endorsement.	46 U.S.C. 12151	150,404	154,197

H. SLSDC 2019 Adjustments

SLSDC's 2019 civil penalty adjustment is as follows:

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02522)
Maximum civil penalty for each violation of the Seaway Rules and Regulations at 33 CFR part 401.	33 U.S.C. 1232	\$91,901	\$94,219

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Orders 12866 or DOT's Regulatory Policies and Procedures; therefore, the rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Flexibility Analysis

The Department has determined the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) does not apply to this rulemaking. The RFA applies, in pertinent part, only when "an agency is required . . . to publish general notice of proposed rulemaking." 5 U.S.C. 604(a).⁴ The Small Business Administration's *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (2012), explains that:

If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]. . . . If

an NPRM is not required, the RFA does not apply.

As stated above, DOT has determined that good cause exists to publish this final rule without notice and comment procedures under the APA. Therefore, the RFA does not apply.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This regulation has no substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. It does not contain any provision that imposes substantial direct compliance costs on State and local governments. It does not contain any new provision that preempts state law, because states are already preempted from regulating in this area under the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Because none of the measures in the rule have tribal implications or impose substantial direct compliance costs on

Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing notice of and a 60-day comment period on, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. This final rule imposes no new information reporting or record keeping necessitating clearance by OMB.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979 as amended July 13, 1982 and July 30, 1985). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether

⁴ Under 5 U.S.C. 603(a), the Regulatory Flexibility Act also applies when an agency "publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States." However, this rule does not involve the internal revenue laws of the United States.

extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action qualifies for a categorical exclusion in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, (80 FR 44208, July 24, 2015), paragraph 5–6.6.f, which covers regulations not expected to cause any potentially significant environmental impacts. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this final rule.

G. Unfunded Mandates Reform Act

The Department analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995. The Department considered whether the rule includes a federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The Department has determined that this final rule will not result in such expenditures. Accordingly, this final rule is not subject to the Unfunded Mandates Reform Act.

H. Executive Order 13771

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” does not apply to this action because it is nonsignificant; therefore, it is not subject to the “2 for 1” and budgeting requirements.

List of Subjects

14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

14 CFR Part 383

Administrative practice and procedure, Penalties.

14 CFR Part 406

Administrative procedure and review, Commercial space transportation, Enforcement, Investigations, Penalties, Rules of adjudication.

33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

46 CFR Part 221

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

46 CFR Part 307

Marine safety, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 340

Harbors, Maritime carriers, National defense, Packaging and containers.

46 CFR Part 356

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Definitions, General information, Regulations

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 213

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 216

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 217

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad

safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 221

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping

requirements, State and local governments.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 236

Penalties, Positive Train Control, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 237

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Incorporation by reference, Passenger Equipment, Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 270

Penalties, Railroad safety, Reporting and recordkeeping requirements, System safety.

49 CFR Part 272

Penalties, Railroad employees, Railroad safety, Railroads, Safety, Transportation.

49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and Rubber Products, Tires, Penalties.

Accordingly, the Department of Transportation amends 14 CFR chapters

II and III, 33 CFR part 401, 46 CFR chapter II, and 49 CFR chapters I, II, III, and V as follows:

Title 14—Aeronautics and Space

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44701–44703, 44709–44710, 44713, 44725, 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. Revise § 13.301 to read as follows:

§ 13.301 Inflation adjustments of civil monetary penalties.

(a) This subpart provides the maximum civil monetary penalties or range of minimum and maximum civil monetary penalties for each statutory civil penalty subject to FAA jurisdiction, as adjusted for inflation.

(b) Each adjustment to a maximum civil monetary penalty or to minimum and maximum civil monetary penalties that establish a civil monetary penalty range applies to actions initiated under this part for violations occurring on or after July 31, 2019, notwithstanding references to specific civil penalty amounts elsewhere in this part.

(c) Minimum and maximum civil monetary penalties are as follows:

TABLE 1 TO § 13.301: MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS

United States Code citation	Civil monetary penalty description	2018 minimum penalty amount	New minimum penalty amount for violations occurring on or after 07/31/2019, adjusted for inflation	2018 maximum penalty amount	New maximum penalty amount for violations occurring on or after 07/31/2019, adjusted for inflation
49 U.S.C. 5123(a)(1)	Violation of hazardous materials transportation law.	N/A	N/A	\$79,976	\$81,993.
49 U.S.C. 5123(a)(2)	Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	N/A	N/A	\$186,610	\$191,316.
49 U.S.C. 5123(a)(3)	Violation of hazardous materials transportation law relating to training.	\$481	\$493	\$79,976	\$81,993.
49 U.S.C. 46301(a)(1)	Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	N/A	N/A	\$33,333	\$34,174.
49 U.S.C. 46301(a)(1)	Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	N/A	N/A	\$1,466	\$1,501.

TABLE 1 TO § 13.301: MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS—
Continued

United States Code citation	Civil monetary penalty description	2018 minimum penalty amount	New minimum penalty amount for violations occurring on or after 07/31/2019, adjusted for inflation	2018 maximum penalty amount	New maximum penalty amount for violations occurring on or after 07/31/2019, adjusted for inflation
49 U.S.C. 46301(a)(1)	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	N/A	N/A	\$1,466	\$1,501.
49 U.S.C. 46301(a)(3)	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.	No change.
49 U.S.C. 46301(a)(5)(A)	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	N/A	N/A	\$13,333	\$13,669.
49 U.S.C. 46301(a)(5)(B)(i)	Violation by an individual or small business concern related to the transportation of hazardous materials.	N/A	N/A	\$13,333	\$13,669.
49 U.S.C. 46301(a)(5)(B)(ii)	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	N/A	N/A	\$13,333	\$13,669.
49 U.S.C. 46301(a)(5)(B)(iii)	Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	N/A	N/A	\$13,333	\$13,669.
49 U.S.C. 46301(a)(5)(B)(iv)	Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	\$13,333	\$13,669.
49 U.S.C. 46301(b)	Tampering with a smoke alarm device.	N/A	N/A	\$4,280	\$4,388.
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	\$23,246	\$23,832.
49 U.S.C. 46318	Interference with cabin or flight crew.	N/A	N/A	\$35,440	\$35,883.
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice.	N/A	N/A	\$13,333	\$13,669.
49 U.S.C. 46320	Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort.	N/A	N/A	\$20,408	\$20,923.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See 49 U.S.C. 46301(a)(1) and (a)(5), above.	See 49 U.S.C. 46301(a)(1) and (a)(5), above.

■ 3. Part 383 is revised to read as follows:

PART 383—CIVIL PENALTIES

Sec.

- 383.1 Purpose and periodic adjustment.
383.2 Amount of penalty.

Authority: Sec. 701, Pub. L. 114–74, 129 Stat. 584; Sec. 503, Pub. L. 108–176, 117 Stat. 2490; Pub. L. 101–410, 104 Stat. 890; Sec. 31001, Pub. L. 104–134.

§ 383.1 Purpose and periodic adjustment.

(a) *Purpose.* This part adjusts the civil penalty liability amounts prescribed in 49 U.S.C. 46301(a) for inflation in accordance with the Act cited in paragraph (b) of this section.

(b) *Periodic adjustment.* DOT will periodically adjust the maximum civil penalties set forth in 49 U.S.C. 46301 and this part as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a), are as follows:

(a) A general civil penalty of not more than \$34,174 (or \$1,503 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section, (*see* 49 U.S.C. 46301(a)(1));

(b) With respect to small businesses and individuals, notwithstanding the general \$1,466 civil penalty, the following civil penalty limits apply:

(1) A maximum civil penalty of \$13,669 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued pursuant to those provisions (*see* 49 U.S.C. 46301(a)(5)(A));

(2) A maximum civil penalty of \$6,834 applies for violations of section 41719 and rules and orders issued pursuant to that provision (*see* 49 U.S.C. 46301(a)(5)(C)); and

(3) A maximum civil penalty of \$3,418 applies for violations of section 41712 or consumer protection rules or orders (*see* 49 U.S.C. 46301(a)(5)(D)).

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 4. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 5. Amend § 406.9 by revising paragraph (a) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(c), a person found by the FAA to have violated a requirement of the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than \$240,155 for each violation. A separate violation occurs for each day the violation continues.

* * * * *

Title 33—Navigation and Navigable Waters

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

■ 6. The authority citation for subpart A of part 401 is revised to read as follows:

Authority: 33 U.S.C. 981–990, 1231 and 1232, 49 CFR 1.52, unless otherwise noted.

■ 7. Amend § 401.102 by revising paragraph (a) to read as follows:

§ 401.101 Criminal penalty.

(a) A person, as described in § 401.101(b) who violates a regulation is liable to a civil penalty of not more than \$94,219.

* * * * *

Title 46—Shipping

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

■ 8. The authority citation for part 221 continues to read as follows:

Authority: 46 U.S.C. chs. 301, 313, and 561; Pub. L. 114–74; 49 CFR 1.93.

■ 9. Section 221.61 is revised to read as follows:

§ 221.61 Compliance.

(a) This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309, 31330, and 56101, pursuant to 49 U.S.C. 336.

(b) Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$21,038 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31329 and the

regulations promulgated thereunder is liable for a civil penalty of not more than \$52,596 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 U.S.C. 56101(e) is liable for a civil penalty of not more than \$21,134 for each violation.

PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

■ 10. The authority citation for part 307 continues to read as follows:

Authority: Pub. L. 109–304; 46 U.S.C. 50113; Pub. L. 114–74; 49 CFR 1.93.

■ 11. Section 307.19 is revised to read as follows:

§ 307.19 Penalties.

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of \$133.00 for each day of failure to file an AMVER report required by this part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

PART 340—PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS

■ 12. The authority citation for part 340 continues to read as follows:

Authority: 50 U.S.C. 4501 *et seq.* (“The Defense Production Act”); Executive Order 13603 (77 FR 16651); Executive Order 12656 (53 FR 47491); Pub. L. 114–74; 49 CFR 1.45; 49 CFR 1.93(l).

■ 13. Section 340.9 is revised to read as follows:

§ 340.9 Compliance.

Pursuant 50 U.S.C. 4513 any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this regulation shall, upon conviction, be fined not more than \$26,582 or imprisoned for not more than one year, or both.

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL’S DOCUMENTATION

■ 14. The authority citation for part 356 continues to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; Pub. L. 114–74; 49 CFR 1.93.

■ 15. Amend § 356.49 by revising paragraph (b) to read as follows:

§ 356.49 Penalties.

* * * * *

(b) A fine of up to \$154,197 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) within the exclusive economic zone of the United States; and

* * * * *

Title 49—Transportation

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 16. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321(b).

■ 17. Section 107.329 is revised to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than \$81,993 for each violation, except the maximum civil penalty is \$191,316 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$493 for violations relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection,

marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than \$81,993 for each violation, except the maximum civil penalty is \$191,316 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$493 for violations relating to training.

■ 18. In appendix A to subpart D of part 107, section II, following the table, under “B. Penalty Increases for Multiple Counts”, the first sentence of the second paragraph is revised to read as follows:

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

* * * * *

II. * * *

B. * * *

Under the Federal hazmat law, 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations relating to packaging manufacture or qualification) is subject to a civil penalty of up to \$81,993 or \$191,316 for a violation occurring on or after July 31, 2019. * * *

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 19. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 20. Amend § 171.1 by revising paragraph (g) to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

* * * * *

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$81,993 for each violation, except the maximum civil penalty is \$191,316 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$493 for a violation relating to training.

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

■ 21a. The authority citation for part 190 is revised to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.*

■ 21b. Amend § 190.223 by revising paragraphs (a) through (d) to read as follows:

§ 190.223 Maximum penalties.

(a) Any person found to have violated a provision of 49 U.S.C. 60101, *et seq.*, or any regulation or order issued thereunder, is subject to an administrative civil penalty not to exceed \$218,647 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,186,465 for any related series of violations.

(b) Any person found to have violated a provision of 33 U.S.C. 1321(j), or any regulation or order issued thereunder, is subject to an administrative civil penalty under 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

(c) Any person found to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed \$79,875, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed \$1,270, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

* * * * *

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

■ 22. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 23. Amend § 209.103 by revising paragraphs (a) and (c) to read as follows:

§ 209.103 Minimum and maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous materials transportation laws, an order issued thereunder, subchapter A or C of chapter I, subtitle B, of this title, or a special permit or approval issued under subchapter A or C of chapter I, subtitle B, of this title is liable for a civil penalty

of not more than \$81,993 for each violation, except that—

(1) The maximum civil penalty for a violation is \$191,316 if the violation results in death, serious illness, or severe injury to any person, or substantial destruction of property and

(2) A minimum \$493 civil penalty applies to a violation related to training.

(c) The maximum and minimum civil penalties described in paragraph (a) of this section apply to violations occurring on or after July 31, 2019.

■ 24. Amend § 209.105 by revising the last sentence of paragraph (c) to read as follows:

§ 209.105 Notice of probable violation.

(c) * * * In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of \$81,993 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to and including the maximum penalty amount of \$191,316.

§ 209.409 [Amended]

■ 25. Amend § 209.409 as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

■ 26. In appendix A to part 209, amend the section “Penalty Schedules; Assessment of Maximum Penalties” by:

■ a. Adding a sentence to the end of the sixth paragraph;

■ b. Revising the fourth sentence of the seventh paragraph; and

■ c. Revising the first sentence of the tenth paragraph.

The addition and revisions read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

Penalty Schedules; Assessment of Maximum Penalties

* * * * *

* * * Effective July 31, 2019, the minimum civil monetary penalty was raised from \$870 to \$892, the ordinary maximum civil monetary penalty was raised from \$28,474 to \$29,192, and the aggravated maximum civil monetary penalty was raised from \$113,894 to \$116,766.

* * * For each regulation or order, the schedule shows two amounts within the \$892 to \$29,192 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). * * *

* * * Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$116,766 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. * * *

■ 27. Amend appendix B to part 209 in the introductory text by revising the second sentence of the first paragraph, the last sentence of the second paragraph, and the fifth sentence of the third paragraph to read as follows:

Appendix B to Part 209—Federal Railroad Administration Guidelines for Initial Hazardous Materials Assessments

* * * The guideline penalty amounts reflect the best judgment of the FRA Office of Railroad Safety (RRS) and of the Safety Law Division of the Office of Chief Counsel (RCC) on the relative severity of the various violations routinely encountered by FRA inspectors on a scale of amounts up to the maximum \$81,993 penalty, except the maximum civil penalty is \$191,316 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, and a minimum \$493 penalty applies to a violation related to training. * * *

* * * When a violation of the Federal hazardous material transportation law, an order issued thereunder, the Hazardous Materials Regulations or a special permit, approval, or order issued under those regulations results in death, serious illness or severe injury to any person, or substantial destruction of property, a maximum penalty of at least \$81,993 and up to and including \$191,316 shall always be assessed initially.

* * * In fact, FRA reserves the express authority to amend the NOPV to seek a penalty of up to \$81,993 for each violation, and up to \$191,316 for any violation resulting in death, serious illness or severe injury to any person, or substantial destruction of property, at any time prior to issuance of an order. * * *

PART 213—TRACK SAFETY STANDARDS

■ 28. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 213.15 [Amended]

■ 29. In § 213.15, amend paragraph (a) as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 214—RAILROAD WORKPLACE SAFETY

■ 30. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 31304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 214.5 [Amended]

■ 31. Amend § 214.5 as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

■ 32. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 241, note; and 49 CFR 1.89.

§ 215.7 [Amended]

■ 33. Amend § 215.7 as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

■ 34. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 216.7 [Amended]

■ 35. Amend § 216.7 as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 217—RAILROAD OPERATING RULES

- 36. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 217.5 [Amended]

- 37. Amend § 217.5 as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 218—RAILROAD OPERATING PRACTICES

- 38. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 218.9 [Amended]

- 39. Amend § 218.9 as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 219—CONTROL OF ALCOHOL AND DRUG USE

- 40. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; Sec. 412, Div. A, Pub. L. 110-432, 122 Stat. 4889 (49 U.S.C. 20140, note); and 49 CFR 1.89.

§ 219.10 [Amended]

- 41. In § 219.10, amend as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 220—RAILROAD COMMUNICATIONS

- 42. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20103, note, 20107, 21301–21302, 20701–20703,

21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 220.7 [Amended]

- 43. Amend § 220.7 as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

- 44. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 221.7 [Amended]

- 45. Amend § 221.7 as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

- 46. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 222.11 [Amended]

- 47. Amend § 222.11 as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 223—SAFETY GLAZING STANDARDS—LOCOMOTIVES, PASSENGER CARS AND CABOOSSES

- 48. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 223.7 [Amended]

- 49. Amend § 223.7 as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

- 50. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 224.11 [Amended]

- 51. In § 224.11, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 225—RAILROAD ACCIDENTS/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

- 52. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 225.29 [Amended]

- 53. Amend § 225.29 as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 227—OCCUPATIONAL NOISE EXPOSURE

- 54. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103, note, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 227.9 [Amended]

- 55. In § 227.9, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$870” and add in its place “\$892”;
 - b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
 - c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 228—PASSENGER TRAIN EMPLOYEE HOURS OF SERVICE; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

■ 56. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 103, 20103, 20107, 21101–21109; Sec. 108, Div. A, Public Law 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 228.6 [Amended]

■ 57. In § 228.6, amend paragraph (a) as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

■ 58. In appendix A to part 228, below the heading “GENERAL PROVISIONS,” amend the “Penalty” paragraph by adding a sentence at the end of the paragraph to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

General Provisions

* * * * *

Penalty. * * * Effective July 31, 2019, the minimum civil monetary penalty was raised from \$870 to \$892, the ordinary maximum civil monetary penalty was raised from \$28,474 to \$29,192, and the aggravated maximum civil monetary penalty was raised from \$113,894 to \$116,766.

* * * * *

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

■ 59. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 229.7 [Amended]

■ 60. In § 229.7, amend paragraph (b) as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 230—STEAM LOCOMOTIVE INSPECTION AND MAINTENANCE STANDARDS

■ 61. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 230.4 [Amended]

■ 62. In § 230.4, amend paragraph (a) as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 231—RAILROAD SAFETY APPLIANCE STANDARDS

■ 63. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 231.0 [Amended]

■ 64. In § 231.0, amend paragraph (f) as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 232—BRAKE SYSTEM SAFETY STANDARDS FOR FREIGHT AND OTHER NON-PASSENGER TRAINS AND EQUIPMENT; END-OF-TRAIN DEVICES

■ 65. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 232.11 [Amended]

■ 66. In § 232.11, amend paragraph (a) as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 233—SIGNAL SYSTEMS REPORTING REQUIREMENTS

■ 67. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 504, 522, 20103, 20107, 20501–20505, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 233.11 [Amended]

■ 68. Amend § 233.11 as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 234—GRADE CROSSING SAFETY

■ 69. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 110–432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 234.6 [Amended]

■ 70. In § 234.6, amend paragraph (a) as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 235—INSTRUCTIONS GOVERNING APPLICATIONS FOR APPROVAL OF A DISCONTINUANCE OR MATERIAL MODIFICATION OF A SIGNAL SYSTEM OR RELIEF FROM THE REQUIREMENTS OF PART 236

■ 71. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 235.9 [Amended]

■ 72. Amend § 235.9 as follows:

■ a. Remove the dollar amount “\$870” and add in its place “\$892”;

■ b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and

■ c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 236—RULES, STANDARDS, AND INSTRUCTIONS GOVERNING THE INSTALLATION, INSPECTION, MAINTENANCE, AND REPAIR OF SIGNAL AND TRAIN CONTROL SYSTEMS, DEVICES, AND APPLIANCES

■ 73. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 236.0 [Amended]

■ 74. In § 236.0, amend paragraph (f) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 237—BRIDGE SAFETY STANDARDS

■ 75. The authority citation for part 237 continues to read as follows:

Authority: 49 U.S.C. 20102–20114; Public Law 110–432, Div. A, Sec. 417; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 237.7 [Amended]

■ 76. In § 237.7, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

■ 77. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 238.11 [Amended]

■ 78. In § 238.11, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

■ 79. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 239.11 [Amended]

■ 80. Amend § 239.11 as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

■ 81. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 240.11 [Amended]

■ 82. In § 240.11, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 241—UNITED STATES LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

■ 83. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.89.

§ 241.15 [Amended]

■ 84. In § 241.15, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

■ 85. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 242.11 [Amended]

■ 86. In § 242.11, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES

■ 87. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 243.7 [Amended]

■ 88. In § 243.7, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

■ 89. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 244.5 [Amended]

■ 90. In § 244.5, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”; and
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 270—SYSTEM SAFETY PROGRAM

■ 91. The authority citation for part 270 continues to read as follows:

Authority: 49 U.S.C. 20103, 20106–20107, 20118–20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 270.7 [Amended]

■ 92. In § 270.7, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”;
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 272—CRITICAL INCIDENT STRESS PLANS

■ 93. The authority citation for part 272 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and sec. 410, Div. A, Pub. L. 110–432, 122 Stat. 4888.

§ 272.11 [Amended]

■ 94. In § 272.11, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$870” and add in its place “\$892”;
- b. Remove the dollar amount “\$28,474” and add in its place “\$29,192”;
- c. Remove the dollar amount “\$113,894” and add in its place “\$116,766”.

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 95. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 113; chapters 5, 51, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; Sec. 701 of Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.87.

■ 96. Amend Appendix A to part 386 by revising the introductory text and sections II, IV.a. through e., and IV.g. through j. to read as follows:

Appendix A to Part 386—Penalty Schedule: Violations of Notices and Orders

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Pub. L. 114–74, sec. 701, 129 Stat. 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

* * * * *

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of \$1,093 but not more than \$10,932 per violation.

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to \$1,895 per violation.

(For purposes of this violation, the term “driver” means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to \$18,943 per violation.

(This violation applies to motor carriers including an independent contractor who is not a “driver,” as defined under paragraph IV(a) above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—\$1,895 each time the vehicle or intermodal equipment is so operated.

(This violation applies to drivers as defined in IV(a) above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to \$18,943 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner operator who is not a “driver,” as defined in IV(a) above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$947 per violation.

* * * * *

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations or to cease part of an intermodal equipment provider's operations, i.e., failure to cease operations as ordered.

Penalty—Up to \$27,331 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to \$24,017 per day the operation continues after the effective date and time of the out-of-service order.

i. Violation—Conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

Penalty—Up to \$15,419 for each day that operations are conducted during the suspension or revocation period.

j. Violation—Conducting operations during a period of suspension or revocation under

§ 385.911, § 385.913, § 385.1009 or § 385.1011.

Penalty—Up to \$24,017 for each day that operations are conducted during the suspension or revocation period.

■ 97. Amend Appendix B to part 386 by revising the introductory text and paragraphs (a)(1) through (5), (b), (d) through (f), (g) introductory text, (g)(1) through (8), (g)(10) through (14), (g)(16) through (18), (g)(21)(i), (g)(22) and (23), (h), and (i) to read as follows:

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Pub. L. 114–74, sec. 701, 129 Stat. 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) * * *

(1) *Recordkeeping.* A person or entity that fails to prepare or maintain a record required by parts 40, 382, 385, and 390–99 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$1,270 for each day the violation continues, up to \$12,695.

(2) *Knowing falsification of records.* A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390–99 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation order of the Secretary is subject to a maximum civil penalty of \$12,695 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) *Non-recordkeeping violations.* A person or entity that violates parts 382, 385, or 390–99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$15,419 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 382, 385, and 390–99 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$3,855.

(5) *Violation of 49 CFR 392.5.* A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed \$3,174 for a first conviction and not less than \$6,348 for a second or subsequent conviction.

* * * * *

(b) *Commercial driver's license (CDL) violations.* Any person who violates 49 CFR part 383, subparts B, C, E, F, G, or H, is subject to a civil penalty not to exceed \$5,732; except:

(1) A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$3,174 for a first conviction and not less than \$6,348 for a second or subsequent conviction;

(2) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than \$5,732 or more than \$31,737; and

(3) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that CDL-holder to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings is subject to a civil penalty of not more than \$16,453.

* * * * *

(d) *Financial responsibility violations.* A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter or any person (except an employee who acts without knowledge) who knowingly violates the rules of Part 387 subparts A and B is subject to a maximum penalty of \$16,915. Each day of a continuing violation constitutes a separate offense.

(e) *Violations of the Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations found in Subpart E of Part 385.* This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$81,993 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not less than \$493 and not more than \$81,993 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations or exemptions under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$81,993 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not more than \$81,993.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$191,316 for each offense.

(f) *Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than \$27,331 (49 CFR 385.13). Each day the transportation continues in violation of a final "unsatisfactory" safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than \$81,993 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$191,316 for each offense. Each day the transportation continues in violation of a final "unsatisfactory" safety rating constitutes a separate offense.

(g) *Violations of the commercial regulations (CRs).* Penalties for violations of the CRs are specified in 49 U.S.C. chapter 149. These penalties relate to transportation subject to the Secretary's jurisdiction under 49 U.S.C. chapter 135. Unless otherwise noted, a separate violation occurs for each day the violation continues.

(1) A person who operates as a motor carrier for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$10,931 per violation.

(2) A person who knowingly operates as a broker in violation of registration requirements of 49 U.S.C. 13904 or financial security requirements of 49 U.S.C. 13906 is liable for a penalty not to exceed \$10,931 for each violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$27,331 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier of property in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of \$10,932 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone

along the United States-Mexico border, is liable for a maximum penalty of \$15,034 for an intentional violation and a maximum penalty of \$37,587 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a minimum penalty of \$21,865 and a maximum penalty of \$43,730 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, is liable for a minimum penalty of \$1,644 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of \$3,291 for the first violation and \$8,227 for each subsequent violation.

* * * * *

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of \$164,531 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts or omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is \$328 for the first violation and \$411 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$823 for the first violation and up to \$3,291 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$823 for the first violation and up to \$3,291 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than \$16,453 per violation.

* * * * *

(16) A person required to make a report to the Secretary, answer a question, or make,

prepare, or preserve a record under part B of subtitle IV, title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a minimum penalty of \$1,093 and for a maximum penalty of \$8,227 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business-related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of \$3,291.

(18) A person who violates a provision of part B, subtitle IV, title 49, U.S.C., or a regulation or order under part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of \$823 for each violation if another penalty is not provided in 49 U.S.C. chapter 149.

* * * * *

(21) * * *

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than \$16,453 for each violation. Each day of a continuing violation constitutes a separate offense.

* * * * *

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than \$12,695 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than \$31,737 for each violation.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle

subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than \$1,270 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$12,695.

(i) *Evasion.* A person, or an officer, employee, or agent of that person:

(1) Who by any means tries to evade regulation of motor carriers under title 49, United States Code, chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or sections 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation issued under any of those provisions, shall be fined at least \$2,187 but not more than \$5,466 for the first violation and at least \$2,732 but not more than \$8,199 for a subsequent violation.

(2) Who tries to evade regulation under part B of subtitle IV, title 49, U.S.C., for carriers or brokers is liable for a penalty of at least \$2,187 for the first violation or at least \$5,466 for a subsequent violation.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 98. The authority citation for 49 CFR Part 578 is revised to read as follows:

Authority: Pub. L. 92–513, Pub. L. 94–163, Pub. L. 98–547, Pub. L. 101–410, Pub. L. 102–388, Pub. L. 102–519, Pub. L. 104–134, Pub. L. 109–59, Pub. L. 110–140, Pub. L. 112–141, Pub. L. 114–74, Pub. L. 114–94, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, 33114 and 33115; delegation of authority at 49 CFR 1.81, 1.95.

■ 99. In § 578.5, paragraphs (a) through (g) and (i) are revised to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) *Motor vehicle safety*—(1) *In general.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than \$22,329 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is \$111,642,265.

(2) *School buses.* (i) Notwithstanding paragraph (a)(1) of this section, a person who:

(A) Violates section 30112(a)(1) of Title 49 United States Code by the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in 49 U.S.C. 30125(a)); or

(B) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than \$12,695 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph for a related series of violations is \$19,042,502.

(3) *Section 30166.* A person who violates Section 30166 of Title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is \$22,329 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is \$111,642,265.

(4) *False and misleading reports.* A person who knowingly and willfully submits materially false or misleading information to the Secretary, after certifying the same information as accurate under the certification process established pursuant to Section 30166(o), shall be subject to a civil penalty of not more than \$5,466 per day. The maximum penalty under this paragraph for a related series of daily violations is \$1,093,233.

(b) *National Automobile Title Information System.* An individual or entity violating 49 U.S.C. Chapter 305 is liable to the United States Government for a civil penalty of not more than \$1,783 for each violation.

(c) *Bumper standards.* (1) A person that violates 49 U.S.C. 32506(a) is liable to the United States Government for a civil penalty of not more than \$2,924 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of 49 U.S.C. 32506(a)(1) or (4)—

(i) That does not comply with a standard prescribed under 49 U.S.C. 32502, or

(ii) For which a certificate is not provided, or for which a false or

misleading certificate is provided, under 49 U.S.C. 32504.

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is \$3,256,233.

(d) *Consumer information*—(1) *Crashworthiness and damage susceptibility*. A person who violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than \$2,924 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is \$1,594,890.

(2) *Consumer tire information*. Any person who fails to comply with the national tire fuel efficiency program under 49 U.S.C. 32304A is liable to the United States Government for a civil penalty of not more than \$60,518 for each violation.

(e) *Country of origin content labeling*. A manufacturer of a passenger motor vehicle distributed in commerce for sale in the United States that willfully fails to attach the label required under 49 U.S.C. 32304 to a new passenger motor vehicle that the manufacturer manufactures or imports, or a dealer that fails to maintain that label as required under 49 U.S.C. 32304, is liable to the United States Government for a civil penalty of not more than \$1,783 for each violation. Each failure to attach or maintain that label for each vehicle is a separate violation.

(f) *Odometer tampering and disclosure*. (1) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than \$10,932 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph for a related series of violations is \$1,093,233.

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or \$10,932, whichever is greater.

(g) *Vehicle theft protection*. (1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than \$2,402 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single violation. The maximum penalty under

this paragraph for a related series of violations is \$600,388.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than \$178,338 a day for each violation.

* * * * *

(i) *Medium- and heavy-duty vehicle fuel efficiency*. The maximum civil penalty for a violation of the fuel consumption standards of 49 CFR part 535 is not more than \$41,882 per vehicle or engine. The maximum civil penalty for a related series of violations shall be determined by multiplying \$41,882 times the vehicle or engine production volume for the model year in question within the regulatory averaging set.

Issued in Washington, DC, under authority delegated at 49 CFR 1.27(n), on: June 26, 2019.

Steven G. Bradbury,
General Counsel.

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AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 203

RIN 0412–AA91

Streamlining the Registration Process for Private Voluntary Organizations

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: USAID is issuing a final rule to rescind the Agency's rules to streamline the registration process for Private Voluntary Organizations (PVOs). Foreign assistance has evolved since the establishment of the requirement that PVOs register with USAID, and a careful review of the Agency's business practices has concluded that there is no longer a need for the current, time-consuming and costly Agency-wide process. The remaining USAID programs required by statute to register PVOs as a condition of eligibility have incorporated a simplified registration process into each of their applications for funding. USAID published the proposed rule and has determined to adopt a final rule to support streamlining the PVO registration process.

DATES: This rule is effective August 30, 2019.

FOR FURTHER INFORMATION CONTACT: Daniel Grant, Telephone: (202) 712–0497 or email: dgrant@usaid.gov

SUPPLEMENTARY INFORMATION: On February 12, 2019 (84 FR 3351), USAID issued a proposed rule to rescind part 203 of title 22 of the Code of Federal Regulations (CFR) (22 CFR part 203) to streamline the registration process for PVOs. Effective upon the publication of this final rule, PVOs would no longer be required to register with USAID to compete for funding, with the exception of organizations that apply for the Limited Excess-Property Program (LEPP), the Ocean-Freight Reimbursement Program (OFR), or to other Federal Departments and Agencies under Section 607(a) of the Foreign Assistance Act (FAA). Applicants to the LEPP, the OFR, and for assistance under Section 607(a) of the FAA must complete and submit to USAID a self-certification form to indicate they qualify as a PVO. The self-certification form, which an authorized representative of the applicant organization must sign, requires that a PVO confirm whether it is registered as a U.S.-based organization or an international PVO. Rescission of 22 CFR part 203 is expected to reduce the burden on the public significantly; produce a total estimated annual cost savings of \$779,406 to USAID; and offer significant savings for the PVO community, projected to range from approximately \$2 million to \$11 million per year.

A. Discussion of Comments

USAID received one set of comments from an individual in response to the proposed rule. A discussion of these comments follows:

The commenter sought clarification on the rule and the rulemaking process, in addition to the laws associated with the registration of PVOs. The three USAID programs that require registration because of statute are the LEPP, the OFR, and applications to other U.S. Government Departments and Agencies that seek to provide foreign assistance in accordance with Section 607(a) of the FAA. The statute is silent on the methodology for registration. While 22 CFR part 203 details a specific process, USAID has determined it is duplicative of pre-award assessments and due-diligence requirements the Agency already undertakes with all prospective awardees. Maintaining both sets of requirements imposes a significant cost burden on PVOs (and PVOs only) to obtain and maintain registration, a process largely duplicated if a PVO is considered for an award. Replacing 22 CFR part 203 with a legally compliant, simplified self-certification would streamline the process significantly. USAID is updating

this process not because of changes in law or new legal requirements, but to reduce costs and eliminate unnecessary regulation. Only PVOs participating in the three specific programs mentioned above would have to self-certify, and the Bureaus and Independent Offices within USAID that manage these programs would provide guidance as necessary as part of implementing them.

Maintenance of a PVO registry is not necessary to implement these programs. In addition, no law requires maintaining a database of PVOs, which is duplicative of the role private rating organizations now play. While different from the focus of the PVO-registration program, initially established to help achieve USAID's international-development mission, private rating organizations offer the transparency on service organizations that the PVO-registration process had also provided, although that was not the purpose of USAID's PVO-registration program.

USAID published the proposed rule on February 12, 2019, and issuance of this final rule serves as USAID's notification to, and request for, input from the public on the streamlined registration process for PVOs.

B. Background

USAID is issuing this final rule to rescind 22 CFR part 203, which codified the rules for PVO registration with USAID and provided the registration process for PVOs, including the conditions for registration and documentation required to be submitted to USAID to complete a registration, as well as detailing the annual renewals and termination processes.

USAID has rescinded 22 CFR part 203 because the process to register PVOs is no longer needed for the majority of programs open to PVOs across the Agency. Therefore, the Agency has streamlined it to apply only to programs that require registration by statute (LEPP, OFR, and applications to other U.S. Government Departments and Agencies that seek to provide foreign assistance in accordance with Section 607(a) of the FAA). Combined, these programs serve fewer than 50 organizations.

USAID initially established its process to register PVOs to ensure an organization met the definition of a PVO and specific organizational standards. Today, USAID examines all potential partner organizations, PVOs or otherwise, via a pre-award assessment managed by warranted USAID Agreement/Contract Officers in accordance with Agency policy (Automated Directives System [ADS] Chapter 303: Grants and Cooperative

Agreements to Non-Governmental Organizations; and ADS Chapter 302: USAID Direct Contracting), and as required by relevant regulations (*i.e.*, 2 CFR 200.205 for assistance, and 48 CFR part 9 for contracts). The due-diligence process for registering PVOs under 22 CFR part 203 is duplicative of these pre-award assessments, and organizations spend a substantial amount of time and money to obtain and maintain registration. Finally, USAID's PVO registration has historically played the role that private rating organizations now play—publishing data on PVOs and other types of non-governmental organizations. The extensive information publicly available through other providers has eliminated the Agency's need to produce information on the sector through the maintenance and publication of a registry.

C. Impact Assessment

(1) *Executive Orders (E.O.) 12866 and 13563—Regulatory Planning and Review*

Under E.O. 12866, USAID must determine whether a regulatory action is “significant” and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). USAID has determined that 22 CFR part 203 is not an “economically significant regulatory action” under Section 3(f)(1) of E.O. 12866. This final rule is not a major rule under Section 804 of Title 5 of the United States Code (U.S.C.).

E.O.s 12866 and 13563 direct Federal Departments and Agencies to assess all the costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Streamlining the duplicative Agency-wide registration program would eliminate thousands of labor hours and save hundreds of thousands of dollars for USAID and the estimated 550 PVOs currently registered with the Agency.

USAID uses a contractor to manage the PVO-registration process, which costs the Agency approximately \$700,000 per year. In addition, internal USAID annual labor costs related to the registration process amount to \$79,406 in burdened salary and benefit expenses (50 percent of a General Schedule [GS]-13 Full-Time Equivalent [FTE]). With

this deregulation, USAID anticipates saving \$779,406 in Federal Government costs per year.

Moreover, USAID estimates that the deregulation would generate significant cost-savings for affected PVOs. USAID recently surveyed all 550 PVO registrants to quantify the burden associated with the registration process. Within the past ten years, the number of PVOs registered with USAID on an annual basis has been consistent, ranging from 550 to 553 PVOs per year. Based on the results of the survey, USAID estimates that all 550 PVO registrants spent a total of 4,378 hours per year to prepare and file the registration forms.

Using market research, USAID estimates that the burdened labor cost for PVO staff to conduct tasks related to registration ranges from \$40 to \$80 per hour.¹ Applying those rates to the total 4,378 personnel hours yields an estimated cost that ranges from \$175,120 to \$350,240 for PVO staff to register.

In addition, with rescission of the rule, USAID concludes that PVOs would achieve significant further cost-savings, because a component of the registration process is the requirement to conduct an external financial audit. USAID estimated the total number of external audits conducted only for the purposes of registering as a PVO, but not used because the organization did not receive an award from USAID, range from 183 to 367. Based on market research,² past experience, and consultations with registered PVOs, the average cost of an independent audit ranges from \$10,000 to \$30,000. USAID then calculated a low estimate and high estimate of cost-savings. For the high estimate, USAID applied the rate of \$30,000 to 367 registrants (two-thirds of the 550 total registrants) that do not receive an award. This yields an annual total of \$11,010,000 in “unfruitful” expenses avoided. For the low estimate, we applied the \$10,000 rate as the audit cost, and added the assumption that half of registrants without awards would have procured financial audits even in the absence of the rule. Multiplying \$10,000 by 183 (one-third of the 550 total registrants) yields a total of \$1,830,000 for our low-cost estimate of

¹ Calculated based on nationwide data on nonprofit program manager salaries (https://www.glassdoor.com/Salaries/nonprofit-program-manager-salary-SRCH_KO0,25.htm), with employee benefit costs added into the hourly rates (<https://www.bls.gov/news.release/eccec.nr0.htm>).

² <https://www.councilofnonprofits.org/nonprofit-audit-guide/what-is-independent-audit>, <http://www.financialexecutives.org/ferf/download/2015%20Final/2015-018.pdf>

cost-savings associated with avoided audit expenses. When estimates for PVO staff time and financial audits are combined, the cost savings for affected PVOs ranges from \$2,005,120 to \$11,360,240. When added to the expected costs internal to USAID of \$779,406, the annual total of incremental cost savings as a result of the rescission ranges from \$2,784,526 to \$12,139,646. Therefore, the rescission of our PVO-registration rule would benefit USAID and our PVOs by streamlining processes and achieving significant cost-savings.

2. Executive Order (E.O.) 13771

This rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost-savings of this rule appear in the rule's economic analysis.

3. Regulatory Flexibility Act

Because the rescission of this regulation removes, rather than imposes, the collection of information, USAID certifies that the rescission would not have a significant economic impact on a substantial number of small entities.

4. Paperwork Reduction Act (PRA)

The Paperwork Reduction Act (44 U.S.C. 3507) applies to this rule, because it removes information-collection requirements formerly approved by OMB. Rescission of this rule would reduce paperwork significantly and eliminate information-collection requirements on the 550 PVOs that currently register with the Agency. USAID collects information from all registered PVOs as part of the registration requirement, such as financial data and a costly external financial audit, to determine whether the PVO meets the conditions of registration. Under the revised approach, only organizations that apply for the Agency's LEPP or OFR, or to other U.S. Government Departments and Agencies that seek to provide foreign assistance (about 50 organizations in total) would have to certify they meet USAID's PVO requirements through the new, streamlined certification process described earlier. USAID would not collect any other data or demand extra financial audits from these organizations.

USAID previously collected information for to register PVOs under the OMB-approved AID Form 1550-2 (OMB Approval Number 0412-0035), but inadvertently operated in non-compliance with the PRA when OMB approval of this form expired, and USAID did not seek extension of the OMB approval when the Agency moved

to an on-line system for PVO registration. USAID's online PVO-registration system required that PVOs provide the same information requested on AID Form 1550-2, including financial data. As such, the public-reporting burden for collection of information remained the same under the on-line system.

5. Administrative Procedures Act

USAID is issuing this deregulatory action to remove an unneeded hurdle to doing business with the Agency that imposes unnecessary and excessive costs on the private sector with no value to the Government. The rescinded rule originally called for the collection of information, such as a company's make-up of volunteers—since obviated once statutory changes removed the volunteer requirement. Apart from that requirement, statutory references to the registration of PVOs (such as those in Sections 123 or 607 of the FAA) provide no further guidance or requirements to the Agency on what such registration should entail. By rescinding this rule, the Agency would be free to simplify and streamline registration to remove barriers that impose expenses on smaller organizations that wish to compete for USAID funds.

USAID also conducted surveys of the primary stakeholders to the registration process—that of Agency's internal stakeholders and the PVO community. Surveys of registered PVOs in 2012 and 2017 showed that the PVO community did not see significant value in the registration program delineated by 22 CFR part 203, and internal stakeholders for the Agency determined that the information collected in accordance with 22 CFR 203 served no purpose for the Agency. These findings contributed to the decision to remove both the registration program and the rule that required such a rigorous registration process. Additionally, USAID does not plan to replace the current rule with any other.

For the LEPP, the OFR, and PVOs that apply to other U.S. Government Departments and Agencies that are seeking to provide foreign assistance under Section 607(a) of the FAA, all of which still require registration because of legislative requirements, as provided above, the Agency has developed a simplified registration process as part of the application process.

List of Subjects for 22 CFR Part 203

Foreign aid, Nonprofit organizations, Reporting and recordkeeping requirements.

PART 203—[REMOVED]

■ For the reasons discussed in the preamble, and under the authority of Sec. 621, Public Law 87-195, 75 Stat. 445, (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp., p. 435, USAID removes 22 CFR part 203.

Carrie Thompson,

Acting Assistant Administrator, Bureau for Economic Growth, Education, and the Environment.

[FR Doc. 2019-15685 Filed 7-30-19; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2017-0004]

RIN 0651-AD15

Changes to the Trademark Rules of Practice To Mandate Electronic Filing

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) amends the Rules of Practice in Trademark Cases and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to mandate electronic filing of trademark applications and all submissions associated with trademark applications and registrations, and to require the designation of an email address for receiving USPTO correspondence, with limited exceptions. This rule advances the USPTO's IT strategy to achieve complete end-to-end electronic processing of trademark-related submissions, thereby improving administrative efficiency by facilitating electronic file management, optimizing workflow processes, and reducing processing errors.

DATES: This rule is effective on October 5, 2019.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, TMPolicy@uspto.gov, (571) 272-8946.

SUPPLEMENTARY INFORMATION:

Purpose: The USPTO revises the rules in parts 2 and 7 of title 37 of the Code of Federal Regulations to require electronic filing through the USPTO's

Trademark Electronic Application System (TEAS) of all trademark applications based on section 1 and/or section 44 of the Trademark Act (Act), 15 U.S.C. 1051, 1126, and submissions filed with the USPTO concerning applications or registrations. These submissions include, for example, responses to Office actions, registration maintenance filings, international applications, subsequent designations, and direct filings with the USPTO relating to extensions of protection through the international registration system. In addition, this rulemaking requires the designation of an email address for receiving USPTO correspondence concerning these submissions.

The requirement to file an initial application through TEAS does not apply to applications based on section 66(a) of the Act, 15 U.S.C. 1141f, because these applications are initially filed with the International Bureau (IB) of the World Intellectual Property Organization and subsequently transmitted electronically to the USPTO. However, section 66(a) applicants and registrants are required to electronically file all subsequent submissions concerning their applications or registrations and to designate an email address for receiving USPTO correspondence. This rulemaking does not encompass electronic filing of submissions made to the Trademark Trial and Appeal Board (TTAB) in *ex parte* or *inter partes* proceedings. Such submissions are currently required to be filed through the USPTO's Electronic System for Trademark Trials and Appeals (ESTTA).

This rule is intended to maximize end-to-end electronic processing of applications and related submissions, as well as registration maintenance filings. Achieving complete end-to-end electronic processing of all trademark submissions is an IT objective of the USPTO. End-to-end electronic processing means that an application and all application- and registration-related submissions are filed and processed electronically, and any related correspondence between the USPTO and the relevant party is conducted entirely electronically. Thus, an application that is processed electronically end to end would be filed through TEAS, and all submissions related to the application, such as voluntary amendments, responses to Office actions, or allegations of use, would also be filed through TEAS. With this change, outgoing USPTO correspondence regarding the application will be sent by email. Likewise, all submissions related to a

registration must be filed through TEAS and outgoing USPTO correspondence regarding the registration will be sent by email.

Although more than 99% of applications under section 1 or section 44 are now filed electronically, just under 88% are currently prosecuted electronically from end to end. This means that approximately 12% of these filings still involve paper processing. Prior reductions in the filing fees for electronic submissions resulted in almost 100% of new applications being filed electronically, but have not achieved complete end-to-end electronic processing. By mandating electronic filing of trademark applications and submissions concerning applications or registrations through TEAS, the amended rules will reduce paper processing to an absolute minimum and thus maximize end-to-end electronic processing.

End-to-end electronic processing of all applications, related correspondence, statutorily required registration maintenance submissions, and other submissions will benefit trademark customers and increase the USPTO's administrative efficiency by facilitating electronic file management, optimizing workflow processes, and reducing processing errors. Paper submissions hinder efficiency and accuracy and are more costly to process than electronic submissions because they require manual uploading of scanned copies of the documents into the USPTO electronic records system and manual data entry of information in the documents. Electronic submissions through TEAS, on the other hand, generally do not require manual processing and are automatically categorized, labeled, and uploaded directly into an electronic file in the USPTO electronic records system for review by USPTO employees and the public. If a TEAS submission contains amendments or other changes to the information in the record, often those amendments and changes are automatically entered into the electronic records system. Furthermore, TEAS submissions are more likely to include all necessary information because the USPTO can update its forms to specifically tailor the requirements for a particular submission and require that the information be validated prior to submission. Consequently, preparing and submitting an application or related document, or a registration maintenance filing, through TEAS is likely to result in a more complete submission and take less time than preparing and mailing the paper equivalent. Thus, TEAS submissions help ensure more complete

filings, expedite processing, shorten pendency, minimize manual data entry and potential data-entry errors, and eliminate the potential for lost or missing papers.

This rule also requires the designation of an email address for receiving USPTO correspondence concerning these submissions, which is either that of the applicant or registrant, if unrepresented, or an authorized attorney, if one has been appointed. Currently, in order to receive a filing date for a new application under section 1 or section 44, the USPTO requires, among other things, that the applicant designate an "address for correspondence." 37 CFR 2.21(a)(2). Applicants who filed using the TEAS Plus or TEAS Reduced Fee (TEAS RF) filing options have been required to designate an email address for correspondence, while those who filed on paper or through the regular TEAS application were permitted to designate a postal address. This rule requires applicants and registrants, and parties to a proceeding before the TTAB, to provide and maintain an email address for correspondence. The requirement to designate an email address for receiving USPTO correspondence benefits the USPTO and its customers by reducing costs and increasing efficiency. Email correspondence can be sent, received, and processed faster than paper correspondence, which must be printed, collated, scanned, and uploaded to the electronic records system, and mailed domestically or internationally, at greater expense. Under this rule, applicants and registrants, and parties to a proceeding before the TTAB, are also required to provide and maintain a postal address. The domicile address specified for an applicant, registrant, or party to a proceeding will be treated by the Office as the postal address for the applicant, registrant, or party. In the rare circumstance where mail cannot be delivered to its domicile address, the applicant, registrant, or party may request to designate a postal address where mail can be delivered.

A qualified practitioner representing an applicant, registrant, or party also is required to provide and maintain a postal address. This requirement ensures the USPTO's ability to contact the applicant, registrant, party, or practitioner by mail in certain limited circumstances, such as when an appointed practitioner is suspended or excluded from practice before the USPTO and is no longer the correspondent, or when the Office sends a physical registration certificate.

Previous Initiatives to Increase End-to-End Electronic Processing: The

USPTO previously amended its rules to encourage electronic filing through TEAS and email communication by establishing the TEAS Plus and TEAS RF filing options for applications based on section 1 and/or section 44. *See* 37 CFR 2.6. These filing options have lower application fees than a regular TEAS application, but, unlike a regular TEAS application, they require the applicant to (1) provide, authorize, and maintain an email address for receiving USPTO correspondence regarding the application and (2) file certain application-related submissions through TEAS. *See* 37 CFR 2.22, 2.23. If the applicant does not fulfill these requirements, the applicant must pay an additional processing fee. *See* 37 CFR 2.6, 2.22, 2.23.

Despite these additional requirements, and the potential additional processing fee for noncompliance, the TEAS RF filing option is now the most popular filing option among USPTO customers, followed by TEAS Plus. These two filing options currently account for nearly 99% of all new trademark applications filed under section 1 and/or section 44, suggesting that applicants are comfortable with filing and communicating with the USPTO electronically.

Furthermore, in January 2017, the USPTO revised its rules to increase fees for paper filings to bring the fees nearer to the cost of processing the filings and encourage customers to use lower-cost electronic options. As a result of these rule changes, the USPTO is now processing nearly 88% of applications filed under section 1 and/or section 44 electronically end to end.

Discussion of Rule Changes

(1) New Applications. Under this rule, § 2.21 is amended to require applicants to file electronically, through TEAS, any trademark, service mark, certification mark, collective membership mark, or collective trademark or service mark application for registration on the Principal or Supplemental Register under section 1 and/or section 44. As noted above, the requirement to file an application through TEAS does not apply to applications based on section 66(a) because they are initially processed by the IB and subsequently transmitted electronically to the USPTO.

The TEAS RF filing option, which required applicants to maintain an email address for receiving USPTO correspondence regarding the application and to file the application and related submissions through TEAS, will become the default, or “standard,”

filing option and will be renamed “TEAS Standard” on the effective date of this rule. The filing fee for this option remains at \$275 per class. The TEAS Plus option also remains at \$225 per class, while the TEAS option under 37 CFR 2.6(a)(1)(ii) at \$400 per class is eliminated. However, the per-class fee of \$400 in § 2.6(a)(1)(ii), which is the current filing fee for applications under section 66(a), is retained as the filing fee for such applications.

Under this rule, an application filed on paper under section 1 and/or section 44 will not receive a filing date unless it falls under one of the limited exceptions discussed below.

(2) Additional Processing Fee. Previously, the additional processing fee under § 2.6(a)(1)(v) applied to TEAS Plus and TEAS RF applications that failed to meet the requirements under § 2.22(a) or § 2.23(a) at filing, and to TEAS Plus and TEAS RF applications when certain submissions were not filed through TEAS or when the applicant failed to maintain a valid email address for receipt of communications from the Office. Under this rule, the processing fee applies only to TEAS Plus applications that fail to meet the amended filing requirements under § 2.22(a). All applicants and registrants, except those specifically exempted, are now required to electronically file any submissions in connection with an application or registration and to designate and maintain an email address for correspondence. A TEAS Plus or TEAS Standard (previously TEAS RF) applicant who meets the amended filing requirements, but thereafter seeks acceptance of a submission filed on paper, pursuant to new § 2.147, or a waiver of the requirement to file such submissions electronically, must then pay the relevant paper filing fee and the paper petition fee for any submission filed on paper.

(3) Submissions Required to Be Filed Through TEAS. This rule amends § 2.23 to also require that correspondence concerning a trademark application or registration under section 1, section 44, or section 66(a) be filed through TEAS, except for correspondence required to be submitted to the Assignment Recordation Branch or through ESTTA. Although all correspondence is required to be filed electronically, the USPTO recognizes that there may be certain circumstances when a paper filing is necessary. For those instances, the Office codifies a new regulatory section, at 37 CFR 2.147, which sets out a procedure for requesting acceptance of paper submissions under particular circumstances. This section is discussed

below in the explanation of the limited exceptions to the amended requirements.

Although this rule requires correspondence to be filed through TEAS, current USPTO practice regarding informal communications is unchanged. Thus, for example, an applicant or an applicant’s attorney may still conduct informal communications with an examining attorney regarding a particular application by telephone or email. *See* Trademark Manual of Examining Procedure (TMEP) § 709.05.

(4) Email Correspondence Address. This rule amends §§ 2.21, 2.23, and 7.4 to require that applicants and registrants provide a valid email address for themselves and any appointed practitioner for receipt of correspondence from the USPTO. Thus, except in the case of nationals from exempted treaty countries, as discussed below, the USPTO’s required method of corresponding with applicants and registrants is via Office actions and notices sent to the designated email address. If the email transmission were to fail because, for example, the applicant or registrant provided an incorrect email address, the recipient’s mailbox is full, or the email provider has a service outage, the USPTO will not attempt to contact the correspondent designated pursuant to § 2.18(a) by other means. Instead, pursuant to amended § 2.23(d), the applicant or registrant is responsible for monitoring the status of the application or registration using the USPTO’s Trademark Status and Document Retrieval (TSDR) system, which displays any USPTO Office actions and notices that have issued, any submissions properly filed with the USPTO, and any other actions taken by the USPTO.

As noted above, applications under section 66(a) are processed and transmitted electronically to the USPTO from the IB. These applications do not include an email address for receiving USPTO correspondence, and the USPTO does not anticipate the IB will update its systems to include email addresses prior to implementation of this rule. In addition, only 2.9% of Madrid applications were approved for publication upon first action in fiscal year 2017. Therefore, the USPTO believes it is appropriate to waive the requirement for an email address prior to publication in this limited situation and until such time as the IB’s systems are updated. However, Madrid applicants are subject to the requirements under §§ 2.23(b) and 2.32(a)(2), (4) to file all submissions electronically and to provide an email

address on such submissions for receipt of correspondence from the USPTO.

Under § 2.18(c), an applicant, registrant, or party to a proceeding must maintain a current and accurate correspondence address for itself and its qualified practitioner, if one is designated.

(5) Changes from the Proposed Rule. The USPTO further amends § 2.22(a) by revising amended paragraph (a)(3) to limit the requirement for the names and citizenship of general partners to domestic partnerships and to add a requirement for the names and citizenship of active members of domestic joint ventures. These changes are added for consistency with current §§ 2.32(a)(3)(iii) and (iv). The USPTO also revises § 2.22(a)(4) to set out the requirements for sole proprietorships in order to further clarify the requirements for TEAS Plus applicants at filing.

The USPTO amends § 2.32(a)(3)(i) to require the applicant's legal entity type in addition to its citizenship and adds § 2.32(a)(1)(v) to require the state of organization of a sole proprietorship and the name and citizenship of the sole proprietor. These requirements are added for consistency with current § 2.22(a)(2) and new § 2.22(a)(4).

The USPTO further amends § 2.56(a) to include cross references to § 2.160 and § 7.36 and also amends § 2.56(b) and (c) to update these paragraphs with criteria for electronic submissions and better conform them to existing requirements in the Trademark Act and precedential case law for specimens of use, including that web pages must show the URL and access or print date. The amendments also more clearly conform the rule language to the statutory requirements for use in commerce by requiring that the specimen show use of the mark placed on the goods, on containers or packaging for the goods, or on labels or tags affixed to the goods.

The USPTO further amends § 2.147(b)(2) to require a copy of the previously mailed paper submission since the USPTO will not process the original submission and will destroy it after 90 days. This requirement is analogous to the requirements in §§ 2.64(a)(2)(i), 2.197(b)(2), and 2.198(e)(2) for a copy of previously submitted correspondence in order to establish timeliness.

The USPTO further amends § 7.25 to delete the proposed cross reference to § 2.198 and to delete the cross reference to § 2.197 since these sections could be applicable to extensions of protection in some circumstances.

Limited Exceptions for Paper Submissions: As discussed below, the

USPTO will permit paper submissions of applications and correspondence in limited situations. This rule establishes a process for filing paper submissions in such situations.

(1) *International Agreements:* The United States (U.S.) is a member of both the Trademark Law Treaty (TLT) and the subsequent Singapore Treaty on the Law of Trademarks (STLT), which treaties constitute two separate international instruments that may be ratified or acceded to independently by member countries. One provision of TLT mandates that its members accept paper trademark applications from nationals of other TLT members. STLT, on the other hand, allows its members to choose the means of transmittal of communications, whether on paper, in electronic form, or in any other form. This incongruity between the treaties was addressed in Article 27(2) of STLT, which provides that any Contracting Party to both STLT and TLT shall continue to apply TLT in its relations with Contracting Parties to TLT that are not parties to STLT. Accordingly, nationals of TLT members that are not also members of STLT at the time of submission of the relevant document to the USPTO are not required to file applications electronically or receive communications from the USPTO via email, nor are they required to submit a petition with a paper filing, until such time as their country joins STLT. Currently, the USPTO must accept paper trademark applications from nationals of the following countries: Bahrain, Bosnia and Herzegovina, Burkina Faso, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Dominican Republic, Egypt, El Salvador, Guatemala, Guinea, Honduras, Hungary, Indonesia, Monaco, Montenegro, Morocco, Nicaragua, Oman, Panama, Slovenia, Sri Lanka, Trinidad and Tobago, Turkey, and Uzbekistan.

(2) *Specimens for Scent, Flavor, or Other Non-Traditional Marks:* This rule allows for the separate submission of physical specimens when it is not possible to submit the specimens using TEAS because of the nature of the mark. For example, if the application or registration is for a scent or flavor mark, because the required specimen must show use, or continued use, of the flavor or scent, it cannot be uploaded electronically. In that situation, the applicant may submit the application through TEAS and indicate that it is mailing the specimen to the USPTO. In these circumstances, all other requirements of this rulemaking apply. However, the applicant or registrant is not required to submit a petition

requesting acceptance of a specimen filed on paper or waiver of the requirement to file the specimen electronically. This exception does not apply to specimens for sound marks, which can be attached to the TEAS form as an electronic file.

(3) *Petition to Accept a Paper Submission:* This rule includes a new regulatory section titled "Petition to the Director to accept a paper submission," which is codified at § 2.147. Under this section, an applicant or registrant may file a petition to the Director requesting acceptance of a submission filed on paper in three situations.

Under new § 2.147(a), the petition may be submitted if TEAS is unavailable on the date of the deadline for the submission specified in a regulation in parts 2 or 7 of this chapter or in a section of the Act. Under this provision, the applicant or registrant is required to submit proof that TEAS was unavailable because a technical problem, on either the USPTO's part or the user's part, prevented the user from submitting the document electronically. Generally, if users receive an error message the first time they attempt to submit a filing electronically, the USPTO expects that they will try to resolve any failures due to user error. In situations where the inability to submit the filing was not due to user error, the USPTO encourages users to try to submit the document again electronically before resorting to the paper petition process.

The second scenario applies to the specific documents with statutory deadlines identified in new § 2.147(b) when such a document was timely submitted on paper, but not examined by the Office because it was not submitted electronically in accordance with § 2.21(a) or § 2.23(a). The Office will issue a notice informing the applicant, registrant, or petitioner for cancellation that the paper submission will not be processed or examined because it was not submitted electronically. The applicant, registrant, or party may file a petition to request that the timely filed paper submission be accepted only if the applicant, registrant, or party is unable to timely resubmit the document electronically by the statutory deadline.

Finally, under new § 2.147(c), when an applicant or registrant does not meet the requirements under § 2.147(a) or (b) for requesting acceptance of the paper submission, the applicant or registrant may petition the Director under § 2.146(a)(5), requesting a waiver of § 2.21(a) or § 2.23(a) and documenting the nature of the extraordinary situation that prevented the party from

submitting the correspondence electronically. The Office addresses petitions under § 2.146(a)(5) on a case-by-case basis because the assessment of what would qualify as an extraordinary situation depends on the specific facts and evidence presented.

With respect to USPTO technical problems that render TEAS unavailable, the USPTO intends to continue to follow its current approach. For example, when verifiable issues with USPTO systems prevent electronic filing for extended periods, the Office has waived non-statutory deadlines on petition, such as the deadline for response to a post-registration Office action, as well as petition fees. Such measures help avoid negatively impacting applicants and registrants in the event of USPTO technical problems. Because the impact of technical problems varies depending on the specific facts, the USPTO cannot provide advance guidance about all possibilities or specific measures the USPTO may take in the future.

Moreover, applicants and registrants must be mindful of the fact that statutory deadlines, such as those for submission of a statement of use or an affidavit or declaration of use under section 8 or section 71, cannot be waived. The USPTO strongly encourages applicants and registrants to ensure that they are able to timely submit the relevant document by mail using the certificate of mailing or Priority Mail procedures in § 2.197 and § 2.198 in the event of an unexpected technical problem to avoid missing a statutory deadline.

Furthermore, the inability to submit an application or submission electronically due to USPTO regularly scheduled system maintenance generally does not qualify for relief under new § 2.147 or as an extraordinary situation under § 2.146. The USPTO routinely performs system maintenance between midnight and 5:30 a.m. Eastern Time on weeknights and at all hours on Saturdays, Sundays, and holidays. Advance notice of the maintenance is generally posted on the USPTO Systems Status and Availability page on the USPTO website.

(4) Postal-service Interruptions or Emergencies. The Office intends to continue the approach it has employed when there has been a postal-service interruption or emergency related to a natural disaster. In such events, the Office has generally waived certain requirements of the rules for those in the affected area, such as non-statutory deadlines and petition fees. The Office also issues notices regarding the specific procedures to be followed in such

circumstances and posts the notices on the “Operating Status” page of the USPTO website.

(5) Applications and Post-Registration Maintenance Documents Filed Prior to the Effective Date of this Rule. Paper, TEAS Regular, and Madrid applications filed prior to the effective date of this rule are not subject to the requirements to provide an email address for the applicant and its attorney, if represented, or to communicate with the USPTO electronically. Such applications are “grandfathered” under the prior rules until the application registers or is abandoned and cannot be revived or reinstated pursuant to 37 CFR 2.64, 2.66, or 2.146. Similarly, post-registration maintenance documents submitted prior to the effective date of the rule are not subject to the requirements and are grandfathered under the prior rules until the document has been accepted or the registration has been cancelled or expired and cannot be revived or reinstated pursuant to 37 CFR 2.64, 2.66, or 2.146.

However, on the effective date of this rule, because all new applications and post-registration maintenance documents are required to be filed electronically through TEAS, all TEAS forms will be updated to require the applicant's or registrant's email address and the email address of applicant's or registrant's attorney, if represented. Therefore, if a grandfathered applicant or registrant files a TEAS document after the effective date of this rule, the TEAS form will not validate for submission without the email address(es) being provided. Furthermore, if such an applicant, registrant, or attorney chooses to correspond electronically with the Office using one of the TEAS forms, the USPTO will presume that email communication is authorized and will send all future correspondence to the email address of the applicant, registrant, or attorney, as appropriate.

Applicants who filed an application prior to the effective date of the rule using the TEAS RF or TEAS Plus option are currently subject to the requirement to correspond electronically with the USPTO, as well as all the other requirements in current § 2.22(a)–(b) and § 2.23(a)–(b). After the effective date of this rule, if a TEAS Plus or TEAS RF applicant submits a response to an Office action or other document on paper, the applicant will no longer be charged the additional processing fee under prior § 2.22(c) or § 2.23(c), but must submit a petition requesting acceptance of the paper filing under § 2.146 or § 2.147, as appropriate.

Requirements for Paper Submissions:

Because paper submissions are permitted in the limited circumstances described above, the current rules addressing the requirements for paper submissions are retained and modified, as necessary, for consistency with the other revisions in this rulemaking. In addition, the rules governing the certificate-of-mailing and Priority Mail Express® procedures, 37 CFR 2.197 and 2.198, are amended to make filing with a certificate of mailing or via Priority Mail Express® available for all submissions, including new applications, on the rare occasions when filing on paper is permitted. This rule also simplifies how the filing date of a submission utilizing these procedures is determined. Streamlining the requirements for filing with a certificate of mailing or via Priority Mail Express® provides greater clarity to parties who seek to use these procedures and make the rules easier to administer for the Office. Although the certificate-of-mailing and Priority Mail Express® procedures are retained, facsimile transmissions, which are currently permitted for certain types of trademark correspondence, are not permitted under this rule for any applications or submissions. Continuing to accept fax transmissions would be counterproductive to maximizing end-to-end electronic processing because such submissions require manual processing similar to paper submissions.

Proposed Rule: Comments and Responses

The USPTO published a proposed rule on May 30, 2018, at 83 FR 24701, soliciting comments on the proposed amendments. In response, the USPTO received comments from four groups and ten individual commenters, representing law firms, organizations, individuals, and other interested parties. Some commenters expressed general support for the amendments, while raising concerns or providing suggestions about particular provisions. Other commenters objected to the amendments mandating electronic filing because of concerns about the stability and usability of the USPTO's current electronic filing systems or the possibility that some parties may not have adequate access to the internet. In addition, some commenters objected to the requirement that an email address be provided for correspondence, because of concerns that this would be burdensome to applicants or that the public availability of email addresses will be misused by third parties engaging in scams or unwanted solicitations. Similar or related

comments have been grouped together and summarized below, followed by the USPTO's responses. All comments are posted on the USPTO's website at <https://www.uspto.gov/trademark/trademark-updates-and-announcements/comments-proposed-rulemaking-related-changes-trademark>.

Comment: Several commenters objected to the requirement to file submissions electronically because they believe it will adversely affect parties who do not have adequate internet access or are otherwise unable to file electronically.

Response: The USPTO appreciates the concerns raised in these comments and has given them careful consideration. As noted above, more than 99% of all initial applications based on section 1 and/or section 44 of the Act are now filed electronically. For example, in fiscal year 2018, a total of 468,926 applications were filed, with only 144 applications filed on paper. Accordingly, the USPTO has determined that, as a general matter, the requirement to file all submissions electronically would not be impracticable or burdensome for the USPTO's customers, most of whom already file electronically.

Customers who do not have personal access to the internet have the option to use the internet at one of the 85 Patent and Trademark Resource Centers (PTRC) around the U.S. to electronically file submissions with the USPTO. A PTRC is part of a nationwide network of public, state, and academic libraries designated by the USPTO to support the public with federal trademark- and patent-filing assistance. Although PTRC representatives are not attorneys and cannot provide legal advice, they can provide access to USPTO resources and explain the application process and fee schedule. Public libraries provide another resource for parties without internet access. According to the American Library Association Fact Sheet 26, "Internet Access and Digital Holdings in Libraries," 98% of libraries offer free public internet access and 76% of libraries assist patrons in using online government programs and services (<http://www.ala.org/tools/libfactsheets/alalibraryfactsheet26>; accessed Sept. 24, 2018). Applicants, registrants, or parties also have the option to hire an attorney to file electronically on their behalf. Finally, if an extraordinary situation requires a particular applicant, registrant, or party to file on paper, the rule allows such submissions to be considered on petition by the USPTO on a case-by-case basis.

Comment: A commenter suggested that the USPTO has already sufficiently advanced its objective of electronic filing by increasing the fees associated with paper filing.

Response: As noted above, the USPTO previously revised its rules to increase fees for paper filings to bring the fees nearer to the cost of processing the filings and to encourage customers to use lower-cost electronic options. Despite these fee increases, approximately 12% of applications and registrations under section 1 and/or section 44 of the Act still involve some paper processing. Fee increases have not been effective in eliminating the volume of non-application paper submissions. Therefore, the USPTO has determined that mandatory electronic filing is necessary to attain, as closely as possible, its goal of end-to-end electronic processing.

Comment: The USPTO received several comments regarding its electronic systems. Some commenters expressed concerns that the USPTO's current electronic systems, including the payment system, are not sufficiently reliable to support a mandate of electronic filing, noting that removing the paper filing option eliminates a failsafe way to file if the internet or the electronic filing system is unavailable. Other commenters suggested that the usability of TEAS forms should be improved and stated that TEAS currently lacks forms to address all filing situations. Some commenters noted that TEAS sometimes will not allow submissions due to erroneous status information in the USPTO's electronic record. Relatedly, a commenter urged that any rulemaking that would remove the paper filing option should be accompanied by the provision of a "none of the above" TEAS form to address the circumstances when the internet or TEAS is unavailable, and that every TEAS form should include a "miscellaneous" section in which free-text comments and evidence can be provided. One commenter asked whether fax transmission will remain as an alternative method for filing if the electronic system is not available and suggested that the USPTO either provide an alternative method that is electronic but not tied to the TEAS system or allow for a deadline extension when the TEAS system is not operational at the time of deadline. Finally, a commenter suggested that the USPTO implement contingency servers and systems that would serve as a backup to the USPTO's primary electronic systems and reduce the need

for paper filings if the primary systems experience an outage.

Response: The USPTO recognizes that the successful implementation of mandatory electronic filing requires reliable, well-functioning electronic filing and payment systems. To that end, the USPTO is actively engaged in enhancing the Office's systems to significantly improve reliability and stability with the result of reducing unscheduled outages and instabilities and mitigating any that do occur. For example, the USPTO recently upgraded the main server that houses the TEAS and payment systems, which will significantly enhance reliability and responsiveness.

The USPTO also acknowledges the comments concerning the general usability of TEAS forms and is enhancing its electronic systems to accommodate the requirements of mandatory electronic filing, and also plans to improve the overall functionality of the TEAS forms. In addition, remedies are already available to customers who are unable to file a TEAS submission because of incorrect status information in the USPTO electronic record. To request assistance, such as correction of the status information so that TEAS will allow submission of the appropriate form, customers may call or email the USPTO. Furthermore, when a party is unable to file electronically because of an extraordinary situation, § 2.147(c) allows the party to petition the Director under § 2.146(a)(5), requesting that the Director waive § 2.23(a) and accept a paper submission.

Regarding the commenter's request to retain fax transmission, the rule removes this submission option. As noted above, continuing to accept fax transmissions would be counterproductive to maximizing end-to-end electronic processing because such submissions require manual processing similar to paper submissions. If a significant outage or other emergency occurs, the USPTO may consider waiving the relevant rules to accept certain submissions by fax or another means for specific purposes.

Regarding the comment requesting the rule allow for a deadline extension when the TEAS system is not operational at the time of deadline, the USPTO has previously waived non-statutory deadlines on petition when verifiable issues with USPTO systems prevented electronic filing for extended periods. The USPTO may make this option available, if appropriate. However, the USPTO has no authority to extend deadlines set by statute.

Comment: One commenter who assists “low-wealth entrepreneurs” with trademark matters noted that, while most of these entrepreneurs have computer access and an email address, some have little understanding of the application and prosecution process and the rules governing this process. This commenter expressed concern that these entrepreneurs would be required to handle email communications from the USPTO that may significantly impact their ability to conduct their business. The commenter urged that USPTO communications be written in a way that ensures understanding by a lay person. Other commenters expressed concerns that the current TEAS forms are too complicated for the lay person, with one commenter suggesting that the USPTO permit applicants to file already completed applications in .pdf form.

Response: The USPTO is dedicated to making its communications comprehensible for all customers, but recognizes that the trademark application process is legal in nature and can be complex and difficult to understand for some applicants, regardless of whether submissions are filed on paper or electronically. Filing a trademark application with the USPTO starts a legal proceeding that is governed by U.S. law. Therefore, it may be advisable for an applicant to hire a qualified trademark attorney licensed to practice law in the United States who can give legal advice, help avoid pitfalls with the filing and prosecution of an application, and help enforce trademark rights. Applicants may also seek to avail themselves of free or reduced-fee legal services through such resources as the USPTO’s Law School Clinic Certification Program, the list of Pro Bono IPL Resources provided by the American Bar Association, and the International Trademark Association trademark pro bono clearinghouse pilot program.

Further, the USPTO believes that the requirement to file electronically benefits those applicants who are unable to hire an attorney and must represent themselves. Specifically, electronic filing costs less than paper filing, especially if the lower-fee TEAS Plus application filing option is utilized. In addition, electronic filing simplifies and increases the efficiency of the application process for applicants. Those who file electronically are more likely to provide the necessary information in their submissions because the USPTO can update its electronic forms to specifically tailor the requirements for a particular submission and require that the information be validated prior to submission.

Consequently, preparing and submitting an application or related document through TEAS is likely to result in a more complete submission and take less time than preparing and mailing the paper equivalent. In addition, the USPTO is dedicated to providing future enhancements to its online filing systems to further simplify the process for applicants by, for example, providing more informative, interactive, and user-friendly forms.

Regarding the comment suggesting that applicants be permitted to file completed applications in .pdf form, this approach would be counterproductive to maximizing end-to-end electronic processing because submissions in .pdf form require manual processing similar to paper submissions.

Comment: A commenter noted that the electronic filing requirement may lead to librarians being asked legal questions by those filing electronic submissions with the USPTO using a library computer and that referring these patrons to a PTRC might not be an effective solution to this problem.

Response: The USPTO acknowledges the possibility that library patrons may ask librarians legal questions about the trademark process, but does not believe this is an impediment to implementing mandatory electronic filing. The USPTO presumes that if a librarian is asked for legal information regarding trademark law, or any other area of law, he or she would direct the patron to a local bar association or other appropriate resource. As noted above, filing a trademark application with the USPTO starts a legal proceeding that is governed by U.S. law. It is therefore advisable for their patrons to seek legal guidance from a qualified private trademark attorney.

If a patron has questions regarding the trademark application process, a librarian can direct the patron to the USPTO website for information, including the email address and toll-free phone number for the Trademark Assistance Center. In addition, although PTRC library representatives cannot provide legal advice, they can: (1) Provide access to USPTO resources such as search systems and demonstrate how to use search tools to conduct a trademark search; (2) direct patrons to website information and explain the application process/timeline and fees; and (3) offer classes on intellectual property in some locations.

Comment: One commenter recommended that the proposed rule include information on the economic impact on entities who still choose the paper filing option and also provide means to reduce the economic burden

for that group rather than impose additional costs.

Response: The USPTO believes that the overall economic impact on affected parties will be minimal. As noted above, in fiscal year 2018, more than 99% of all initial applications based on section 1 and/or section 44 of the Act were filed electronically—only 144 out of 468,926 applications were filed on paper. Thus, as a practical matter, almost all USPTO customers who may use the USPTO’s electronic systems to file their trademark applications have already done so. Moreover, under the current system TEAS filers are subsidizing those who file on paper because current fees for paper filers do not cover the full cost of processing paper filings. The change to mandatory electronic filing also will improve the quality of Trademark applications and registrations because paper filings require manual uploading of scanned copies into USPTO electronic systems and manual data entry of information in the documents, which results in data-entry errors.

Thus, given the additional costs associated with filing applications and related submissions by paper, including higher fees, a requirement to file electronically will likely result in reduced costs overall for most customers who previously filed on paper.

Comment: Some commenters objected to the changes to §§ 2.21, 2.23, and 7.4, requiring the provision of an email address for applicants and registrants. One commenter noted that, when an applicant or registrant is represented by counsel, and counsel has provided a correspondence email address, the rule changes impose additional burdens on both the trademark owner and its counsel. Another commenter stated that the TEAS system appears to be open to abuse and fraud, and some commenters were concerned that the requirement to provide the applicant’s email address for correspondence would lead to an increase in scams and misleading solicitations by third parties. One commenter had similar concerns about applicants’ telephone numbers.

Response: The amended rules include a requirement for the applicant’s email address, even when the applicant is represented by an attorney. This requirement ensures that the USPTO has an electronic means of contacting the applicant if the attorney’s email address cannot be used, such as when the attorney is suspended or excluded from practice before the USPTO or when representation otherwise ceases. The USPTO does not undertake double correspondence with both the applicant or registrant and the attorney of record.

Accordingly, if an applicant or registrant is represented by an attorney, the USPTO corresponds and conducts business only with the attorney. Once representation ceases, under this rule, the USPTO will correspond only with the applicant or registrant. Therefore, the applicant or registrant must provide an email address belonging to the applicant or registrant itself for receipt of correspondence from the USPTO in such a circumstance.

The USPTO appreciates the commenters' concerns that scams and misleading solicitations may increase if the email addresses required under these rules are publicly available in the USPTO's systems. Currently, all owner email addresses that appear in the "status" view of USPTO records are masked from public view. In addition, the USPTO plans to similarly mask from public view in application and registration files the correspondence email addresses of applicants and registrants who are not represented by counsel to reduce the likelihood that they will be subjected to scams and other unwanted solicitations. The contact information of attorneys appearing in USPTO records, including email addresses and telephone numbers, will remain publicly available and viewable, as this information is publicly available from other sources already and could be used for legitimate purposes by third parties.

Comment: One commenter stated that, to the extent that the USPTO does not already comply with the European Union's General Data Protection Regulation (GDPR), mandating the provision of email addresses of individuals associated with applicants and registrants, will subject the USPTO to this regulation, as well as to the penalties and obligations associated with any data breach.

Response: The USPTO is aware of the GDPR and has taken into account any implications it might have for the implementation of these amended rules.

Comment: Regarding the proposed amendment of § 2.151 to state that the USPTO will issue "to the owner" a certificate of registration, one commenter asked how the Office will know who "the owner" is, noting that, at most, the Office will know only who the owner of record is. This commenter also noted that, to avoid the need for future rulemaking, the USPTO should consider broadening the requirement for an email address, so that the requirement also encompasses an "alphanumeric identifier that is capable of receiving electronic communications." The commenter then suggested that the ability of users to

input an email address into a TEAS form should be restricted to forms for which doing so actually updates the information.

Response: Under amended § 2.151, a certificate of registration will be issued to the owner of record, as indicated in the USPTO electronic record at the time the certificate is issued.

The USPTO appreciates the suggestion to use broader terminology than "email address," but has determined that "email address" is sufficiently accurate and will serve the intended purpose under the rule. The USPTO also appreciates the suggestion regarding the ability to input and update email addresses in TEAS forms, and will take that feedback into account when considering enhancements to TEAS.

Comment: One commenter stated the USPTO should provide another filing mechanism to ensure that customers have access to protect their trademark rights without having to incur the uncertainty or additional fees and time associated with filing a separate petition, if having to file on paper. This commenter suggested that a more predictable and desirable remedy in this situation may include submitting with the relevant filing a declaration or other statement attesting to the outage, lack of access, or other reason for not filing electronically, and that the filer may also include evidence of the problem, such as a screen shot. The commenter noted that, to ease the administrative burden on the USPTO and add certainty for applicants and counsel as to permissible exceptions, any USPTO form could acknowledge clear exceptions through use of a box to be checked, but for unusual or unique circumstances, a free-form text box could be provided in the relevant form. Relatedly, one commenter recommended that the rules be modified to provide specific examples of documentation the user can provide to satisfy the USPTO's requirement for proof that TEAS was unavailable for electronic filing because of a "technical problem." This commenter suggested that such documentation might include screenshots showing the time and date and the error statement encountered by the user, or a signed declaration under 37 CFR 2.20 indicating the circumstances of the unsuccessful electronic filing.

Response: The USPTO believes that a petition describing the reasons for a paper submission is the most efficient and effective mechanism for providing the information necessary to enable the USPTO to determine whether the submission should be accepted.

However, the USPTO also agrees with the commenters that the petition process may be simplified by the use of a standard preformatted petition form, listing the most common reasons for requesting acceptance of a paper submission. The user could complete the form by selecting the appropriate reason and include the completed form with the paper submission. The USPTO is working to make such a form available before this rule takes effect.

The USPTO appreciates the suggestion that the rules should be modified to provide specific examples of documentation a user can provide to satisfy the USPTO's requirement for proof that TEAS was unavailable for electronic filing because of a "technical problem." However, considering the type and nature of evidence that may suffice will differ depending on the circumstances, the USPTO believes it is preferable to enact a rule that provides flexibility as to the type of evidence the USPTO may accept as proof. However, the Office will consider adding such examples in other USPTO materials, such as web pages or the TMEP, to provide guidance.

Comment: One commenter urged the USPTO to continue its practice of attempting to contact the correspondent by other means if a transmission to the email address of record fails, including physical correspondence by mail. This commenter noted that email addresses frequently change due to companies adopting new domain names and staffing changes, and that technical issues due to hardware malfunction, software bugs, or malicious cyberattacks increase the chances of electronic communication being disrupted.

Response: Although the USPTO previously attempted to contact the correspondent by other means if an email transmission failed and, in some cases, sent a paper copy of the correspondence to the physical address of record, it no longer does so. As the commenter indicated, email transmissions may fail for a variety of reasons outside of the USPTO's control. Even if the number of failed transmissions are relatively low, attempting to contact the applicant or registrant in every instance is administratively burdensome to the USPTO. In addition, continuing to send paper correspondence after implementing mandatory electronic filing would be counterproductive to the goal of maximizing end-to-end electronic processing.

Moreover, under § 2.18(c), applicants and registrants are required to maintain a current and accurate correspondence email address, and to monitor the status

of their applications or registrations for any notices issued or action taken by the USPTO, in accordance with § 2.23(d).

Comment: One commenter stated that, for a paper filed during a time when TEAS is unavailable, a petition requirement is unneeded and burdensome because the USPTO will usually already be aware of instances when its filing system is broken. This commenter suggested that, when the USPTO is unaware of an outage, the USPTO could respond to a paper filing with a request for a showing by the filer as to the nature and time of the outage. Some commenters objected to any requirement that the filer postpone a filing until such time as a TEAS outage is repaired and another commenter stated that an applicant or registrant should not be required to wait until the day of the deadline to be eligible for an exception to the electronic filing requirement when TEAS is unavailable.

Response: When a paper submission is necessary because of an unscheduled TEAS outage or some other technical problem, the USPTO believes that the mechanism of a petition, which permits inclusion of a description of the reasons for the paper submission, is the only appropriate mechanism for providing the information necessary to enable the USPTO to determine whether the particular submission should be accepted.

Regarding known TEAS outages, the USPTO intends to continue to follow the approach employed in the past. For example, when verifiable issues with USPTO systems prevent electronic filing for extended periods, the USPTO has waived non-statutory deadlines on petition, such as the deadline for response to a post-registration Office action, as well as petition fees. Even when the USPTO is aware of an outage, a petition would typically still be required, because the party requesting relief would need to establish that the outage prevented electronic filing of the particular submission. However, because the impact of technical problems varies depending on the specific facts, the Office cannot provide advance guidance about all possibilities or specific measures the USPTO may take in the future.

The USPTO acknowledges the commenters' concerns about waiting until the date of the deadline to be eligible for an exception to the requirement to file electronically. However, this requirement applies only if the party is relying on § 2.147(a), which provides that the petition may be submitted if TEAS is unavailable on the date of the deadline for the submission

specified in a regulation in parts 2 or 7 of this chapter or in a section of the Act.

If an extraordinary situation prevents an applicant or registrant from waiting until the deadline for a submission to be eligible for an exception to the requirement to file electronically, or otherwise postponing a TEAS submission, § 2.147(c) provides that the applicant or registrant may petition the Director under § 2.146(a)(5), requesting a waiver of § 2.21(a) or § 2.23(a) and documenting the nature of the extraordinary situation that prevented the party from submitting the correspondence electronically at the relevant time. Because petitions for extraordinary situations are not automatically granted, and the assessment of what would qualify as an extraordinary situation depends on the specific facts, the Office will address particular situations on a case-by-case basis.

Discussion of Regulatory Changes

The USPTO amends § 2.2 to revise paragraph (e) to include the abbreviation "USPTO" and paragraphs (f) and (g) to indicate that the definitions of "TEAS" and "ESTTA" include all related electronic systems required to complete an electronic submission through each and to delete the URLs. The USPTO also adds: § 2.2(q), defining "ETAS;" § 2.2(r), defining "Eastern Time;" § 2.2(s), defining "electronic submission;" and § 2.2(t) defining "USPS." The paragraph designations (q) through (t) do not correspond to the proposed changes published at 83 FR 24701. The revisions to these designations reflect additional changes published in an intervening rule published at 84 FR 31498.

The USPTO amends § 2.6 to clarify that § 2.6(a)(1)(ii) applies to applications filed under section 66(a) of the Act. The USPTO also changes the wording "Reduced Fee (RF)" to "Standard" and deletes the reference to § 2.23 in § 2.6(a)(1)(iii), rewords § 2.6(a)(1)(iv) for clarity, and deletes the reference to § 2.23(c) in § 2.6(a)(1)(iv).

The USPTO deletes the wording "and attorney" and the reference to TEAS in current § 2.17(d)(1), because it is unnecessary in view of amended § 2.23(a), redesignates § 2.17(d)(1) as § 2.17(d), and deletes § 2.17(d)(2) as unnecessary as a result of updates to the electronic form for filing a power of attorney.

The USPTO amends the title to § 2.18(a) to "Establishing the correspondent" and adds introductory text indicating that the following paragraphs set out the procedures by which the Office will determine the

address to which correspondence will be sent. The USPTO revises § 2.18(a)(1) to define when the Office will send correspondence to the applicant, registrant, or party to a proceeding and § 2.18(a)(2) to define when the Office will send correspondence to an attorney. The USPTO also deletes current paragraphs (a)(3)–(a)(5), redesignates current § 2.18(a)(6) as § 2.18(b), adds the title "Ex parte matters," and rewords the text for clarity, and deletes current paragraph (a)(7). The USPTO redesignates current § 2.18(b) as § 2.18(c), changes the title to "Maintaining and changing the correspondence addresses," and deletes current § 2.18(b)(1)–(4). The USPTO redesignates current § 2.18(c)(1) as § 2.18(d), deletes the word "Trademark" in the first sentence, deletes the second and third sentences in current § 2.18(c)(1), clarifies that the Office will change the address if a new address is provided, adds a cross reference to § 2.18(a), and deletes current § 2.18(c)(2).

The USPTO amends § 2.21(a) to require that applications under section 1 or section 44 be filed through TEAS, to require the domicile and email addresses for each applicant, and if the applicant is represented by a qualified practitioner, to require the postal and email addresses for the practitioner. The USPTO rewords § 2.21(a)(5) for clarity, rewords § 2.21(b) and includes a reference to § 2.21(c), and adds § 2.21(c), which sets out an exemption for certain countries.

The USPTO amends § 2.22(a) to specify that TEAS Plus applications must satisfy the requirements of § 2.21, to delete current paragraphs (a)(1), (a)(5), and (a)(6) and renumber the remaining paragraphs, to change "an individual" and "a juristic" to "each individual" and "each juristic" in redesignated paragraph (a)(2), to clarify that the requirement in redesignated paragraph (a)(3) applies to domestic partnerships and to add a requirement for the names and citizenship of the active members of a domestic joint venture, to add a requirement for the citizenship of a sole proprietorship and for the name and citizenship of the sole proprietor to redesignated paragraph (a)(4), to correct the cross reference in redesignated paragraph (a)(8) to § 2.6(a)(1)(iv), to delete the first sentence and the reference to a particular format in redesignated paragraph (a)(10), and to delete the URL in redesignated paragraph (a)(11). The USPTO revises § 2.22(b) to indicate that the applicant must comply with amended § 2.23(a) and (b), to delete § 2.22(b)(1) and (2),

and to delete the second sentence in § 2.22(c).

The USPTO amends the title of § 2.23 to “Requirement to correspond electronically with the Office and duty to monitor status” and deletes the current text of the section. The USPTO revises § 2.23(a) to require that, unless stated otherwise, all trademark correspondence must be submitted through TEAS; revises § 2.23(b) to require that applicants, registrants, and parties to a proceeding provide and maintain a valid email correspondence address; revises current § 2.23(c) to set out an exemption for nationals of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks; and adds § 2.23(d) to indicate that applicants and registrants are responsible for monitoring the status of their applications and registrations.

The USPTO amends § 2.24(a) to clarify that only an applicant or registrant that is not domiciled in the U.S. may designate a domestic representative. The USPTO deletes § 2.24(a)(1)(i), redesignates § 2.24(a)(1)(ii) as § 2.24(b) and revises it to require an email and postal address for a designated domestic representative, and deletes § 2.24(a)(2). The USPTO redesignates § 2.24(a)(3) as § 2.24(c) and rewords it for clarity, and deletes current § 2.24(b).

The USPTO amends § 2.32(a)(2) to add a statement that if the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirement to provide an email address does not apply. The USPTO amends § 2.32(a)(3)(i) to require the legal entity as well as the citizenship of the applicant(s), deletes “or” from § 2.32(a)(3)(iii), adds “or” to § 2.32(a)(3)(iv), and adds § 2.32(a)(3)(v) to require the state of organization of a sole proprietorship and the name and citizenship of a sole proprietor. The USPTO amends § 2.32(d) to add the word “the” before “fee.”

The USPTO amends § 2.56(a) to indicate that the specimen must show the mark as actually used in commerce for the identified goods or services and to add cross references to §§ 2.160 and 7.36. The USPTO amends § 2.56(b) and (c) to codify existing requirements for specimens. The USPTO amends § 2.56(d) to set out the requirements for submitting a specimen through TEAS, revises current § 2.56(d)(1) and (2) to set out the exceptions to the requirements, and deletes § 2.56(d)(3) and (4).

The USPTO amends the title of § 2.62 to “Procedure for submitting response,” revises § 2.62(a) slightly for clarity, and

revises § 2.62(c) for consistency with amended § 2.23 and to add that responses filed via facsimile will not be accorded a date of receipt.

The USPTO amends § 2.111(c)(2) for consistency with § 2.147(b).

The USPTO amends § 2.146(a) to add the words “in a trademark case” and revises § 2.146(a)(2) and (4) to specify that the regulation applies to “parts 2, 3, 6, and 7” of Title 37.

The USPTO adds § 2.147 to set out the requirements for submitting a petition requesting acceptance of a paper submission.

The USPTO amends § 2.148 to clarify that it applies to “parts 2, 3, 6, and 7 of this chapter.”

The USPTO amends § 2.151 to indicate that the certificate of registration will issue to the owner, to reword the second and third sentences for clarity, and to change the wording “accompany” in the last sentence to “issue with.”

The USPTO amends § 2.162 to change the word “includes” to “issues with the certificate” and to add the wording “or section 71” after “section 8” for consistency with § 2.151.

The USPTO amends § 2.190(a) to clarify that the paragraph refers to paper documents, and to clarify that the stated mailing address is for documents to be sent by mail and that the address for hand delivery is the address for delivery by private courier or another delivery service. The USPTO amends § 2.190(b) to state that trademark documents filed electronically must be submitted through TEAS and that documents related to TTAB proceedings must be filed through ESTTA, and to delete the URLs. The USPTO rewords § 2.190(c) for clarity and to delete the mailing address and URL. The USPTO amends § 2.190(d) to add “certified” to the title and to delete the first sentence and the wording “or uncertified” in the second sentence and to change “should” to “must.” The USPTO corrects the mailing address in § 2.190(e).

The USPTO amends the title of § 2.191 to “Action of the Office based on the written record” and revises the section to state that all business must be recorded in writing, to reword for clarity, and to delete the last sentence.

The USPTO amends § 2.193(a)(2) and (b) to delete wording regarding submission of a photocopy or facsimile or by facsimile transmission. The USPTO amends § 2.193(c)(1) to change the wording “he or she” to “the signer,” and revises § 2.193(d) to require submission of the first and last name and the title or position of the signatory and to delete the wording “in printed or typed form” and the wording after “the

signature.” The USPTO amends the introductory text of § 2.193(e) to clarify that documents must be signed as specified in paragraphs (e)(1) through (9). The USPTO amends the title and introductory text of § 2.193(e)(5) to add “or § 2.147” after the wording “§ 2.146.” The USPTO also deletes § 2.193(e)(10), rewords § 2.193(g)(1) for clarity, and revises § 2.193(g)(2) to change “correspondence” to “documents” and to delete the last sentence.

The USPTO amends the title of § 2.195 to “Filing date of trademark correspondence.” The USPTO deletes current § 2.195(a)–(d) and sets out the procedures for determining the filing date of electronic and paper submissions in § 2.195(a) and (b)(1) through (b)(2), indicates when the Office is closed in § 2.195(b)(3), indicates that email and facsimile submissions are not permitted in § 2.195(c), redesignates current § 2.195(e)(1) through (e)(2)(iii) as § 2.195(d)(1) through (3) and changes U.S. Postal Service and United States Postal Service to USPS. The USPTO deletes current § 2.195(e)(3).

The USPTO amends the title of § 2.197 to “Certificate of mailing.” The USPTO deletes current § 2.197(a) through (c) and sets out the requirements for obtaining a filing date based on a certificate of mailing in § 2.197(a), the procedure when correspondence is mailed in accordance with paragraph (a) of this section but not received by the Office in § 2.197(b), and the filing date when the certificate of mailing does not meet the requirements in § 2.197(c).

The USPTO deletes current § 2.198(a) through (f) and clarifies the filing date of correspondence submitted under this section in amended § 2.198(a) and (b) and the procedures when there is a discrepancy, error, or non-receipt in amended § 2.198(c)–(e).

The USPTO amends § 7.1(c) to indicate that the definition of TEAS includes all related electronic systems required to complete an electronic submission through TEAS and to delete a URL. The USPTO amends § 7.1(d) to add “or the abbreviation *USPTO*.”

The USPTO amends the title of § 7.4 to “International applications and registrations originating from the USPTO—Requirements to electronically file and communicate with the Office.” The USPTO amends § 7.4(a) to specify that all correspondence relating to international applications and registrations originating from the USPTO must be submitted through TEAS and include a valid email correspondence address. The USPTO amends § 7.4(b) to require that applicants and registrants provide and

maintain a valid email correspondence address and to delete current paragraphs (b)(1) and (b)(2). The USPTO amends § 7.4(c) to set out an exemption for nationals of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks and § 7.4(d) to set out the procedure if TEAS is unavailable or when there is an extraordinary situation, and to delete paragraphs (d)(1)–(d)(6). The USPTO also deletes § 7.4(e).

The USPTO amends § 7.11(a) to delete the word “either,” to add a cross reference to § 7.4(a), and to specify that the Office will grant a date of receipt to an international application typed on the official paper form issued by the IB if a paper submission is permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The USPTO also adds the word “and” to § 7.11(a)(10), deletes the word “and” from § 7.11(a)(11), and deletes § 7.11(a)(12).

The USPTO amends § 7.21(b) to delete the word “either,” to add a cross reference to § 7.4(a), and to specify that the Office will grant a date of receipt to a subsequent designation typed on the official paper form issued by the IB if a paper submission is permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The USPTO also adds the word “and” to § 7.21(b)(7), deletes the word “and” from § 7.21(b)(8), and deletes § 7.21(b)(9).

The USPTO revises § 7.25 to delete the reference to § 2.23 and replace it with a reference to § 2.22 and to delete the reference to § 2.197.

This rule revises sections of 37 CFR parts 2 and 7 that were revised in the final rule entitled *Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, published at 84 FR 31498 (July 2, 2019). The revisions published here supplement the changes implemented in that earlier rule and do not change the requirements for obtaining U.S. counsel. However, this rule has resulted in a few changes to the revisions that were made in the earlier rule. In this regard, USPTO in the earlier rule had revised § 2.32(a)(2); under that revision, an application would be required to include the “name and domicile address of each applicant.” In this rule, USPTO is amending § 2.32(a)(2) to require an application to also include the “email address of each applicant” (as discussed above, the requirement to provide an email address does not apply if the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks). In addition, this rule includes a reorganization of

§ 2.22 (“Requirements for a TEAS Plus Application”), which was revised by the earlier rule, to streamline the regulations and improve clarity. As a result of this reorganization, paragraphs (a)(19), (20), and (21) of § 2.22 of the earlier rule are being redesignated—without change—as paragraphs (a)(17), (18), and (19). Also, the requirement for the applicant’s name and domicile address, which was in § 2.22(a)(1) of the earlier rule, is now a requirement of § 2.21(a)(1) of this rule, and applies to all applicants. Finally, we note that the regulatory revisions that were made in that earlier rule are going into effect on August 3, 2019, whereas the regulatory revisions in this rule are going into effect on October 5, 2019.

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the Office has chosen to seek public comment before implementing the rule to benefit from the public’s input.

B. Regulatory Flexibility Act: For the reasons set forth herein, the Senior

Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This rule amends the regulations to require that applications filed under section 1 or section 44 of the Act, and all submissions regarding an application or registration under section 1, section 44, and section 66(a), be filed electronically. The rule also requires that applicants, registrants, and parties to a proceeding maintain a valid email correspondence address and continue to receive communications from the Office by email. The rule applies to all applicants and registrants unless acceptance of a submission filed on paper or a waiver of the proposed requirements is granted on petition, the applicant/registrant is a national of a country to which the requirements will not apply, or the requirement to file electronically is otherwise excepted, as for certain types of specimens. Applicants for a trademark are not industry specific and may consist of individuals, small businesses, non-profit organizations, and large corporations. The USPTO does not collect or maintain statistics on small-versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rule.

The burdens to all entities, including small entities, imposed by these rule changes will be minor procedural requirements on parties submitting applications or documents and communications in connection with an application or registration. The vast majority of users already file and prosecute applications electronically in response to previous initiatives to increase end-to-end electronic processing. For example, the USPTO amended its rules to encourage electronic filing through TEAS and email communication by establishing the TEAS Plus and TEAS RF filing options for applications that are based on section 1 and/or section 44. *See* 37 CFR 2.6. The TEAS RF filing option is now the most popular filing option among USPTO customers, followed by TEAS Plus. These two filing options currently account for approximately 97% of all trademark applications filed under section 1 and/or section 44, and more than 99% of trademark applications under section 1 and/or section 44 in total are now filed electronically through TEAS, suggesting

that most applicants are comfortable with filing and communicating with the USPTO electronically.

Furthermore, in January 2017, the USPTO revised its rules to (1) increase fees for paper filings to bring the fees nearer to the cost of processing the filings and encourage customers to use lower-cost electronic options and (2) require that all submissions to the TTAB be filed through ESTTA. As a result of these rule changes, the USPTO is now processing approximately 88% of applications filed under section 1 and/or section 44 electronically end to end.

The changes enacted herein do not impose any additional economic burden unless the applicant or registrant fails to file electronically. In such cases, the economic burden to the applicant or registrant would be the higher paper fee for the submission (if a fee is required) and the fee for the petition seeking acceptance of a submission filed on paper or a waiver of the requirement to file electronically. However, as mentioned above, since the vast majority of current users already file and prosecute applications electronically, the economic impact of filing on paper is expected to be small. Moreover, this rule will lead to a greater adoption of lower filing-fee options and therefore outweigh any cost burdens and likely save applicants and registrants money. For these reasons, this rule is not expected to have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote

innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

F. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government

Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

N. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

O. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act: This rulemaking involves information collection requirements 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 *et seq.*). The collection of information involved in this rule has been reviewed and previously approved by OMB under control numbers 0651-0009, 0651-0050, 0651-0051, 0651-0054, 0651-0055, 0651-0056, and 0651-0061. This rulemaking has an overall change on the public burdens within these approved collections including a reduction of 862 in burden hours and a reduction of \$5,175 in cost burdens.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of

information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office amends parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

- 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10(c) of Pub. L. 112–29, unless otherwise noted.

- 2. Amend § 2.2 by revising paragraphs (e), (f), and (g) and adding paragraphs (q) through (t) to read as follows:

§ 2.2 Definitions.

* * * * *

(e) The term *Office* or abbreviation *USPTO* means the United States Patent and Trademark Office.

(f) The acronym *TEAS* means the Trademark Electronic Application System and, as used in this part, includes all related electronic systems required to complete an electronic submission through TEAS.

(g) The acronym *ESTTA* means the Electronic System for Trademark Trials and Appeals and, as used in this part, includes all related electronic systems required to complete an electronic submission through ESTTA.

* * * * *

(q) The acronym *ETAS* means the Electronic Trademark Assignment System and, as used in this part, includes all related electronic systems required to complete an electronic submission through ETAS.

(r) *Eastern Time* means Eastern Standard Time or Eastern Daylight Time, as appropriate.

(s) The term *electronic submission* as used in this part refers to any submission made through an electronic filing system available on the Office's website, but not through email or facsimile transmission.

(t) The abbreviation *USPS* as used in this part means the U.S. Postal Service.

- 3. Amend § 2.6 by revising paragraphs (a)(1)(ii) through (v) to read as follows:

§ 2.6 Trademark fees.

(a) * * *

(1) * * *

(ii) For filing an application under section 66(a) of the Act, per class—\$400.00

(iii) For filing a TEAS Standard application, per class—\$275.00

(iv) For filing a TEAS Plus application under § 2.22, per class—\$225.00

(v) Additional processing fee under § 2.22(c), per class—\$125.00

* * * * *

- 4. Amend § 2.17 by revising paragraph (d) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(d) *Power of attorney relating to multiple applications or registrations.*

The owner of an application or registration may appoint a practitioner(s) qualified to practice under § 11.14 of this chapter to represent the owner for all existing applications or registrations that have the identical owner name.

* * * * *

- 5. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

(a) *Establishing the correspondent.*

The Office will send correspondence as follows:

(1) If the applicant, registrant, or party to a proceeding is not represented by an attorney qualified to practice before the Office under § 11.14(a) of this chapter, the Office will send correspondence to the applicant, registrant, or party to the proceeding.

(2) If an attorney is recognized as a representative pursuant to § 2.17(b)(1), the Office will correspond only with that attorney. A request to change the correspondence address does not revoke a power of attorney. Except for service of a cancellation petition, the Office will not correspond directly with the applicant, registrant, or a party to a proceeding, or with another attorney from a different firm, unless:

(i) The applicant or registrant files a revocation of the power of attorney under § 2.19(a) and/or a new power of attorney that meets the requirements of § 2.17(c);

(ii) The attorney has been suspended or excluded from practicing in trademark matters before the USPTO; or

(iii) Recognition of the attorney has ended pursuant to § 2.17(g).

(b) *Ex parte matters.* Only one correspondence address may be designated in an *ex parte* matter.

(c) *Maintaining and changing the correspondence addresses.* The applicant, registrant, or party to a

proceeding must maintain current and accurate correspondence addresses, as required by § 2.23, for itself and its attorney, if one is designated. If any of these addresses change, a request to change the address, signed in accordance with § 2.193(e)(9), must be promptly filed.

(d) *Post registration filings under sections 7, 8, 9, 12(c), 15, and 71 of the Act.* Even if there is no new power of attorney or written request to change the correspondence address, the Office will change the correspondence address upon the examination of an affidavit under section 8, 12(c), 15, or 71 of the Act, renewal application under section 9 of the Act, or request for amendment or correction under section 7 of the Act, if a new address is provided, in accordance with paragraph (a) of this section.

- 6. Revise § 2.21 to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application under section 1 or section 44 of the Act that is filed through TEAS, is written in the English language, and contains all of the following:

(1) The name, domicile address, and email address of each applicant;

(2) If the applicant is represented by a practitioner qualified under § 11.14 of this chapter, the practitioner's name, postal address, and email address;

(3) A clear drawing of the mark;

(4) A listing of the goods or services; and

(5) The filing fee required under § 2.6 for at least one class of goods or services.

(b) If the applicant does not satisfy all the elements required in paragraph (a) of this section, the Office will deny a filing date to the application unless the applicant meets the requirements of paragraph (c) of this section.

(c) If the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirements of paragraph (a) of this section to file through TEAS and provide an email address do not apply.

- 7. Revise § 2.22 to read as follows:

§ 2.22 Requirements for a TEAS Plus application.

(a) A trademark/service mark application for registration on the Principal Register under section 1 and/or section 44 of the Act that meets the requirements for a filing date under § 2.21 will be entitled to a reduced filing fee under § 2.6(a)(1)(iv) if it includes:

(1) The applicant's legal entity;
 (2) The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;

(3) If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;

(4) If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;

(5) One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;

(6) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual, available through the TEAS Plus form. In an application based on section 44 of the Act, the scope of the goods and/or services covered by the section 44 basis may not exceed the scope of the goods and/or services in the foreign application or registration;

(7) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(iv);

(9) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

(10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;

(11) If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the TEAS Plus form;

(12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(13) If the mark is not in standard characters, a description of the mark;

(14) If the mark includes non-English wording, an English translation of that wording;

(15) If the mark includes non-Latin characters, a transliteration of those characters;

(16) If the mark includes an individual's name or portrait, either (i) a statement that identifies the living

individual whose name or likeness the mark comprises and written consent of the individual, or (ii) a statement that the name or portrait does not identify a living individual (*see* section 2(c) of the Act).

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42; and

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information.

(b) In addition to the filing requirements under paragraph (a) of this section, the applicant must comply with § 2.23(a) and (b).

(c) If an application does not fulfill the requirements of paragraph (a) of this section, the applicant must pay the processing fee required by § 2.6(a)(1)(v).

(d) The following types of applications cannot be filed as TEAS Plus applications:

(1) Applications for certification marks (*see* § 2.45);

(2) Applications for collective trademarks and service marks (*see* § 2.44);

(3) Applications for collective membership marks (*see* § 2.44); and

(4) Applications for registration on the Supplemental Register (*see* § 2.47).

■ 8. Revise § 2.23 to read as follows:

§ 2.23 Requirement to correspond electronically with the Office and duty to monitor status.

(a) Unless stated otherwise in this chapter, all trademark correspondence must be submitted through TEAS.

(b) Applicants, registrants, and parties to a proceeding must provide and maintain a valid email address for correspondence.

(c) If the applicant or registrant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirements of paragraphs (a) and (b) of this section do not apply.

(d) Notices issued or actions taken by the USPTO are displayed in the USPTO's publicly available electronic systems. Applicants and registrants are responsible for monitoring the status of

their applications and registrations in the USPTO's electronic systems during the following time periods:

(1) At least every six months between the filing date of the application and issuance of a registration; and

(2) After filing an affidavit of use or excusable nonuse under section 8 or section 71 of the Act, or a renewal application under section 9 of the Act, at least every six months until the registrant receives notice that the affidavit or renewal application has been accepted.

■ 9. Revise § 2.24 to read as follows:

§ 2.24 Designation and revocation of domestic representative by foreign applicant.

(a) An applicant or registrant that is not domiciled in the United States may designate a domestic representative (*i.e.*, a person residing in the United States on whom notices or process in proceedings affecting the mark may be served).

(b) The designation, or a request to change or revoke a designation, must set forth the name, email address, and postal address of the domestic representative and be signed pursuant to § 2.193(e)(8).

(c) The mere designation of a domestic representative does not authorize the person designated to represent the applicant or registrant.

■ 10. Amend § 2.32 by revising paragraphs (a)(2) and (3) and (d) to read as follows:

§ 2.32 Requirements for a complete trademark or service mark application.

(a) * * *

(2) The name, domicile address, and email address of each applicant. If the applicant is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirement to provide an email address does not apply;

(3)(i) The legal entity type and citizenship of the applicant(s); and

(ii) If the applicant is a corporation, association, partnership or other juristic person, the jurisdiction (usually state or nation) under the laws of which the applicant is organized;

(iii) If the applicant is a domestic partnership, the names and citizenship of the general partners;

(iv) If the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture; or

(v) If the applicant is a sole proprietorship, the state of organization

of the sole proprietorship and the name and citizenship of the sole proprietor.

* * * * *

(d) The application must include the fee required by § 2.6 for each class of goods or services.

* * * * *

■ 11. Revise § 2.56 to read as follows:

2.56 Specimens.

(a) An application under section 1(a) of the Act, an amendment to allege use under § 2.76, a statement of use under § 2.88, an affidavit or declaration of continued use or excusable nonuse under § 2.160, or an affidavit or declaration of use or excusable nonuse under § 7.36 must include one specimen per class showing the mark as actually used in commerce on or in connection with the goods or services identified. When requested by the Office as reasonably necessary to proper examination, additional specimens must be provided.

(b)(1) A trademark specimen must show use of the mark on the goods, on containers or packaging for the goods, on labels or tags affixed to the goods, or on a display associated with the goods. To constitute a display associated with the goods, a specimen must show use of the mark directly associated with the goods and such use must be of a point-of-sale nature. The Office may accept another document related to the goods or the sale of the goods when it is impracticable to place the mark on the goods, packaging for the goods, or displays associated with the goods.

(2) A service mark specimen must show the mark as used in the sale of the services, including use in the performance or rendering of the services, or in the advertising of the services. The specimen must show a direct association between the mark and the services.

(3) A collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale of the services, including use in the performance or rendering of the services, or advertising of the member's services.

(4) A collective membership mark specimen must show use by members to indicate membership in the collective organization.

(5) A certification mark specimen must show how a person other than the owner uses the mark to reflect certification of regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other

organization performed the work or labor on the goods or services.

(c) A clear and legible photocopy, photograph, web page printout, or other similar type of reproduction of an actual specimen that meets the requirements of paragraphs (a) and (b) of this section is acceptable. The reproduction must show the entire specimen or enough of the specimen that the nature of the specimen, the mark, and the good or service with which the mark is used are identifiable. A web page must include the URL and access or print date. An artist's rendering, a printer's proof, a computer illustration, digital image, or similar mockup of how the mark may be displayed, or a photocopy of the drawing required by § 2.51, are not proper specimens.

(d) The specimen must be submitted through TEAS in a file format designated as acceptable by the Office, unless:

(1) The mark consists of a scent, flavor, or similar non-traditional mark type, in which case the specimen may be mailed to the Office, pursuant to § 2.190(a), without resort to the procedures set forth in § 2.147; or

(2) Submission on paper is permitted under § 2.23(c) or is accepted on petition pursuant to § 2.147.

■ 12. Revise § 2.62 to read as follows:

§ 2.62 Procedure for submitting response.

(a) *Deadline.* The applicant's response to an Office action must be received by the USPTO within six months from the issue date.

(b) *Signature.* The response must be signed by the applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2).

(c) *Form.* Responses must be submitted through TEAS pursuant to § 2.23(a). Responses sent via email or facsimile will not be accorded a date of receipt.

■ 13. Amend § 2.111 by revising paragraph (c)(2) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(c) * * *

(2)(i) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a petition to cancel may be filed in paper form. A paper petition to cancel a registration must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph (c). Timeliness of the

paper submission, if relevant to a ground asserted in the petition to cancel, will be determined in accordance with §§ 2.195 through 2.198.

(ii) For a petition to cancel a registration on the fifth year anniversary of the date of registration of the mark, a petitioner for cancellation who meets the requirements of § 2.147(b) may submit a petition to the Director to accept a timely filed paper petition to cancel.

* * * * *

■ 14. Amend § 2.146 by revising paragraph (a) to read as follows:

§ 2.146 Petitions to the Director.

(a) Petition may be taken to the Director in a trademark case:

(1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by § 2.63(a) and (b);

(2) In any case for which the Act of 1946, Title 35 of the United States Code, or parts 2, 3, 6, and 7 of Title 37 of the Code of Federal Regulations specifies that the matter is to be determined directly or reviewed by the Director;

(3) To invoke the supervisory authority of the Director in appropriate circumstances;

(4) In any case not specifically defined and provided for by parts 2, 3, 6, and 7 of Title 37 of the Code of Federal Regulations; or

(5) In an extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any requirement of the rules not being a requirement of the Act of 1946.

* * * * *

■ 15. Add § 2.147 to read as follows:

§ 2.147 Petition to the Director to accept a paper submission.

(a) *Paper submission when TEAS is unavailable on the date of a filing deadline.* (1) An applicant or registrant may file a petition to the Director under this section requesting acceptance of a submission filed on paper if:

(i) TEAS is unavailable on the date of the deadline for the submission specified in a regulation in part 2 or 7 of this chapter or in a section of the Act; and

(ii) The petition is timely filed, pursuant to § 2.197 or § 2.198, on the date of the deadline.

(2) The petition must include:

(i) The paper submission;

(ii) Proof that TEAS was unavailable on the date of the deadline;

(iii) A statement of the facts relevant to the petition, supported by a declaration under § 2.20 or 28 U.S.C.

1746 that is signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter;

(iv) The fee for a petition filed on paper under § 2.6(a)(15)(i); and

(v) Any other required fee(s) under § 2.6 for the paper submission.

(b) *Certain paper submissions timely filed before the date of a filing deadline.*

(1) An applicant, registrant, or petitioner for cancellation may file a petition to the Director under this section, requesting acceptance of any of the following submissions that was timely submitted on paper and otherwise met the minimum filing requirements, but not processed or examined by the Office because it was not submitted electronically pursuant to § 2.21(a), § 2.23(a), or § 2.111(c)(1), and the applicant, registrant, or petitioner for cancellation is unable to timely resubmit the document electronically by the deadline:

(i) An application seeking a priority filing date with a deadline under section 44(d)(1) of the Act;

(ii) A statement of use filed within the last six months of the period specified in section 1(d)(2) of the Act;

(iii) An affidavit or declaration of continued use or excusable nonuse with a deadline under section 8(a)(3) or section 71(a)(3) of the Act;

(iv) A request for renewal of a registration with a deadline under section 9(a) of the Act;

(v) An application for transformation of an extension of protection into a United States application with a deadline under section 70(c) of the Act; or

(vi) A petition to cancel a registration under section 14 of the Act on the fifth year anniversary of the date of the registration of the mark.

(2) The petition must be filed by not later than two months after the issue date of the notice denying acceptance of the paper filing and must include:

(i) A statement of the facts relevant to the petition, supported by a declaration under § 2.20 or 28 U.S.C. 1746 that is signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter;

(ii) A copy of the relevant paper submission and proof that it was timely filed;

(iii) Proof that a sufficient fee accompanied the original paper submission;

(iv) The required fee(s) under § 2.6 for the paper submission; and

(v) The relevant petition fee under § 2.6(a)(15).

(c) *Petition under § 2.146.* If the applicant or registrant is unable to meet the requirements under paragraphs (a) or (b) of this section for filing the petition, the applicant or registrant may submit a petition to the Director under § 2.146(a)(5) to request a waiver of § 2.21(a) or § 2.23(a).

(d) This section does not apply to requirements for paper submissions to the Trademark Trial and Appeal Board except as specified in paragraph (b)(vi).

■ 16. Revise § 2.148 to read as follows:

§ 2.148 Director may suspend certain rules.

In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in parts 2, 3, 6, and 7 of this chapter that is not a requirement of the Act may be suspended or waived by the Director.

■ 17. Revise § 2.151 to read as follows:

§ 2.151 Certificate.

When the Office determines that a mark is registrable, the Office will issue to the owner a certificate of registration on the Principal Register or the Supplemental Register. The certificate will state the application filing date, the act under which the mark is registered, the date of issue, and the number of the registration and will include a reproduction of the mark and pertinent data from the application. A notice of the requirements of sections 8 and 71 of the Act will issue with the certificate.

■ 18. Revise § 2.162 to read as follows:

§ 2.162 Notice to registrant.

When a certificate of registration is originally issued, the Office issues with the certificate a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 or section 71 of the Act. However, the affidavit or declaration must be filed within the time period required by section 8 or section 71 of the Act even if this notice is not received.

■ 19. Revise § 2.190 to read as follows:

§ 2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) *Paper trademark documents.* In general, trademark documents to be delivered by the USPS must be addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451. Trademark-related documents to be delivered by hand,

private courier, or other delivery service may be delivered during the hours the Office is open to receive correspondence to the Trademark Assistance Center, James Madison Building—East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia 22314.

(b) *Electronic trademark documents.* Trademark documents filed electronically must be submitted through TEAS. Documents that relate to proceedings before the Trademark Trial and Appeal Board must be filed electronically with the Board through ESTTA.

(c) *Trademark assignment documents.* Requests to record documents in the Assignment Recordation Branch may be filed electronically through ETAS. Paper documents and cover sheets to be recorded in the Assignment Recordation Branch should be addressed as designated in § 3.27 of this chapter.

(d) *Requests for certified copies of trademark documents.* Paper requests for certified copies of trademark documents must be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

(e) *Certain documents relating to international applications and registrations.* International applications under § 7.11, subsequent designations under § 7.21, responses to notices of irregularity under § 7.14, requests to record changes in the International Register under § 7.23 and § 7.24, requests to note replacements under § 7.28, requests for transformation under § 7.31 of this chapter, and petitions to the Director to review an action of the Office's Madrid Processing Unit must be addressed to: Madrid Processing Unit, 600 Dulany Street, Alexandria, VA 22314–5796.

■ 20. Revise § 2.191 to read as follows:

§ 2.191 Action of the Office based on the written record.

All business with the Office must be transacted in writing. The action of the Office will be based exclusively on the written record. No consideration will be given to any alleged oral promise, stipulation, or understanding when there is disagreement or doubt.

■ 21. Amend § 2.193 by:

■ a. Revising paragraphs (a)(2), (b), (c)(1), (d), (e) introductory text, (e)(5) introductory text, and (e)(9);

■ b. Removing paragraph (e)(10); and

■ c. Revising paragraphs (f) and (g).

The revisions read as follows:

§ 2.193 Trademark correspondence and signature requirements.

(a) * * *

(2) An electronic signature that meets the requirements of paragraph (c) of this section, personally entered by the person named as the signatory. The Office will accept an electronic signature that meets the requirements of paragraph (c) of this section on correspondence filed on paper or through TEAS or ESTTA.

(b) *Copy of original signature.* If a copy of an original signature is filed, the filer should retain the original as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

(c) * * *

(1) Personally enter any combination of letters, numbers, spaces and/or punctuation marks that the signer has adopted as a signature, placed between two forward slash ("/") symbols in the signature block on the electronic submission; or

* * * * *

(d) *Signatory must be identified.* The first and last name, and the title or position, of the person who signs a document in connection with a trademark application, registration, or proceeding before the Trademark Trial and Appeal Board must be set forth immediately below or adjacent to the signature.

(e) *Proper person to sign.* Documents filed in connection with a trademark application or registration must be signed as specified in paragraphs (e)(1) through (9) of this section:

* * * * *

(5) *Petitions to Director under § 2.146 or § 2.147.* A petition to the Director under § 2.146 or § 2.147 must be signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the following guidelines:

* * * * *

(9) *Requests to change correspondence address in an application or registration.* A notice of change of correspondence address in an application or registration must be signed by the applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the following guidelines:

(i) If the applicant or registrant is represented by a practitioner qualified to practice before the Office under § 11.14 of this chapter, the practitioner must sign; or

(ii) If the applicant or registrant is not represented by a practitioner qualified to practice before the Office under § 11.14, the individual applicant or registrant or someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint applicants or joint registrants, all must sign.

(f) *Signature as certification.* The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by any person, whether a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this chapter. Violations of § 11.18(b) of this chapter may jeopardize the validity of the application or registration, and may result in the imposition of sanctions under § 11.18(c) of this chapter. Any practitioner violating § 11.18(b) of this chapter may also be subject to disciplinary action. See § 11.18(d) and § 11.804 of this chapter.

(g) *Separate copies for separate files.*

(1) Since each file must be complete in itself, a separate copy of every document filed in connection with a trademark application, registration, or inter partes proceeding must be furnished for each file to which the document pertains, even though the documents filed in multiple files may be identical.

(2) Parties should not file duplicate copies of documents in a single application, registration, or proceeding file, unless the Office requires the filing of duplicate copies.

* * * * *

■ 22. Revise § 2.195 to read as follows:

§ 2.195 Filing date of trademark correspondence.

The filing date of trademark correspondence is determined as follows:

(a) *Electronic submissions.* The filing date of an electronic submission is the date the Office receives the submission, based on Eastern Time, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia.

(b) *Paper correspondence.* The filing date of a submission submitted on paper is the date the Office receives the submission, except as follows:

(1) *Priority Mail Express®.* The filing date of the submission is the date of deposit with the USPS, if filed pursuant to the requirements of § 2.198.

(2) *Certificate of mailing.* The filing date of the submission is the date of deposit with the USPS, if filed pursuant to the requirements of § 2.197.

(3) *Office closed.* The Office is not open to receive paper correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia.

(c) *Email and facsimile submissions.* Email and facsimile submissions are not permitted and, if submitted, will not be accorded a date of receipt.

(d) *Interruptions in USPS.* If the Director designates a postal service interruption or emergency within the meaning of 35 U.S.C. 21(a), any person attempting to file correspondence by Priority Mail Express® Post Office to Addressee service who was unable to deposit the correspondence with the USPS due to the interruption or emergency may petition the Director to consider such correspondence as filed on a particular date in the Office. The petition must:

(1) Be filed promptly after the ending of the designated interruption or emergency;

(2) Include the original correspondence or a copy of the original correspondence; and

(3) Include a statement that the correspondence would have been deposited with the USPS on the requested filing date but for the designated interruption or emergency in Priority Mail Express® service; and that the correspondence attached to the petition is the original correspondence or a true copy of the correspondence originally attempted to be deposited as Priority Mail Express® on the requested filing date.

■ 23. Revise § 2.197 to read as follows:

§ 2.197 Certificate of mailing.

(a) The filing date of correspondence submitted under this section is the date of deposit with the USPS if the correspondence:

(1) Is addressed as set out in § 2.190 and deposited with the USPS with sufficient postage as first-class mail; and

(2) Includes a certificate of mailing for each piece of correspondence that:

(i) Attests to the mailing and the address used;

(ii) Includes the name of the document and the application serial number or USPTO reference number, if assigned, or registration number to which the document pertains;

(iii) Is signed separately from any signature for the correspondence by a person who has a reasonable basis to expect that the correspondence would be mailed on the date indicated; and

(iv) Sets forth the date of deposit with the USPS.

(b) If correspondence is mailed in accordance with paragraph (a) of this section, but not received by the Office,

the party who mailed such correspondence may file a petition to the Director under § 2.146(a)(2) to consider such correspondence filed in the Office on the date of deposit with the USPS. The petition must:

(1) Be filed within two months after the date of mailing;

(2) Include a copy of the previously mailed correspondence and certificate; and

(3) Include a verified statement attesting to the facts of the original mailing.

(c) If the certificate of mailing does not meet the requirements of paragraph (a)(2) of this section, the filing date is the date the Office receives the submission.

■ 24. Revise § 2.198 to read as follows:

§ 2.198 Filing of correspondence by Priority Mail Express®.

(a) The filing date of correspondence submitted under this section is the date of deposit with the USPS, as shown by the “date accepted” on the Priority Mail Express® label or other official USPS notation.

(b) If the USPS deposit date cannot be determined, the filing date is the date the Office receives the submission.

(c) If there is a discrepancy between the filing date accorded by the Office to the correspondence and the “date accepted,” the party who submitted the correspondence may file a petition to the Director under § 2.146(a)(2) to accord the correspondence a filing date as of the “date accepted.” The petition must:

(1) Be filed within two months after the date of deposit;

(2) Include a true copy of the Priority Mail Express® mailing label showing the “date accepted,” and any other official notation by the USPS relied upon to show the date of deposit; and

(3) Include a verified statement attesting to the facts of the original mailing.

(d) If the party who submitted the correspondence can show that the “date accepted” was incorrectly entered or omitted by the USPS, the party may file a petition to the Director under § 2.146(a)(2) to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS. The petition must:

(1) Be filed within two months after the date of deposit;

(2) Include proof that the correspondence was deposited in the Priority Mail Express® Post Office to Addressee service prior to the last scheduled pickup on the requested filing date. Such proof must be

corroborated by evidence from the USPS or evidence that came into being within one business day after the date of deposit; and

(3) Include a verified statement attesting to the facts of the original mailing.

(e) If correspondence is properly addressed to the Office pursuant to § 2.190 and deposited with sufficient postage in the Priority Mail Express® Post Office to Addressee service of the USPS, but not received by the Office, the party who submitted the correspondence may file a petition to the Director under § 2.146(a)(2) to consider such correspondence filed in the Office on the USPS deposit date. The petition must:

(1) Be filed within two months after the date of deposit;

(2) Include a copy of the previously mailed correspondence showing the number of the Priority Mail Express® mailing label thereon; and

(3) Include a verified statement attesting to the facts of the original mailing.

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

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

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 26. Amend § 7.1 by revising paragraphs (c) and (d) to read as follows:

§ 7.1 Definitions of terms as used in this part.

* * * * *

(c) The acronym *TEAS* means the Trademark Electronic Application System, and, as used in this part, includes all related electronic systems required to complete an electronic submission through TEAS.

(d) The term *Office* or the abbreviation *USPTO* means the United States Patent and Trademark Office.

* * * * *

■ 27. Revise § 7.4 to read as follows:

§ 7.4 International applications and registrations originating from the USPTO—Requirements to electronically file and communicate with the Office.

(a) Unless stated otherwise in this chapter, all correspondence filed with the USPTO relating to international applications and registrations originating from the USPTO must be submitted through TEAS and include a valid email address for correspondence.

(b) Applicants and registrants under this section must provide and maintain a valid email address for correspondence with the Office.

(c) If an applicant or registrant under this section is a national of a country that has acceded to the Trademark Law Treaty, but not to the Singapore Treaty on the Law of Trademarks, the requirements of paragraphs (a) and (b) of this section do not apply.

(d) If TEAS is unavailable, or in an extraordinary situation, an applicant or registrant under this section who is required to file a submission through TEAS may submit a petition to the Director under § 2.146(a)(5) and (c) of this chapter to accept the submission filed on paper.

■ 28. Amend § 7.11 by:

■ a. Revising paragraphs (a) introductory text and (a)(10) and (11);

■ b. Removing paragraph (a)(12); and

■ c. Revising paragraph (b).

The revisions read as follows:

§ 7.11 Requirements for international application originating from the United States.

(a) The Office will grant a date of receipt to an international application that is filed through TEAS in accordance with § 7.4(a), or typed on the official paper form issued by the International Bureau, if permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The international application must include all of the following:

* * * * *

(10) If the application is filed through TEAS, the international application fees for all classes, and the fees for all designated Contracting Parties identified in the international application (*see* § 7.7); and

(11) A statement that the applicant is entitled to file an international application in the Office, specifying that applicant: Is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an applicant's address is not in the United States, the applicant must provide the address of its U.S. domicile or establishment.

(b) For requirements for certification, *see* § 7.13.

■ 29. Amend § 7.21 by:

■ a. Revising paragraphs (b)

introductory text and (b)(7) and (8);

■ b. Removing paragraph (b)(9); and

■ c. Revising paragraph (c).

The revisions read as follows:

§ 7.21 Subsequent designation.

* * * * *

(b) The Office will grant a date of receipt to a subsequent designation that

is filed through TEAS in accordance with § 7.4(a), or typed on the official paper form issued by the International Bureau, if permitted under § 7.4(c) or accepted on petition pursuant to § 7.4(d). The subsequent designation must contain all of the following:

* * * * *

(7) The U.S. transmittal fee required by § 7.6; and

(8) If the subsequent designation is filed through TEAS, the subsequent designation fees (*see* § 7.7).

(c) If the subsequent designation is accorded a date of receipt, the Office will then forward the subsequent designation to the International Bureau.

* * * * *

■ 30. Amend § 7.25 by revising paragraph (a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.21, 2.22, 2.76, 2.88, 2.89, 2.130, 2.131, 2.160 through 2.166, 2.168, 2.173, 2.175, and 2.181 through 2.186, all sections in parts 2 and 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

* * * * *

Dated: July 25, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019-16259 Filed 7-30-19; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0004; FRL-9997-38-Region 4]

Air Plan Approval; TN; Updates to the National Ambient Air Quality Standards for Chattanooga

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is taking final action to approve a revision to the Chattanooga portion of the Tennessee State Implementation Plan (SIP), provided by the State of Tennessee, through the Tennessee Department of Environment and Conservation from Chattanooga/Hamilton County Air

Pollution Control Bureau by a letter dated September 12, 2018. The revision updates the National Ambient Air Quality Standards (NAAQS) in the Chattanooga portion of the Tennessee SIP. The amendments in the Tennessee SIP reflect recent revisions made to the federal NAAQS. EPA is approving the changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective August 30, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2019-0004. 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

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare for six criteria pollutants: ozone, particulate matter (PM) (including fine particulate matter, or PM_{2.5}), carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide. The CAA requires periodic review of the air quality criteria, the

science upon which the standards are based, and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR 50, *National Primary and Secondary Ambient Air Quality Standards*.

EPA is taking final action to approve changes to the Chattanooga portion of the Tennessee SIP that were provided to EPA through a letter dated September 12, 2018.¹ EPA is finalizing approval of the portions of this SIP revision that make changes to air quality rules in Part II, Chapter 4, Article II, Section 4-41.² The September 12, 2018, SIP revision makes changes to the SIP that deletes the current version and substitutes a revised version of Part II, Chapter 4, Article II, Section 4-41, Rule 21 of the Chattanooga City Code "Ambient Air Quality Standards." Hamilton County revised its rule to be consistent with changes to the federal NAAQS.

In a notice of proposed rulemaking (NPRM) published on March 29, 2019 (84 FR 11917), EPA proposed to approve the aforementioned changes to Part II, Chapter 4, Article II, Section 4-41 in the Chattanooga portion of the Tennessee SIP, which address the NAAQS. The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before April 29, 2019.

II. Response to Comments

EPA received one potentially adverse comment on its March 29, 2019, NPRM. This comment is provided in the docket for today's final action. EPA has summarized and responded to the comment below.

Comment: The Commenter notes that "high levels of ground level ozone, airborne particles and other matter" pose a threat to human health, "making this proposal a public concern." The Commenter also states that any changes to the SIP "must consider any changes in location of monitoring sites, protocol of air quality monitoring and quality standards sample so that there is no heteroskedasticity which could lead to corruption of time measure data." According to the Commenter, if any of these changes have been made, "further scrutiny should be made concerning the motive or whether data has been skewed in favor of noncompliance." The Commenter further states that it is "important that careful consideration and verification be given to this proposed revision."

¹ EPA notes that the Agency received the SIP revision on September 18, 2018.

² As discussed in the NPRM, EPA does not recognize gaseous fluorides as criteria pollutants and EPA is not acting to approve the standard related to gaseous fluorides. *See* 84 FR 11917, n.4.

Response: It is unclear how the commenter would like EPA to change the proposed rule. To the extent the commenter is concerned about the health effects of air pollution, EPA notes that final approval of this SIP revision will incorporate more protective NAAQS into the Chattanooga portion of the Tennessee SIP. To the extent the commenter is concerned about air quality monitoring, these concerns are outside of the scope of this rulemaking, which updates Tennessee's SIP solely to reflect the current NAAQS. Tennessee's SIP revision does not change the location of any monitoring sites or any air quality monitoring plans. EPA further notes that it has carefully evaluated the SIP revision and is approving it for the reasons discussed in this notice and the NPRM.

III. 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 changes to the Chattanooga portion of the Tennessee SIP at Part II, Chapter 4, Article II, Section 4–41, Rule 21, state effective January 23, 2017. 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

IV. Final Action

EPA is taking final action to approve changes to Part II, Chapter 4, Article II, Section 4–41, Rule 21, of the Chattanooga portion of the Tennessee SIP because the changes are consistent with section 110 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 30, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Lead, Carbon Monoxide.

Dated: July 18, 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 RR—Tennessee

- 2. Section 52.2220(c), Table 4, is amended under Article II, Section 4–41 Rules, Regulations, Criteria, Standards by revising the entry for “Section 4–41 Rule 21” to read as follows:

³ See 62 FR 27968 (May 22, 1997).

§ 52.2220 Identification of plan.

(c) * * *

* * * * *

TABLE 4—EPA-APPROVED CHATTANOOGA REGULATIONS

State section	Title/subject	Adoption date	EPA approval date	Explanation
*	*	*	*	*
Article II. Section 4—41 Rules, Regulations, Criteria, Standards				
Section 4—41 Rule 21.	Ambient Air Quality Standards.	1/23/17	7/31/2019, [Insert citation of publication].	With the exception of the portions related to the standard for gaseous fluorides, which are not approved into the SIP.
*	*	*	*	*

* * * * *

[FR Doc. 2019–16194 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R04–OAR–2018–0759; FRL–9997–40–Region4]****Air Plan Approval; Kentucky; Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour NO₂ 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 Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet by a letter dated November 16, 2018, for the purpose of addressing the Clean Air Act (CAA or Act) “good neighbor” interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is finalizing approval of Kentucky’s November 16, 2018, SIP revision addressing prongs 1 and 2 to ensure that air emissions in Kentucky do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in any other state.

DATES: This rule is effective August 30, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0759. All documents in these dockets 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. Mr. Adams can be reached by phone at (404) 562–9009 or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO₂

at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides (NO_x). NO₂ is the component of greatest concern and is used as the indicator for the larger group of NO_x. Emissions that lead to the formation of NO₂ generally also lead to the formation of other NO_x. Therefore, control measures that reduce NO₂ can generally be expected to reduce population exposures to all gaseous NO_x, which may reduce the formation of ozone and fine particles, both of which pose significant public health threats. For comprehensive information on the 2010 1-hour NO₂ NAAQS, please refer to the February 9, 2010 (75 FR 6474), **Federal Register** notice.

When EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions. Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such

infrastructure submissions, EPA evaluates the submitting state's implementation plan for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP. EPA has other authority to address any issues concerning a state's implementation of the regulations that comprise its SIP.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIPs. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). EPA sometimes refers to prong 1 and prong 2 conjointly as the "good neighbor" provision of the CAA. The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

EPA's most recent infrastructure SIP guidance, the September 13, 2013, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," did not explicitly include criteria for how the Agency would evaluate infrastructure SIP submissions intended to address section 110(a)(2)(D)(i)(I). With respect to certain pollutants, such as ozone and particulate matter (PM), EPA has addressed interstate transport in eastern states in the context of regional rulemaking actions that quantify state emission reduction obligations. For NO₂, EPA has considered available information such as current air quality, emissions data and trends, and regulatory provisions that control source emissions to determine whether emissions from one state interfere with the attainment or maintenance of the NAAQS in another state. EPA's action on Kentucky's CAA section 110(a)(2)(D)(i)(I) interstate transport SIP revision for the 2010 NO₂ NAAQS is informed by these considerations.

In a notice of proposed rulemaking (NPRM) for Kentucky, published on May 16, 2019 (84 FR 22084), EPA proposed to approve the Kentucky SIP submission on the basis that the Commonwealth's SIP adequately addresses prong 1 and prong 2 requirements for the 2010 1-hour NO₂ NAAQS. The details of the Kentucky submission and the rationale for EPA's action are explained in the NPRM. Comments on the proposed rulemaking were due on or before June 17, 2019. EPA did not receive any comments.

II. Final Action

As described above, EPA is taking final action to approve the infrastructure SIP submission transmitted under cover letter by the Commonwealth of Kentucky on November 16, 2018, addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) for the 2010 1-hour NO₂ NAAQS. EPA is approving Kentucky's infrastructure SIP submission because it is consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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, this 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 30, 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, Ozone, Reporting and recordkeeping requirements.

Dated: July 18, 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(e) is amended by adding an entry for “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO₂ NAAQS” at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanations
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS.	Kentucky	11/16/18	7/31/19 [Insert citation of publication].	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) only.

[FR Doc. 2019–16195 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0164; FRL–9997–33–Region 9]

Revisions to the California State Implementation Plan, Feather River Air Quality Management District; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, correcting amendment.

SUMMARY: The Environmental Protection Agency (EPA) published a direct final rule in the **Federal Register** on July 8, 2015, that approved revisions to the Feather River Air Quality Management District portion of the California State Implementation Plan (SIP) but did not include all the necessary amendatory language to list all the SIP revisions that were being approved. This document corrects this error.

DATES: This final rule is effective on July 31, 2019.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972–3073, gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: On July 8, 2015 (80 FR 38959), the EPA took direct final action to approve revisions to the Feather River Air Quality Management District (AQMD) portion of the

California SIP.¹ The approval covered one Feather River AQMD rule (Rule 3.8 (“Gasoline Dispensing Facilities”)) and three Reasonably Available Control Technology (RACT) SIP demonstrations from Feather River AQMD: One from 2006 (“2006 RACT SIP”), one from 2009 (“2009 RACT SIP”) and one from 2014 (“2014 RACT SIP”). In our direct final action, we mistakenly codified our approval of Rule 3.8 twice and failed to codify our approval of the 2009 RACT SIP.

On September 8, 2015 (80 FR 53739), we corrected our July 8, 2015 direct final action by replacing one of the listings for our approval of Rule 3.8 with our approval of the 2014 RACT SIP. In our September 8, 2015 action, we also intended to replace the July 8, 2015 listing of the 2014 RACT SIP with the missing approval of the 2009 RACT SIP, but inadvertently failed to do so with the result that our approval of the 2014 RACT SIP is now codified at both 40 CFR 52.220(c)(459) and 40 CFR 52.220(c)(460) and the approval of the 2009 RACT SIP is still missing. In this action, we are revising paragraph (c)(459) to list our approval of the 2009 RACT SIP.

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are

impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period. Further, this action is consistent with the purpose and rationale of the final rule for which amendatory instructions are being corrected herein. Because this action does not change the EPA’s analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This action merely corrects incomplete amendatory instructions in a previous rulemaking. For these reasons, the EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

¹ The Feather River AQMD administers air quality management programs in Yuba and Sutter Counties in California.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with state officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(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.

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

Dated: July 16, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

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.*

Subpart F—California

- 2. Section 52.220 is amended by revising paragraphs (c)(459) introductory text and (c)(459)(ii)(A)(1) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(459) The following plan revision was submitted on October 27, 2009, by the Governor's designee.

* * * * *

(ii) * * *

(A) * * *

(1) Reasonably Available Control Technology State Implementation Plan Revision, Negative Declaration for Control Techniques Guidelines Issued 2006–2008 (“2009 RACT SIP”), as adopted on June 1, 2009.

* * * * *

[FR Doc. 2019–16050 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R05–OAR–2018–0285; FRL–9997–36–Region 5]

Air Plan Approval; Wisconsin; Title V Operation Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving updates and revisions to the Wisconsin title V Operation Permit Program, submitted by Wisconsin pursuant to subchapter V of the Clean Air Act (Act), which requires states to develop, and to submit to EPA for approval, programs for issuing operation permits to all major stationary sources. The revision was submitted to update the title V program since the final approval of the program in 2001 and to change the permit fee schedule for subject facilities. The revision consists of amendments to Chapter Natural Resources (NR) 407 Wisconsin Administrative Code, operation permits, Chapter NR 410 Wisconsin Administrative Code, permit fees, and Wisconsin statute 285.69, fee structure. This approval action will help ensure that Wisconsin properly implements the requirements of title V of the Act.

DATES: This direct final rule will be effective September 30, 2019, unless EPA receives adverse comments by August 30, 2019. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0285 at <http://www.regulations.gov>, or via email to damico.genevieve@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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Susan Kraj, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, kraj.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:
I. What did Wisconsin Submit?
II. What is EPA Approving?
III. What Action is EPA Taking?
IV. Statutory and Executive Order Reviews.

I. What did Wisconsin submit?

A. Background

On March 8, 2017, EPA received a request from the Wisconsin Department of Natural Resources (WDNR) that we approve revisions and updates to Wisconsin's title V operating permit program. Pursuant to subchapter V of the Act, generally known as title V, and the implementing regulations, at 40 Code of Federal Regulations (CFR) part 70, states developed and submitted to EPA for approval programs for issuing operation permits to all major stationary sources and to certain other sources. EPA promulgated interim approval of Wisconsin's title V operating permit program on March 6, 1995 (60 FR

12128). In 2001, Wisconsin submitted corrections to the interim approval issues identified in the 1995 interim approval action as well as additional program revisions and updates. EPA took action to approve the corrections to the interim approval issues and promulgated final approval of the Wisconsin title V program on December 4, 2001 (66 FR 62951).

B. Wisconsin's Submittal

Wisconsin is seeking approval of changes and updates made to its title V program since the 1995 and 2001 approvals. EPA received WDNR's submittal updating its title V operating permit program on March 8, 2017, and supplemental information on January 26, 2018 (submittal). WDNR's submittal contains two sections, Part 1 and Part 2.

Part 1 contains previously approved program elements which are included for informational purposes, as well as Other Changes — Minor Clarifications and Corrections (which are changes that were included in WDNR's 2001 submittal that EPA did not act on or approve in the 2001 approval).

Part 2 contains title V program revisions and updates since Wisconsin's program was approved in 2001. Part 2 of the submittal contains section I—Additional State Rule Changes and Updates to the Regulations, and section II—Permit Fee Demonstration.

II. What is EPA approving?

In this action, EPA is addressing the changes and updates in WDNR's submittal that have not been previously approved. This includes the Part 1, Section IX Other Changes — Minor Clarifications and Corrections, as well as the changes in Part 2, Sections I and II, of WDNR's submittal that relate to the Federal title V program at 40 CFR part 70.

WDNR's submittal includes changes related to several different operating permit programs, including its title V program as well its Federally Enforceable State Operating Permit (FESOP) program and its state-only enforceable operating permit program. EPA approved Wisconsin's FESOP program on January 18, 1995 (60 FR 3538). FESOP permits are those in which a source takes a federally-enforceable limit to restrict its emissions to below major source thresholds in order to avoid needing a title V permit. WDNR's State-only operating permit program is for sources with emissions below those that would require a FESOP or title V permit. In this action, EPA is only approving provisions related to WDNR's title V operating permit program. EPA is not approving any

changes or updates solely related to WDNR's FESOP or State-only operation permit programs.

For the reasons set forth below, the revisions and updates to WDNR's title V operating permits program, including the submitted amendments to the operating permits program regulations at NR 407 Wisconsin Administrative Code and fee related provisions at NR 410 and Wisconsin Statute 285.69, substantially meet the corresponding requirements of 40 CFR part 70.

A. Analysis of Part I Section IX—Minor Clarifications and Corrections

In Wisconsin's 1995 initial program approval, EPA identified several issues (in addition to the interim approval issues) that should be clarified or corrected, and WDNR agreed to make these changes. WDNR included these changes in its 2001 program submittal, but EPA only acted on the interim approval corrections at that time. For each of these additional items EPA had identified, WDNR included an analysis of the changes in its current submittal. EPA is approving the changes identified in Part I, Section IX, items 1–6 of the submittal.

B. Analysis of Part 2, Section I—Updates to Regulations

WDNR's submittal contains over thirty revisions related to its operation permit program since the final approval in 2001. The WDNR followed all necessary procedures for adoption of changes that were made to these regulations including the WDNR's secretary's approval of the notice of public hearing, certification of publication, affidavit of mailing of the public notice to interested parties, a list of public hearing appearances, and the WDNR report on comments and response to comments.

For a detailed analysis of Part 2, Section I—Updates to Regulations, of the submittal, please refer to the Technical Support Document (TSD) for this action, which is available in the docket at the address noted above. The TSD shows that all operating permit program requirements of title V of the Act, 40 CFR part 70, and relevant guidance were met by Wisconsin's submittal.

C. Analysis of Part 2, Section II—Permit Fee Demonstration

WDNR submitted a fee demonstration because it is required by 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), which provide that a state program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that

are sufficient to cover the permit program costs. 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) provide that a state may collect fees that cover the actual permit program costs, or may use a presumptive fee schedule, adjusted for inflation (using the Consumer Price Index). Wisconsin's fee schedule is not based on the presumptive minimum fee schedule established in 40 CFR 70.9(b) and does not provide for inflation adjustments; therefore, Wisconsin must provide a demonstration that its collected fees cover the actual permit program costs as required by 40 CFR 70.9(b)(5).

WDNR describes in its submittal the rule changes related to fees that have occurred since 2001, including changes that revised the operation permit fee structure. WDNR's current title V fee structure requires sources that are required to obtain a Federal operation permit to pay an annual air emissions tonnage fee, but sources also pay an additional annual flat fee, based on the tons of actual billable emissions. In addition, sources also pay an additional annual flat fee if the source is subject to other requirements, such as if maximum achievable control technology standards apply to the source, if one or more Federal new source performance standards apply to the source, if Federal prevention of significant deterioration permitting applies to the source, and if the source is a privately-owned coal-fired electric utility with an electric generating unit, among other flat fees.

The submittal provides tables showing the fee rate per ton of billable pollutants, the billable tons, and the total fees assessed for various years. The submittal also provides details on WDNR's revenue, work planning, and expenditures. In addition, WDNR has several mechanisms in place to ensure that fees collected from title V sources are used solely for funding title V permit activities as required by 40 CFR 70.9(a). In the submittal, WDNR compares the actual revenues collected under its fee structure to an estimate of what would be collected using the presumptive minimum fee schedule, and WDNR's actual revenues collected exceed the presumptive minimum projections. WDNR demonstrates that the level of fees collected by WDNR from federally-regulated sources is sufficient for the WDNR to adequately administer and enforce the required minimum elements of the title V permit program required in Section 502(b) of the Act.

Upon review of the information submitted, EPA finds that WDNR has demonstrated that it has adequate funding levels to support its title V

program. Accordingly, Wisconsin has adequately demonstrated that the revised fee schedule has resulted in the collection of fees in an amount sufficient to cover its actual program costs, as required by 40 CFR 70.9 and the Act.

III. What action is EPA taking?

EPA is approving Wisconsin's submittal. This approval of the revisions and updates in Wisconsin's submittal addresses only the provisions as described above in Section II, What is EPA Approving, which pertain to the Federal title V program requirements, and does not apply to any other Federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. EPA finds that the program revisions and updates in WDNR's submittal have satisfactorily addressed the requirements of part 70, and EPA is therefore approving this submittal.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective September 30, 2019 without further notice unless we receive relevant adverse written comments by August 30, 2019. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective September 30, 2019.

IV. Statutory and Executive Order Reviews

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action"

and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this state operating permit program will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this action proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state operating permit program, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

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

This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to approve a state operating permit program.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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

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

populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing state operating permit program submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Act. Accordingly, this action merely approves certain state requirements and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operation permits, Reporting and recordkeeping requirements.

Dated: July 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 70 is amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

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

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

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

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

* * * * *

Wisconsin

* * * * *

(d) Department of Natural Resources: Title v operating permit program revisions and updates received on March 8, 2017.

Wisconsin's Title v program is hereby updated to include these requested changes.

* * * * *

[FR Doc. 2019-16336 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1983-0002; FRL-9997-52-Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Duell & Gardner Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Deletion of the Duell & Gardner Landfill Superfund Site (Duell & Gardner Site), located in Dalton Township, Muskegon County, Michigan, from the National Priorities List (NPL). 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). This direct final deletion is being published by EPA with the concurrence of the State of Michigan, through the Michigan Department of Environment, Great Lakes and Energy (MDEGLE) because EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 30, 2019 unless EPA receives adverse comments by August 30, 2019. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1983-0002, by one of the following methods:

<https://www.regulations.gov>. Follow the on-line 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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.

Email: cano.randolph@epa.gov.

Mail: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR-6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-6036.

Hand deliver: Superfund Records Center, U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604, (312) 886-0900. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-1983-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 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 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 hard copy. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at:

U.S. Environmental Protection Agency, Region 5, Superfund Records Center, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604. Phone: (312) 886-0900. Hours: Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

Dalton Township Hall, Superfund Site Information Repository, 1616 East Riley Thompson Road, Muskegon, MI 49445. Phone: (231) 766-3043. Hours: Monday through Friday, 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR-6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-6036, or via email at cano.randolph@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Deletion
- V. Deletion Action

I. Introduction

EPA Region 5 is publishing this direct final Notice of Deletion of the Duell & Gardner Site, from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to Section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of 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.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Duell & Gardner Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Duell & Gardner Site from the NPL unless adverse comments are received during the public comment period.

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), 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, 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. EPA conducts such five-year reviews even if a site is deleted from the NPL. 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 deletion of the Duell & Gardner Site:

(1) EPA consulted with the State of Michigan prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State thirty (30) working days for review of this action and the parallel Notice of Intent to Delete prior to their publication

today, and the State, through the MDEGLE, has concurred on the deletion of the Duell & Gardner Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, an announcement of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Muskegon Chronical. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Duell & Gardner Site from the NPL.

(4) 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 Duell & Gardner Site information repositories identified in the **ADDRESSES** Section of this rule.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion in the **Federal Register** before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

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 EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist 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 Site Deletion

The following information provides EPA's rationale for deleting the Duell & Gardner Site from the NPL:

Site Background and History

The Duell & Gardner Site (CERCLIS ID: MID980504716) is an 80-acre parcel of land located at 1285 East Bard Road in Dalton Township, Muskegon County, Michigan, approximately five miles north of the City of Muskegon, Michigan. See Figure 1 in the Docket. The landfill consisted mostly of municipal debris and waste spread out over an eight-acre area in the southern half of the property. During the cleanup, the waste was consolidated into a four-acre area and covered with a landfill cap.

The Duell & Gardner Site is not fenced; however the entrance road to

the landfill is gated. The landfill is secluded and is posted with warning signs and permanent markers around the perimeter indicating that the landfill is a hazardous waste site.

The Duell & Gardner Site is located in a primarily residential and agricultural area. Two single family homes and an agricultural field are located in the northern half of the Duell & Gardner Site property. These residences are supplied with drinking water from two wells that are located upgradient of the landfill. These wells are not impacted by contaminants from the Duell & Gardner Site. Several residential wells are located approximately one-half mile in the general downgradient direction of the landfill. Twenty-one private wells located within this area were sampled during the investigations and were found not to be contaminated by the Duell & Gardner Site.

The Duell & Gardner Site owners used the property for waste disposal activities from the mid-1940s to 1973. From the 1940s until 1969, the property owner/landfill operator disposed municipal and industrial waste in trenches, depressions and on the ground surface of approximately eight-acres of the 80-acre property. In 1969, new owners began operating the landfill as a licensed solid waste disposal facility. From 1969 until 1973, the landfill operators disposed waste, including liquid waste, in unlined trenches excavated on the property.

The Muskegon County Health Department (MCHD) periodically inspected the landfill from 1969 through September 1973. In 1971, the Michigan Department of Public Health (MDPH) stipulated that liquid waste could not be disposed in the landfill. In 1973, MCHD noted that the landfill operators were disposing liquid waste in the landfill. The Michigan Department of Public Health (MDPH) ordered that the landfill be closed in January 1974, after which the landfill ceased accepting waste.

Initial concern regarding possible groundwater contamination at the Duell & Gardner Site arose in 1977 when the MDPH was considering approving the construction of a community water supply in the area. In 1979, the Michigan Department of Natural Resources (MDNR) (subsequently known as the Michigan Department of Environmental Quality, or MDEQ, and now MDEGLE) collected soil and drum samples from the property. The samples indicated that polychlorinated biphenyls (PCBs) were present in the soil.

EPA collected surface water samples from a tributary of Bear Creek in 1981. In 1982, EPA installed and sampled four

groundwater monitoring wells at the Duell & Gardner Site. EPA determined that the groundwater below the property was generally flowing to the southeast. EPA did not detect any significant concentrations of organic or inorganic compounds in these groundwater monitoring wells.

EPA proposed the Duell & Gardner Site to the NPL on December 30, 1982 (47 FR 58476). EPA finalized the Duell & Gardner Site NPL listing on September 8, 1983 (48 FR 40658).

In 1984, the MDNR and EPA found and sampled drums in a wooded area adjacent to the landfill. The samples showed evidence of organic and inorganic contamination. MDNR investigated further and identified 21 distinct drum and waste disposal areas at the Duell & Gardner Site in September 1985. MDNR found approximately 550 drums in various stages of deterioration scattered in the woods adjacent to the landfill in groups of 9 to 140 drums. MDNR also found hundreds of small laboratory bottles, areas of refuse and debris and piles of unidentified sludge-like material scattered around the base of the landfill.

EPA conducted a CERCLA removal action at the Duell & Gardner Site in 1986. EPA removed 550 drums in various stages of deterioration from the Duell & Gardner Site for off-site disposal. EPA also removed some of the laboratory bottles, sludge-like material and soil for off-site disposal. EPA implemented the CERCLA removal action to prevent contaminants from leaching into the groundwater. This action reduced the risk of ingesting contaminated groundwater and the risks from direct exposure to contaminants through dermal contact and incidental ingestion.

Remedial Investigation/Feasibility Study

MDNR initiated a Remedial Investigation/Feasibility Study (RI/FS) at the Duell & Gardner Site in 1986. The purpose of the RI/FS was to quantify the residual contamination at the Duell & Gardner Site and to identify and evaluate cleanup alternatives. MDNR also conducted a Treatability study to identify technologies which might eliminate or reduce the toxicity, mobility and/or volume of the contaminants present in the soil and groundwater at the landfill. MDNR conducted the RI/FS using Federal Superfund funding.

MDNR completed the RI report, the Treatability Study report and the FS report in 1992. The results of the RI indicated that soil was contaminated with organic compounds including bis(2-ethylhexyl)phthalate, gentian

violet, aniline, and N,N-dimethylaniline. PCBs and pesticides (DDT, DDD, and DDE) were also detected in the soil at two locations. Gentian violet (a dye and at one time used as a topical antiseptic), often referred to as crystal violet, was detected at concentrations as high as 188 milligrams per kilogram (mg/Kg). Other contaminants detected in soil included pentachlorophenol and polynuclear aromatic hydrocarbons including chrysene, benzo(k)fluoranthene, indeno(1,2,3-cd)pyrene and benzo(a)anthracene.

Groundwater sampling indicated that two contaminated groundwater plumes were emanating from the Duell & Gardner Site. One plume contained chloroform and carbon tetrachloride. The other plume contained aniline and N,N-dimethylaniline. The chloroform and carbon tetrachloride were only detected in the shallow portion of the aquifer (ten to twenty feet below ground surface) while aniline and N,N-dimethylaniline were found in deeper portions of the aquifer, up to 100 feet below ground surface. Gentian violet and tetrachloroethylene were also detected in the groundwater. The 21 private wells sampled downgradient of the landfill were not contaminated.

MDNR collected surface water and sediment samples from the tributary to Bear Creek located east of the Duell & Gardner Site and sediment samples from the drainage ditch located south of the property. Neither of these drainage systems was contaminated.

The FS evaluated five cleanup alternatives for soil and four cleanup alternatives for groundwater. The cleanup alternatives evaluated for soil included: no action; excavation and on-site capping; excavation, on-site vitrification and capping; excavation, on-site thermal treatment and capping; and excavation, off-site incineration and capping. The cleanup alternatives evaluated for groundwater included: no action; land use restrictions and monitoring; groundwater extraction with ultraviolet oxidation treatment; and groundwater extraction with carbon adsorption treatment.

Selected Remedy

The remedial action objectives (RAOs) for the Duell & Gardner Site are to: (1) Prevent direct human exposure to soil having concentrations of chemicals of concern resulting in a cumulative excess cancer risk of greater than 1×10^{-4} ; (2) Prevent future residents from using groundwater containing carbon tetrachloride and N,N-dimethylaniline contaminants above drinking water standards as a domestic water supply;

and (3) Restore groundwater and all soil areas outside of the landfill to their beneficial use (residential).

EPA and MNDR selected a cleanup remedy for the Duell & Gardner Site in a September 7, 1993 Record of Decision (ROD). The selected cleanup remedy included the following main components: (1) Excavation of contaminated soil with on-site low-temperature thermal treatment; (2) Contaminated groundwater extraction with on-site carbon adsorption treatment; (3) Construction of a clay cap over the landfill area meeting the requirements of Michigan Act 641 (a solid waste cap); (4) Institutional controls such as deed restrictions to prevent the installation of drinking water wells in the affected area of the site during remediation; (5) Groundwater monitoring to assess the remediation and assure containment of the contaminant plumes; (6) A pre-design investigation to further define the limits of the contamination.

The MDEQ (formerly the MDNR and now known as the MDEGLE) conducted the pre-design investigation in 1996 and follow-up groundwater sampling in 1998. The investigations showed that the extent of soil and groundwater contamination was less than previously identified and that the size and mass of the groundwater plumes appeared to have stabilized or decreased since the RI. In addition, the State of Michigan revised its cleanup levels, which resulted in a reduction in the volume of soil requiring remediation.

EPA issued a Proposed Plan requesting public comment on amending the soil and groundwater cleanups in 1999. Following public comment, MDEQ conducted a study to better understand the groundwater contamination at the Duell & Gardner Site. MDEQ's study cast doubt on the stability of the groundwater plumes and whether the groundwater contaminants would naturally degrade before they migrated beyond the Duell & Gardner Site boundary. Due to these concerns and concerns about the ability to reliably restrict the use of contaminated groundwater downgradient of the landfill, EPA and MDEQ decided that the groundwater components of the 1993 ROD should remain unchanged.

EPA issued the ROD Amendment on June 29, 2001. The amended ROD retained the construction of a landfill cap; the groundwater extraction and treatment system; and the placement of use restrictions or institutional controls (ICs) on parts of the Duell & Gardner Site property to prevent the installation of drinking water wells until the groundwater cleanup standards

(residential) are met. In addition, the ROD Amendment required permanent restrictions for the capped area to prevent excavation or other unauthorized activities. With respect to the soil, the amended ROD eliminated low-temperature thermal desorption from the remedy and required excavation and the appropriate disposal of contaminated soils. The ROD Amendment also updated the cleanup standards for soil and groundwater to current Michigan Part 201 criteria (see Tables 2A and 2B in the Docket).

Response Actions

The U.S. Army Corps of Engineers (USACE) conducted the remedial design (RD) and remedial action (RA) at the Duell & Gardner Site through an interagency agreement with EPA. USACE completed the RD in 2000. USACE and its contractor, IT Corporation, mobilized to the Duell & Gardner Site to start the RA construction in October 2000. USACE and IT Corporation completed the landfill cap construction in April 2001.

During the RA, USACE conducted additional soil characterization activities and consolidated the eight-acre landfill waste area into a four-acre rectangular landfill area. While performing the Landfill Boundary Verification activities, USACE discovered approximately 2,000 cubic yards of gentian violet-impacted soils within the four-acre landfill area. USACE excavated the waste and sampled the material. After discussions with EPA and MDEQ, USACE consolidated the excavated material into a special waste cell constructed within the landfill cap. USACE collected confirmation soil samples from the excavated areas. The confirmation samples did not show any regulatory exceedances for gentian violet.

Confirmation soil samples collected from soil excavations in the southwestern portion of the eight-acre waste area showed 4-chloro-methylphenoxy acetic acid (MCPA), a systemic phenoxy herbicide used to control annual and perennial weeds, at concentrations above Michigan Part 201 Soil Criteria for the Protection of Residential Drinking Water at one location. USACE did not remove additional soil from the excavations, however, since the bottoms of the excavations were at the water table and additional excavation would not reduce the source of MCPA contamination in groundwater. As a result, the confirmation samples from two grids within this area remain above Michigan's residential drinking water

protection criteria of 390 micrograms per liter ($\mu\text{g/L}$).

During hot spot excavation, *i.e.*, the impacted soil in the area of soil sample locations SL-A8, SL-SB-11, and SS-31, USACE sampled the material and found that it did not meet the definition of hazardous waste. Based on the sample results and discussions between EPA, MDEQ and USACE, the material was consolidated under the landfill cap. The 2001 ROD Amendment accounted for this change.

USACE's and IT Corporation's soil excavation and landfill completion activities are documented in the 2001 Landfill Construction Report prepared by Shaw, which subsequently acquired IT Corporation.

USACE completed the construction and start-up of the groundwater extraction and treatment system on June 29, 2001. The system consisted of four recovery wells, an infiltration gallery, a treatment building containing two granular activated carbon units, various pumps, a 3000-gallon retention tank, conveyance piping, appurtenant devices, and automatic shut-down capabilities.

EPA and MDEQ inspected the construction activities at the Duell & Gardner Site on July 11, 2001. EPA and MDEQ inspected the capped landfill and the operating groundwater treatment system. EPA determined that the landfill cap and the groundwater treatment system met the objectives of the interagency agreement. Three deficiency items were noted including painting the groundwater treatment building, installing a garage door, and installing a lock on the observation well by the infiltration gallery. USACE completed those items on August 3, 2001. EPA determined that the groundwater treatment system was operational and functional on August 10, 2002.

USACE reconfigured the groundwater treatment system in 2003 to provide a higher operating efficiency. The modifications included: New granular activated carbon units incorporated into the recovery well system; additional bag filters; the chemical treatment of wells to reduce well fouling; and replacing the original re-pressurization pump to more efficiently convey backwash water into the infiltration gallery. In 2005, USACE installed a new higher capacity recovery well to capture the groundwater plume more effectively. The 2003 and 2005 modifications were consistent with the 2001 ROD Amendment.

EPA installed and sampled three new groundwater monitoring wells in 2009 in the southeastern corner of the Duell & Gardner Site. EPA installed the wells

to determine whether the contaminant plume was migrating off-site. The laboratory results indicated that the groundwater constituents in the new monitoring wells did not exceed Michigan Part 201 cleanup standards.

USACE operated the groundwater extraction and treatment system and conducted quarterly groundwater monitoring at the Duell & Gardner Site until 2010. In 2010, the groundwater monitoring data indicated that chemical concentrations in groundwater had decreased to below the cleanup standards for two consecutive quarters.

EPA and MDEQ approved that the system be shut down. USACE shut the system down and continued quarterly groundwater monitoring until 2012. In 2012, the groundwater data confirmed that the groundwater extraction and treatment system could be permanently decommissioned. USACE decommissioned the groundwater extraction and treatment system, including the majority of monitoring wells and recovery wells, all transmission piping, wiring and the infiltration basin in 2012 in accordance with the Groundwater Monitoring Plan. The groundwater data and completion of the RA activities at the Duell & Gardner Site is documented in USACE's 2012 Final Remedial Action Report.

EPA, MDEQ and USACE conducted a Pre-Final Site Walk and a Post-Decommissioning Site Walk on July 25, 2012. EPA completed a Final Close Out Report documenting the completion of all response actions at the Duell & Gardner Site in accordance with EPA's *Close Out Procedures for National Priorities List Sites* (OLEM Directive 9320.2-22, May 2011) on November 8, 2012.

Cleanup Levels

The cleanup levels for soil outside the capped area and groundwater in the 1993 ROD were based on Michigan Act 307 Type B Residential Cleanup Standards. Michigan later replaced Act 307 with Act 451. Michigan Act 451 Part 201 included revised cleanup criteria for soil and groundwater. The 2001 ROD Amendment for the Duell & Gardner Site updated the cleanup criteria for soil and groundwater to Michigan's then-current Part 201 Residential Cleanup criteria. Tables 2A and 2B in the Docket are from the 2001 ROD Amendment and show the updated Michigan Part 201 Residential Cleanup Criteria for the Duell & Gardner Site, compared to the previous Michigan Act 307 Criteria selected in the 1993 ROD.

USACE confirmed that soil outside the capped area met MDEQ Part 201 Residential Criteria through additional

soil characterization, soil confirmation sampling and Landfill Boundary Verification during the soil RA. USACE conducted the soil verification sampling in accordance with the USACE's Chemistry Scope of Work. Except as noted above for the two soil samples at the water table that contained MCPA above MDEQ soil criteria for residential groundwater protection, no other regulatory criteria were exceeded. The specific details of the verification sampling are detailed in the 2001 Landfill Construction Report.

USACE conducted quarterly groundwater monitoring to monitor the effectiveness of the groundwater extraction system and chemical concentrations in groundwater over time. USACE conducted the monitoring in accordance with the EPA and MDEQ-approved Groundwater Monitoring Plan. In 2010, after nine years of operation, EPA and MDEQ agreed that the groundwater extraction and treatment system could be shut down because contaminant concentrations in groundwater were below Part 201 Residential Drinking Water Criteria for two consecutive quarters. In accordance with the Groundwater Monitoring Plan, USACE continued to sample the groundwater on a quarterly basis to verify that contaminant levels remained below the cleanup standards.

USACE conducted six additional quarterly groundwater monitoring events. In 2012, USACE compared the March 2012 groundwater monitoring results to MDEQ Part 201 Residential Drinking Water Criteria and MDEQ Part 22 Groundwater Quality Standards. The laboratory results did not exceed any of the Part 201 or Part 22 criteria. Based on the data, EPA and MDEQ agreed that the groundwater extraction and treatment system could be permanently decommissioned. The groundwater monitoring data and the completion of the cleanup activities at the Duell & Gardner Site are documented in the 2012 Final Remedial Action Report. The remaining chemicals of concern in the on-site groundwater are below Part 201 Groundwater Cleanup Criteria and will be allowed to naturally attenuate.

Operation and Maintenance

The Duell & Gardner Site officially transferred from the 10-year EPA-led long-term remedial action phase of the project to MDEQ-lead (now MDEGLE-lead) Operation and Maintenance (O&M) in 2012. The transfer included the following requirements: (1) Abide by the prescribed ICs and Land Use Controls for Long-Term Stewardship; (2) Implement outstanding ICs as required by the ROD, *i.e.*, the installation of

permanent markers; (3) Maintain site security; (4) Ensure vegetation is routinely maintained to prevent damage to the integrity of the landfill cap; and (5) Conduct Annual Monitoring Events for the remaining on-site monitoring wells.

MDEGLE conducts the O&M in accordance with the November 5, 2012 Operations, Maintenance & Monitoring Plan. The existing groundwater monitoring well network is comprised of 23 monitoring wells and four piezometers. MDEGLE collects groundwater samples annually from the wells. The laboratory data is compared to Part 201 groundwater protection standards. The monitoring well protective casings are to remain closed and locked at all times.

The property owners of the Duell & Gardner Site recorded a restrictive covenant at the Muskegon County Register of Deeds on October 30, 2007, Instrument 5260434, Liber 3759, Page 813. The covenant prohibits the use of groundwater contaminated with VOCs above drinking water standards, prevents disturbance to the landfill cap and any other activities that may interfere with the remedy, O&M and other measures necessary to ensure the effectiveness and the integrity of the remedial action.

The groundwater restrictions apply to Parcels A (20.96 acres) and B (the 4.28 acre landfill parcel) shown on the Duell and Gardner Site Survey (see Survey and Figure 2 in the Docket). The landfill cap restrictions apply to Parcel B shown in the survey. The restrictions prohibiting the groundwater monitoring wells from being disturbed apply to the 23 monitoring wells remaining on the Duell & Gardner Site property.

Five Year Review

EPA conducted statutory five year reviews (FYRs) of the Duell & Gardner Site in 2005, 2010 and 2015. The purpose of the FYRs is to determine whether the remedy at a site remains protective of human health and the environment. The Duell & Gardner Site requires statutory FYRs because hazardous substances remain at the Duell & Gardner Site above levels that allow for unrestricted use and unlimited exposure. The review methods, findings, and conclusions are documented in the FYR reports. In addition, the FYR reports identify issues found during the review, if any, and recommendations to address them.

EPA's most recent FYR of the Duell & Gardner Site, in March 2015, determined that the remedy at the Duell & Gardner Site is protective of human health and the environment. Impacted

soils have been removed; wastes have been consolidated into a four-acre landfill and covered with an impermeable cover; groundwater is currently meeting Michigan Part 201 and Part 22 water standards and no longer needs treatment; and ICs to restrict current and future use of the contaminated areas and to ensure long-term stewardship have been implemented. ICs in the form of an environmental covenant are in place for the Duell & Gardner Site. The IC Plan also ensures Long-Term Stewardship because it establishes a process to ensure that ICs are in place, maintained, and effective.

The FYR did not identify any issues or recommendations that would affect the current or future protectiveness of the remedy at the Duell & Gardner Site. The next FYR will be completed on or before March 2, 2020.

Community Involvement

EPA and the State satisfied public participation activities as required in CERCLA Sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. MDEQ (formerly the MDNR and currently known as the MDEGLE) prepared a Community Relations Plan at the start of the RI/FS and established information repositories for site-related reports and documents at MDEQ's offices and at Dalton Township's offices. MDEQ also held three public meetings concerning the Duell & Gardner Site and issued a series of eight progress reports to the public.

MDEQ and EPA published announcements about their proposed action plan and proposed remedy amendment for the Duell & Gardner Site, 30-day public comment periods, and the availability of public meetings, in the Muskegon Chronical in 1993 and 1999. The agencies responded to significant comments received on the proposed plan and proposed ROD Amendment in Responsiveness Summaries attached to the 1993 ROD and the 2001 ROD Amendment.

MDEQ and EPA published notifications in the Muskegon Chronical announcing the start of each of the three FYRs conducted in 2005, 2010 and 2015 inviting the public to comment and express their concerns about the Duell & Gardner Site. The agencies did not receive any public comments.

EPA arranged to publish an advertisement announcing the publication of this rule and the 30-day public comment period in the Muskegon Chronical prior to its publication in the **Federal Register**. Documents in the deletion docket which EPA relied on to support the deletion of

the Duell & Gardner Site from the NPL are available to the public in the Duell & Gardner Site information repositories and at <http://www.regulations.gov>.

Determination That the Site Meets the Criteria for Deletion In the NCP

The November 8, 2012, Final Close Out Report documents that EPA and MDEGLE have successfully implemented all appropriate response actions at the Duell & Gardner Site in accordance with the 1993 ROD, the 2001 ROD Amendment and *Close Out Procedures for National Priorities List Sites* (OLEM Directive 9320.2–22, May 2011).

The cleanup actions specified in 1993 ROD and the 2001 ROD Amendment for the Duell & Gardner Site have been implemented and the Duell & Gardner Site meets acceptable risk levels for all media and exposure pathways. The ongoing IC and long-term stewardship actions required at the Duell & Gardner Site are consistent with EPA policy and guidance.

Contaminated drums and other materials were removed from the Duell & Gardner Site under a CERCLA removal action, and residual materials were excavated and consolidated with materials under a low-permeability landfill cap. Groundwater sampling results confirm that the Duell & Gardner Site does not pose any threat to human health or the environment. Therefore, the EPA has determined that no further Superfund response is necessary at the Duell & Gardner Site to protect human health and the environment.

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Michigan, has determined that all required response actions have been implemented at the Duell & Gardner Site and that no further response action is appropriate.

V. Deletion Action

EPA, with concurrence of the State of Michigan through the MDEGLE, has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Duell & Gardner Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 30, 2019 unless EPA receives adverse comments by August 30, 2019. If adverse comments are received within the 30-day public comment period, EPA

will publish a timely withdrawal of this direct final Notice of Deletion before its effective date and the deletion will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

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.

Dated: July 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9675; 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.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry “MI”, “Duell & Gardner Landfill”, “Dalton Township”.

[FR Doc. 2019–16199 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2006–0759 FRL–9997–47–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the South Minneapolis Residential Soil Contamination Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Partial Deletion of all but nine of approximately 3,632

properties located within the South Minneapolis Residential Soil Contamination Superfund Site in Minnesota from the National Priorities List (NPL). 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. This direct final partial deletion is being published by EPA with the concurrence of the State of Minnesota, through the Minnesota Department of Agriculture, because all appropriate response actions for these 3,623 properties under CERCLA have been completed. However, this partial deletion does not preclude future actions under Superfund. The nine properties not included in this partial deletion will remain on the NPL.

DATES: This direct final partial deletion is effective *September 30, 2019* unless EPA receives adverse comments by *August 30, 2019*. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2006-0759 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://www2.epa.gov/dockets/submitting-epa-dockets>.

Email: cano.randolph@epa.gov

Mail: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (ST-6J), 77

West Jackson Boulevard, Chicago, IL 60604, (312) 886-6036

Hand deliver: Superfund Records Center, U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604, Phone: (312) 886-0900. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-2006-0579. 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 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 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 hard copy. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or electronically or in hard copy at:

U.S. Environmental Protection Agency, Region 5, Superfund Records Center, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604, Phone: (312) 886-0900, Hours: Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

Minneapolis Central Library, 300 Nicollet Mall, 2nd Floor, Minneapolis, MN 55401, Phone: (612) 543-8000. Hours: Monday through Thursday, 9 a.m. to 9 p.m., Friday and Saturday, 9 a.m. to 5 p.m. and Sunday, 12 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (ST-6J), 77 West Jackson Boulevard, Chicago, IL 60604, Phone: (312) 886-6036, or via email at cano.randolph@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Partial Deletion Procedures
- IV. Basis for Site Partial Deletion
- V. Partial Deletion Action

I. Introduction

EPA Region 5 is publishing this direct final Notice of Partial Deletion for the South Minneapolis Residential Soil Contamination Superfund Site (South Minn. Site), from the NPL. The South Minn. Site includes approximately 3,632 properties located on approximately 1,400 acres within an approximate three-quarter mile radius of the CMC Hearland Lite Yard State Superfund Cleanup Site. This partial deletion pertains to all media at approximately 3,623 of the residential properties, parks, schools, playgrounds associated with church schools and a cemetery located within the South Minn. Site boundary, and excludes the nine properties identified in Table 1 in the Docket that still require sampling and/or remediation due to access issues. The nine properties identified in Table 1 in the Docket will remain on the NPL and are not being considered for deletion as part of this action.

The nine properties that are not included in this partial deletion are shown generally on the figure labeled South Minneapolis Remedial Action and are listed in Table 1 in the Docket and include: Three properties that still require remediation (located on East 23rd Street, East 21st Street and East 22nd Street); five properties that still require sampling (located on East 26th Street, 12th Avenue South (two properties, one of which is now a community garden), 30th Avenue South and 14th Avenue South); and one

partially sampled property located on 19th Avenue South.

Commercial and industrial properties located within the South Minn. Site boundary do not require deletion because these properties are not part of the South Minn. Site and are not on the NPL.

The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to CERCLA. EPA maintains the NPL as the list of 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). This partial deletion of the South Minn. Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the residential properties, parks, schools, community gardens, playgrounds associated with church schools and the cemetery within the South Minn. Site boundary that are included in this partial deletion and demonstrates how these properties meet the deletion criteria. Section V discusses EPA's action to partially delete all, but nine, properties located within the South Minn. Site boundary from the NPL unless adverse comments are received during the public comment period.

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, or portions thereof, may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), 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, 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. EPA conducts such five-year reviews even if a site or a portion of a site is deleted from the NPL. 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 all residential properties, parks, schools, community gardens, playgrounds associated with church schools and the cemetery located within the South Minn. Site boundary excluding the nine properties that still require sampling and/or remediation due to access issues:

(1) EPA consulted with the State of Minnesota prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Partially Delete prior to their publication today, and the State, through the Minnesota Department of Agriculture (MDA), has concurred on the partial deletion of the South Minn. Site from the NPL.

(3) Concurrent with the publication of this direct final Notice of Partial Deletion, an announcement of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the Minneapolis Star Tribune. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the South Minn. Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the South Minn. Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist 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 further response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting all residential properties, parks, schools, community gardens, playgrounds associated with church schools and the cemetery located within the South Minn. Site boundary from the NPL, excluding the nine properties that still require sampling and/or remediation:

Site Background and History

The South Minn. Site (MND 000 509 136) is located in Minneapolis, Hennepin County, Minnesota, approximately two miles southeast of downtown Minneapolis. The South Minn. Site includes all residential properties, parks, schools, playgrounds associated with church schools and a cemetery located within an approximate three-quarter mile radius of the CMC Heartland Lite Yard State Superfund Cleanup Site (CMC Site). The CMC Site is located at the northwest corner of Hiawatha Avenue and 28th Street in Minneapolis. Past operations at the CMC Site contaminated the South Minn. Site with arsenic. These past operations are the primary source of the South Minn. Site arsenic contamination. The CMC Site was cleaned up under MDA's State Superfund Cleanup Program in 2004–2005 and redeveloped into a 60,000 square foot light industrial building called the Hiawatha Business Center.

The South Minn. Site is largely a residential area interspersed with commercial and industrial properties, municipal properties including parks and schools, and a cemetery (see Figure

1–1 in the Docket). The South Minn. Site boundary is based on the results of air dispersion modeling which showed the potential area of arsenic deposition from past operations at the CMC Site (see Figure 4–1 in the Docket). The commercial and industrial properties located within the South Minn. Site area are not on the NPL and are not part of the South Minn. Site.

The majority of the homes in the South Minn. Site area were built during the early 1900s through the 1930s. A typical residential block within the South Minn. Site contains

approximately 30 properties with an average lot size of approximately 5,500 square feet (0.1 acre). The current land uses at the South Minn. Site have been in place for some time and are expected to continue. Land use at the South Minn. Site is controlled by the City of Minneapolis's enforced zoning program.

The CMC Site property, which is the primary source of the arsenic contamination at the South Minn. Site, was owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Railroad) beginning in 1880. From 1938 to 1969, Reade Manufacturing Company (Reade) leased the property from the Milwaukee Railroad.

From 1938 to 1963, Reade blended, stored and distributed arsenic herbicides and pesticides at the CMC Site. During the 1940s, Reade also produced an arsenic-based grasshopper insecticide. As part of its operations, Reade regularly unloaded arsenic trioxide from railroad hopper cars onto an open conveyor belt. This caused powdered arsenic trioxide to be released into the air and onto the CMC Site property.

From 1963 to 1968, U.S. Borax subleased the CMC Site property from Reade. U.S. Borax manufactured, shipped and stored borate-based herbicides. U.S. Borax did not receive new shipments of powdered arsenic trioxide, however, its operations at the CMC Site disturbed and dispersed the arsenic contamination that was already present at the property from Reade's operations.

In 1968, a storage tank containing liquid sodium arsenite (NaAsO_2) ruptured at the CMC Site. This released approximately 3,000 gallons of liquid sodium arsenite from a 25,000-gallon storage tank onto an area of approximately 1,000 square meters. U.S. Borax covered the spill with approximately 6 inches of sand.

After 1968, Rollins Oil Company and then Bituminous Roadways, an asphalt road construction company, occupied the CMC Site. By 1996, after the arsenic

contamination was discovered at the CMC Site, Bituminous Roadways placed one to two feet of crushed asphalt over the CMC Site property to minimize human exposure to surface soil and to keep additional dust from blowing off of the property.

The Minnesota Department of Transportation (MnDOT) discovered the arsenic contamination at the CMC Site in 1994 when investigating the Hiawatha Avenue corridor for reconstruction. The MnDOT collected soil samples from the easternmost part of the CMC Site and detected organochlorine pesticides and elevated levels of arsenic in some of the soil borings.

In 1996, CMC Heartland Partners, the CMC Site property owner at the time, began investigating the CMC Site under the oversight of the MDA's Agricultural Voluntary Investigation and Cleanup Program. Later, the State of Minnesota added the CMC Site to the Minnesota Permanent List of Priorities, a list of sites eligible for cleanup under Minnesota's State Superfund Program. In 2003, the MDA formally requested U.S. Borax and CMC Heartland Partners to investigate and cleanup the CMC Site.

U.S. Borax's and CMC Heartland Partner's investigations detected arsenic in surface soil at the CMC Site at concentrations as high as 5,000 mg/kg. Groundwater below the CMC Site contained arsenic concentrations as high as 320,000 micrograms per liter ($\mu\text{g/L}$). The groundwater contamination extended approximately 1,800 feet west-southwest of the CMC Site.

U.S. Borax and CMC Heartland Partners cleaned up the CMC Site from 2004 to 2005 under the oversight of MDA's Superfund Program. The cleanup included the excavation, stabilization and off-site disposal of contaminated soil and debris from the property and institutional controls to restrict access to residual soil and groundwater contamination remaining at and downgradient of the CMC Site.

There are no private drinking water wells at the CMC Site or within the South Minn. Site area. The City of Minneapolis supplies all drinking water to the area from the Mississippi River. The City of Minneapolis, Minnesota Code of Ordinances Chapter 9, Section 1 requires that all properties within the city connect to the municipal water supply.

The MDH established a Special Well Construction Area (SWCA) to address the arsenic plume from the CMC Site in 2005. The SWCA applies to the construction, repair, and sealing of all wells and will remain in effect until further notice. The SWCA includes the

area bounded by East 26th Street on the north, 26th Avenue on the east, Lake Street on the south, and Bloomington Avenue South on the west, within the City of Minneapolis. A copy of MDH's 2005 memorandum concerning the SWCA is available in the Docket.

2800 Hiawatha LLC acquired the CMC Site in 2005. 2800 Hiawatha LLC conducted an additional soil cleanup at the CMC Site under MDA's voluntary cleanup program, now called the AgVIC program, and redeveloped the property into the Hiawatha Business Center. 2800 Hiawatha LLC also monitors the arsenic concentrations in groundwater at the CMC Site.

Due to the elevated concentrations of arsenic at the CMC Site, in 1999, the Minnesota Department of Health (MDH) recommended that soil sampling be performed in residential areas near the CMC Site (part of the area that would come to be known as the South Minn. Site). The prevailing summer winds were determined to be from the southeast toward the northwest; therefore, the residential area located directly downwind of the CMC Site was the focus of this initial sampling effort.

MDA in conjunction with MDH, conducted the initial, limited sampling event at residential properties to the west (crosswind) and northwest (downwind) of the CMC Site in 2001. The results of the 2001 MDA sampling detected arsenic in soil at six of the 11 downwind properties sampled at concentrations as high as 24 to 210 milligrams per kilogram (mg/kg).

Based on the 2001 sampling event and neighborhood concerns, MDA and MDH determined that additional sampling to the northwest and west of the CMC Site was warranted. MDA conducted a second study in 2003. MDA developed the sampling design for the 2003 study to obtain statistically valid data using a grid overlain on the Phillips neighborhood with the majority of the samples falling on residential properties.

MDA's contractor collected soil samples from a total of 242 locations and 167 properties during the 2003 sampling. MDA's contractor additionally collected 12 duplicate samples for quality control and 23 co-located samples to give an indication of spatial variability.

Thirty-five samples collected from 27 of the properties contained arsenic at concentrations greater than or equal to the Minnesota Pollution Control Agency (MPCA) unrestricted land use standard of 10 mg/kg. In 11 of the samples, the concentration of arsenic was greater than 100 mg/kg. Four of those samples

contained arsenic at concentrations exceeding 200 mg/kg.

In 2004, MDA requested EPA's assistance to determine whether a time critical removal action was warranted to address the arsenic concentrations detected in the residential soil. EPA agreed to perform an additional investigation. EPA collected samples from 192 properties, primarily in the vicinity of the properties previously identified as hotspots, from a depth of zero to three inches below ground surface.

EPA consulted with the Agency for Toxic Substances and Disease Registry (ATSDR) and determined that arsenic concentrations equal to or greater than 95 mg/kg in surface soil posed an acute risk to human health and warranted an emergency removal action. Based on the results of multiple sampling events conducted in the Phillips neighborhood (the vicinity of East 26th Street and Bloomington Avenue), EPA identified 30 properties that exceeded the 95 mg/kg criterion.

EPA conducted a removal action in 2004 to mitigate the threat. EPA excavated the top 12 inches of soil from the yards and the top 18 inches of soil from play areas and gardens at the 30 identified properties. EPA removed an average of 106 cubic yards of arsenic-contaminated soil from each excavated property. EPA also collected post-excavation soil samples from each property to document the residual arsenic concentrations remaining in each yard after excavation. EPA backfilled each property to pre-existing grade with clean topsoil and seeded the excavated areas with grass seed.

In 2005, EPA sampled 540 additional properties in the Phillips neighborhood to ensure that 100 percent of the residential properties most likely to be impacted by wind deposition from the CMC Site were evaluated for potential impacts. EPA also sampled another 60 properties to identify whether areas in other wind directions surrounding the CMC Site were impacted.

EPA's sampling effort identified another 31 properties with arsenic concentrations above 95 mg/kg. EPA began a second removal action in 2005. During the 2005 removal action, EPA excavated and disposed of arsenic-contaminated soil consistent with the 2004 removal activities.

Due to the potential health risks posed to residents from exposure to arsenic-contaminated soil, EPA proposed the South Minn. Site to the NPL on September 27, 2006 (71 FR 56433). EPA finalized the South Minn. Site on the NPL on September 19, 2007 (72 FR 53463).

This partial deletion pertains to all media at all properties located within the boundary of the South Minn. Site except for nine properties that still require sampling and/or remediation due to access issues (see Section I., Introduction, above). This partial deletion also pertains to all media at all parks, schools, community gardens (except the community garden located on 12th Avenue South that is one of the nine properties that still requires sampling and/or remediation), playgrounds associated with church schools and the cemetery located within the South Minn. Site boundary.

The nine properties that still require sampling and/or remediation as shown generally on the figure labeled South Minneapolis Remedial Action and as listed in Table 1 in the Docket will remain on the NPL and are not being considered for deletion as part of this action.

Commercial and industrial properties located within the South Minn. Site boundary do not require deletion because these properties are not part of the South Minn. Site and are not on the NPL.

Remedial Investigation and Feasibility Study (RI/FS)

EPA conducted a Remedial Investigation (RI) at the South Minn. Site from 2005 to 2007. The objective of the RI was to have 100 percent of the residential properties, schools and parks within the modeled boundaries of the South Minn. Site sampled for total arsenic. EPA also collected soil samples for arsenic analysis from community gardens, playgrounds associated with church schools and a cemetery.

EPA developed the boundary for the South Minn. Site using the Industrial Source Complex 3 air dispersion model, information from past operations at the CMC Site and wind-rose data for Minneapolis to predict where arsenic may have been deposited in soil at concentrations greater than 10 mg/kg. EPA made slight adjustments to the modeled boundary so that an entire block would be sampled (see Figure 4–1).

EPA did not include previously sampled properties in the RI surface soil sampling unless only one discrete sample had been collected from that property. The RI also did not address groundwater. Groundwater was previously investigated and is being addressed as part of the CMC Site (see Site Background and History section).

EPA conducted the RI surface soil sampling in 2006. EPA conducted the sampling by collecting five samples from separate areas of each property and

combining them into one composite sample for analysis. EPA collected the soil samples from the top three inches of soil, below any grass if present. EPA collected the soil samples from both the front yard and the back yard wherever possible. EPA also collected samples from side yards and gardens depending on their size. For larger properties, such as parks and schools, EPA divided the property into sub-areas and collected composite samples from each sub-area.

The RI also included subsurface soil sampling at 20 soil boring locations throughout the South Minn. Site. The subsurface soil borings were located to provide data to characterize the vertical distribution of arsenic at properties with varying arsenic concentrations. EPA collected subsurface soil samples from each boring at one foot intervals from zero to five feet, and at a depth of ten feet.

The surface soil sampling locations are shown in Figure 3–1 in the Docket. The subsurface soil sampling locations are shown in Figure 3–2.

EPA evaluated the 2006 soil sampling results against the previous soil sampling results collected from 2001 to 2005. EPA determined that the data were compatible and could be evaluated as a single data set for the RI. The total number of properties sampled for arsenic from 2001 to 2006 was 3,578. One-hundred and thirty-five properties within the South Minn. Site remained unsampled because the property owners did not allow EPA access.

The results of the surface and subsurface soil investigations at the South Minn. Site indicated that arsenic was present in the soil at varying concentrations at properties across the area (see Figure 4–2 in the Docket). The RI included a statistical evaluation which determined that the background concentration of arsenic in surface soil from natural and man-made sources within the South Minn. Site area was 16 mg/kg.

Arsenic concentrations within the South Minn. Site ranged from background concentrations up to 2,880 mg/kg. The vertical extent of arsenic concentrations above background appeared to be no greater than three feet below ground surface and, in most cases, was within the upper two feet of soil. This indicated that the mobility of the arsenic in the soil was limited.

Of the 3,578 properties sampled, the majority of residential properties (2,600 properties) had arsenic concentrations below MPCA's unrestricted land use standard of 10 mg/kg. Seven-hundred and eighty-one residential properties contained concentrations of arsenic

below EPA's removal action level for arsenic of 95 mg/kg, but above MPCA's unrestricted land use standard of 10 mg/kg. One-hundred and ninety-seven residential properties had arsenic concentrations in soil above EPA's removal action level of 95 mg/kg.

The properties with arsenic concentrations above EPA's removal action level of 95 mg/kg were scattered throughout the South Minn. Site area. EPA addressed these properties through removal actions EPA completed by 2008. All sample results from the schools, parks, playgrounds and the cemetery were within background levels and these properties did not require remediation.

EPA's RI included a Human Health Risk Assessment (HHRA) to evaluate the risks to human health from the arsenic contamination detected at the South Minn. Site. As part of the HHRA, EPA calculated potential risks due to varying concentrations of arsenic at residences with and without vegetable gardens, and for construction workers.

Using reasonable maximum exposure assumptions, EPA determined that an arsenic concentration of up to 25 mg/kg (or less) in soil is protective of adults and children residing within the South Minn. Site area for up to 50 years with vegetable gardens. This concentration of arsenic corresponds to a cancer risk of 1×10^{-4} and a noncancer hazard of 1, which are within EPA's acceptable risk range. Approximately 486 homes exceeded the 25 mg/kg residential threshold. The HHRA determined that arsenic concentrations of 261 mg/kg (or less) are protective of construction workers.

The HHRA estimated that most of the risk posed by the soil is due to the incidental ingestion of soil and dust (approximately 70 percent), and to eating garden vegetables (approximately 25 percent). A small proportion of the estimated risk (approximately 4 percent) is from dermal contact with soil, and a very small relative proportion of potential risk (less than 0.05 percent) is from the inhalation of dust. The calculated risks to residents and construction workers are likely overestimated due to the uncertainties and conservative assumptions required throughout the HHRA process.

The RI included a Screening Level Ecological Risk Assessment (SLERA) to evaluate potential risks to ecological receptors from the arsenic-contaminated soil at the South Minn. Site. The SLERA concluded that no population-level ecological risks were expected from the arsenic contamination. In addition, EPA's Ecological Soil Screening Levels for arsenic of 43 mg/kg for avian

wildlife and 46 mg/kg for mammalian wildlife were higher than the 25 mg/kg concentration of arsenic determined to be protective of people. There are no water bodies or wetlands within the South Minn. Site.

EPA conducted a Feasibility Study (FS) to develop and evaluate cleanup alternatives to address the unacceptable levels of arsenic found at the South Minn. Site. The FS evaluated six cleanup alternatives: (1) No action; (2) remove soil with arsenic levels above 25 mg/kg to a depth of 12 inches (18 inches in garden areas); (3) remove soil with arsenic levels above 16 mg/kg to a depth of 12 inches (18 inches in garden areas); (4) remove soil with arsenic levels above 25 mg/kg to a depth of 12 inches (18 inches in garden areas) and remove soil deeper than 12 inches with arsenic levels above 95 mg/kg; (5) remove all soil with arsenic levels above 25 mg/kg; and (6) remove all soil with arsenic levels above 16 mg/kg. For all cleanup alternatives except the no action alternative, the excavated soil would be disposed of at landfill.

Selected Remedy

EPA selected a cleanup remedy for the South Minn. Site in a 2008 Record of Decision (ROD). EPA's remedial action objectives for the arsenic-contaminated soil at the South Minn. Site are to control the concentrations of arsenic in soil to limit residential contact with arsenic and minimize the potential for dermal contact, ingestion and inhalation exposures.

EPA's selected cleanup standards for arsenic are 25 mg/kg for soil located zero to 12 inches below grade or to 18 inches below grade in gardens, and 95 mg/kg for soil down to a depth of 10 feet below grade. These concentrations of arsenic correspond to a cancer risk of 1×10^{-4} and a noncancer hazard of 1 for residential exposure to surface soil and a cancer risk of 2×10^{-5} and a noncancer hazard of 0.4 for construction worker exposure to subsurface soil.

The subsurface soil cleanup standard of 95 mg/kg corresponds to a cancer risk of 4×10^{-4} and a noncancer hazard of 4 to residents. However, residential exposure to deep, subsurface concentrations of arsenic is only expected in rare circumstances and for short periods of time, and less frequently than a construction worker. Any risks from exposure to arsenic contamination in deep soil would also be mitigated through the inevitable mixing of the deep soil with the clean, shallow soil above, resulting in lower exposure point concentrations. Therefore, EPA considered the 95 mg/kg acute exposure-based removal action

level provided by ATSDR to be appropriate for subsurface soil and protective over the long-term.

As indicated in the HHRA, most of the risk at the South Minn. Site was due to the incidental ingestion of soil and dust by residents and to residents eating garden vegetables. A small proportion of the estimated risk is from dermal contact with soil, and a very small relative proportion of potential risk is due to inhalation of dust. EPA's remedial action objectives for the South Minn. Site take into consideration that control of the soil concentrations of arsenic will address each of the exposure pathways contributing to the overall risk.

The selected remedy in the ROD applied only to the residential and residential-type properties at the South Minn. Site. The commercial and industrial properties in the area typically had little open ground and were mainly covered by asphalt, concrete or buildings which limited the potential for soil exposure.

The major components of EPA's selected cleanup remedy for the South Minn. Site in the ROD, as modified by a slight, non-significant change documented in a September 23, 2009 EPA memorandum include: (1) Inventory and document the existing conditions at the areas requiring the remedy; (2) excavate soil to a depth of 12 inches below grade in yards or to a depth of 18 inches below grade in garden areas that have a total arsenic concentration above 25 mg/kg; (3) post-excavation soil sampling to document arsenic concentrations in the remaining soil; (4) if the samples at the base of the excavation exceed the deep soil arsenic cleanup standard of 95 mg/kg, then excavate soil until the deep soil cleanup standard is met or to a maximum depth of ten feet; (5) if the samples at the base of the excavation exceed the deep soil arsenic cleanup standard, place a permanent, permeable highly-visible marker layer in the bottom of the excavation to provide a visual barrier over soils that were not excavated during the remedial actions and may contain residual contamination above the deep soil cleanup standard; (6) backfill excavations with clean fill and topsoil to the original grade; (7) restore the excavated areas (*i.e.*, restoring vegetation by seeding the final graded surface and planting replacement plants identified prior to excavation during the inventory); (8) collect samples from excavated soil to confirm the soil is not characteristically hazardous and may be transported to and disposed of at a permitted and compliant Resource Conservation Recovery Act (RCRA)

Subtitle D landfill; (9) if soil is found to be characteristically hazardous, the soil may be stabilized and solidified at a centralized off-site treatment area and disposed of a RCRA Subtitle D landfill, or not stabilized and disposed of as a hazardous waste at a RCRA Subtitle C landfill; and (10) place institutional controls (ICs) on properties where the arsenic cleanup standard was not met at the bottom of the excavation in the form of use-restrictions to define areas of remaining concern or zoning and permit requirements to limit exposure.

Response Actions

EPA conducted the Remedial Design (RD) phase of the South Minn. Site cleanup from 2008 to 2009. EPA conducted the majority of the Remedial Action (RA) construction work for the South Minn. Site from 2009 to 2011. In 2016 and 2018, EPA conducted additional remedial activities and/or sampling at properties where EPA was not previously able to obtain the owners' consent for access.

EPA conducted the RA activities independently at each remediated property, but sequenced the work so that the contractor could move to nearby area as access to properties became available. The typical RA activities conducted at each property included: (1) Pre-construction survey; (2) plant inventory; (3) preconstruction property owner meetings; (4) locating utilities; (5) clearing and grubbing; (6) soil excavation; (7) transport and disposal; (8) post-excavation sampling and survey; (9) backfill placement; (10) topsoil placement; (11) restoration; (12) post-construction survey; (13) landscaping; (14) punch list activities; and (15) post-construction property owner meetings.

EPA implemented dust control measures throughout the RA to minimize potential hazards associated with airborne respirable dust. Dust control measures at residential properties included keeping the soil wet, hand sweeping the sidewalks and streets adjacent to the remediated properties, and using a vacuum truck to sweep streets daily during earthwork activities. Dust control measures at the Hennepin Avenue laydown yard included covering soil piles except when being loaded/unloaded, partial covering during loading/unloading as practicable, water spray for any visible dust, wetting and vacuuming pavement, using a rumble strip to remove dirt on trucks, inspecting trucks and full stormwater collection.

EPA performed health and safety monitoring during construction to determine the effectiveness of the dust

control measures and to assess potential risks to human health. EPA used field dust monitors to compare respirable dust concentrations at residential properties and at the laydown yard with site-specific exposure limits. EPA considered a 15-minute average limit of 1.6 milligrams per cubic meter (mg/m³) to be protective of dust inhalation based on a maximum arsenic concentration of 385 mg/kg in soil. EPA calibrated the monitors daily and stationed them upwind and downwind of excavation activities at each property and at the laydown yard.

A few isolated exceedances of the dust criteria occurred during soil remediation activities, but each of the exceedances was caused by monitoring anomalies, such as instrument calibration errors, construction equipment exhausting into the monitor, monitors falling to the ground, or exceedances at upwind monitoring locations not attributable to construction activities. Additionally, the dust limit was modeled based on an arsenic concentration of 385 mg/kg, which was generally an order of magnitude greater than the actual concentrations of arsenic at the properties or at the laydown yard. When considering the actual arsenic concentrations present at these properties and the laydown yard relative to the modeled concentration of 385 mg/kg, the construction activities did not appear to have caused an unacceptable risk due to dust inhalation. This is supported by monitoring performed at the Hennepin laydown yard. EPA analyzed a limited set of dust samples for arsenic to confirm that exposure limits were not exceeded and arsenic was not detected in any of the samples.

EPA also compared dust monitoring readings to the particulate matter maximum 24-hour primary and secondary criteria of 0.26 mg/m³ and 0.15 mg/m³, respectively, per Minnesota Administrative Rule 7009.0080. Dust monitoring indicated a limited number of exceedances of the primary and secondary particulate matter standards, but the readings appeared to be due to the monitoring anomalies as discussed above, and are not believed to represent actual exceedances.

EPA performed the RA in accordance with the ROD with a few minor exceptions. In a few instances, based on a property owner's request or physical construction limitations, a small area of a property was not excavated even though the arsenic concentration in that area was above the surface soil cleanup level of 25 mg/kg. EPA determined that these areas did not present an

unacceptable risk when evaluating the property as a whole; therefore these properties meet the criteria for partial deletion. These properties include:

(1) One property located on 11th Ave. South (front yard, arsenic concentration 31 mg/kg). The file review indicates the front yard was not cleaned up during the earlier removal action. EPA determined that remedial action was not required given the small size of the yard and the arsenic concentration relative to the cleanup limits. The area-weighted average arsenic concentration for the property is 15.6 mg/kg, which is below the surface soil cleanup level of 25 mg/kg.

(2) A property located on 15th Ave. South (around a tree, arsenic concentration 33 mg/kg). No remediation was performed due to the limited extent of the soil area. The tree was encircled by concrete and excavation could not be performed while maintaining a safe distance from the tree trunk (so as to not harm the tree).

(3) A property located on 19th Ave. South (garden area, arsenic concentration 51.2 mg/kg). After the yard was sampled and before the cleanup could occur, the yard was re-landscaped and a permanent structure was built in the garden area. Thus, it could not be accessed for cleanup.

(4) A property located on 20th Ave. South (garden area, arsenic concentrations of 25.7, 38, and 39.4 mg/kg). EPA determined that remedial action was not required given the small size of the garden area and the arsenic concentrations relative to the cleanup limits. The area-weighted average arsenic concentration for this property is 14.4 mg/kg, which is below the surface soil cleanup level of 25 mg/kg.

By 2011, EPA had completed the soil cleanup at a total of 611 properties: 137 properties remediated through EPA's Emergency Removal Program prior to 2009 that did not require additional response; 56 properties that underwent an Emergency cleanup but required additional soil cleanup during the RA; two properties cleaned up by a developer after entering into an agreement with EPA; and 416 properties requiring an RA soil cleanup only.

During the 2009 to 2011 RA, EPA was not able to complete the sampling and/or remediation at 54 properties due to access issues. These properties included (1) 14 properties that exceeded the cleanup criteria for arsenic, but could not be remediated because the property owners did not respond to requests for access or refused to provide EPA with access to clean up their property; (2) nine properties that EPA was not able to

obtain permission to sample to determine whether they are contaminated with arsenic; and (3) 31 residential properties that could not be completely sampled because portions of the yards were inaccessible due to fenced areas with no entrance provided, locked gates, pets in the yard, etc. during the RI.

EPA and MDA contacted the owners of the 54 unsampled and/or unremediated properties in 2016 and 2018 to provide the property owners with another opportunity to allow EPA to complete the sampling and/or cleanup activities. By 2018, EPA was able to remediate 12 additional properties (one by EPA's Removal Program in 2018), and determine that 33 of the 40 unsampled or partially sampled properties had arsenic concentrations below the cleanup level and did not require remediation.

As of 2018, all, but nine, properties within the South Minn. Site have been remediated and/or sampled and determined to be below cleanup standards. The nine properties that EPA was not able to remediate and/or sample (due to access issues) are shown generally on the figure labeled South Minneapolis Remedial Action and listed in Table 1 in the Docket and include: Three properties that still require remediation (located on East 23rd Street, East 21st Street and East 22nd Street); five properties that still require sampling [located on East 26th Street, 12th Avenue South (two properties, one of which is now a community garden), 30th Avenue South and 14th Avenue South]; and one partially sampled property located on 19th Avenue South. These nine properties are not included as part of the South Minn. partial deletion and will remain on the NPL.

EPA demobilized from the South Minn. Site in 2011, then again in 2016 and 2018 after completing the construction and sampling activities for all, but nine, properties at the South Minn. Site. Reports documenting the completion of the RA for the properties included in this partial deletion are available in the Docket in the following reports: 2012 Final Remedial Action Report; 2016 Final Remedial Action Report; 2018 Data Evaluation Report; 2014 Five-Year Review and 2019 Five-Year Review.

Cleanup Levels

The cleanup standards for the South Minn. Site arsenic contamination in the ROD are 25 mg/kg for soil located zero to 12 inches below grade or 18 inches below grade in gardens and 95 mg/kg for soil down to a depth of 10 feet below grade. EPA confirmed that the cleanup

levels were met at each excavation during the 2009 to 2011 RA using field x-ray fluorescence (XRF) followed by laboratory confirmation sampling.

Based on a statistical analysis EPA conducted during the RD, EPA determined that the lower 95 percent confidence interval for a laboratory arsenic result of 95 mg/kg was an XRF reading of 62 mg/kg. For a laboratory result of 25 mg/kg, the lower 95 percent confidence interval was an XRF reading of 8 mg/kg, and the upper 95 percent confidence interval was an XRF reading of 44 mg/kg. During the RA, XRF readings above 62 mg/kg were considered to be above the 95 mg/kg cleanup level and further excavation was performed. XRF sample detections in surface soil above 44 mg/kg were considered to be above the 25 mg/kg cleanup level and additional excavation was performed. If XRF sample results in surface soil were between 8 mg/kg and 44 mg/kg, EPA submitted the soil sample for laboratory analysis to determine whether additional excavation was required.

After the lower extent of an excavation was reached, EPA collected a 5-point composite sample from the excavation floor for laboratory analysis. The laboratory analysis indicated that all excavated yards were determined to be below the surface and subsurface cleanup criteria of based on the XRF readings and confirmed by the post-excavation analytical results. EPA submitted post-excavation confirmation samples for each excavation area at each property to provide 100 percent laboratory verification. In all instances, the confirmation results from the laboratory confirmed the determination that the excavation was complete based on the XRF readings. The placement of demarcation fabric and ICs were not required in any excavation.

During the RD and the 2009 to 2011 RA, EPA resampled properties that were cleaned up between 2004 and 2008 by the Emergency Removal Program at a depth of 1 foot below ground surface if the 2004 to 2008 post-excavation results were greater than the subsurface criteria of 95 mg/kg. EPA used the results to assess if re-excavation was necessary during the RA. Based on this evaluation, EPA determined that additional soil excavation was required at 56 properties.

The post-excavation confirmation sampling results from the 2004 to 2008 removal actions and the 2009 to 2011 RA are included in Appendix D-3 of the 2012 Final Remedial Action Report in the Docket.

During the 2016 RA, EPA conducted delineation sampling during predesign

activities prior to construction in lieu of post-excavation confirmation sampling. A summary of the investigation activities and delineation sampling results for the 2016 RA is provided in the 2018 Data Evaluation Report in the Docket.

Operation and Maintenance

There is no operation, maintenance or monitoring at the properties included in this partial deletion. All of the properties included in this partial deletion meet the cleanup standards for surface and subsurface soils in the ROD, as confirmed through investigation, delineation and/or confirmation sampling. These properties have either been cleared for unrestricted use/unlimited exposure (UU/UE) or returned to UU/UE through the excavation and off-site disposal of contaminated soil. Because EPA returned these properties to UU/UE, institutional controls to limit land use are not required.

Nine properties have not been sampled and/or remediated due to access issues. These properties are not included in this partial deletion. EPA provided the owners of the three properties with known arsenic contamination above criteria with information concerning the health risks and practices to minimize contact with soil contaminants. EPA also worked with the City of Minneapolis to ensure that utility and construction workers, and prospective buyers are put on notice of the contaminant levels at these properties.

All Minneapolis property owners are required, by City of Minneapolis (City) Code of Ordinances Section 248.30, to disclose to potential buyers environmental testing performed on the property by or under the direction of EPA or other governmental agencies. All Minneapolis rental property owners are also required, by City Code of Ordinances Title 12 Section 244.275, to: (1) Notify tenants of environmental testing results and (2) to cooperate with EPA regarding any necessary cleanup.

Added protection is also provided by the City in the form of a flag in their city permits databases for the three properties with contamination above cleanup levels to ensure that: (1) Rental permits are not issued for the properties, and (2) utility and construction workers are notified of the presence of contamination when a building or construction permit is sought for these properties until cleanups occur.

In April 2019, EPA and MDA contacted the owners of the nine properties that still require sampling and/or remediation to request access,

but EPA's and MDA's requests for access continued to be denied. If EPA cannot obtain consent for access for sampling and/or remediation after continued efforts, EPA may pursue recorded ICs in the future on the uncooperative properties and/or may pursue other options for requiring access.

Five-Year Reviews

The ROD requires EPA to conduct statutory five-year reviews (FYRs) for the South Minn. Site if cleanup standards are still exceeded at the maximum practicable excavation depth at a property, resulting in hazardous substances, pollutants or contaminants remaining above levels that allow for UU/UE. Because EPA could not sample and/or remediate nine properties at the South Minn. Site, EPA is required to conduct statutory FYRs of the South Minn. Site until these remaining properties are either sampled and cleared for UU/UE or remediated.

EPA conducted the first FYR of the South Minn. Site in 2014. EPA conducted the most recent FYR for the South Minn. Site in May 2019. The 2019 FYR concluded that the remedy at the South Minn. Site is protective of human health and the environment because immediate threats have been addressed and the remedy is functioning as intended by the ROD.

The FYR confirms that the arsenic cleanup standards were met at the bottom of each excavation for all properties that were remediated, with the exception of four properties where minor areas of soil above criteria were left in place based on a property owner's request or physical construction limitations. EPA reviewed the information for these properties (provided in the 2012 RA Report) during the 2014 and 2019 FYRs and determined that these residual areas of soil contamination did not present an unacceptable risk when evaluating each property as a whole. (See the Response Actions section above).

The 2019 FYR concluded that for the three contaminated properties that still require remediation (not included as part of this partial deletion) effective governmental ICs are in place. Also, the FYR site inspection did not find any changes in land use at these properties that would cause an unacceptable risk. The contaminated soil at these properties is generally in lawn areas and covered by grass. Sampling throughout the South Minn. Site also demonstrates that the arsenic is generally not mobile and will not affect neighboring properties.

During the 2019 FYR, EPA and MDA contacted the owners of the three properties that still require remediation and the owners of the six properties that still require sampling to obtain access and were again refused (these properties are not included as part of this partial deletion). If EPA cannot obtain consent for access for sampling and/or remediation after continued efforts, EPA may pursue recorded ICs in the future on the uncooperative properties and/or may pursue other options for requiring access.

EPA will conduct the next FYR at the South Minn. Site on or before May 2023. If EPA is able to complete the sampling and any necessary remediation at the nine remaining properties at the South Minn. Site, however, EPA will propose to delete the South Minn. Site from the NPL in its entirety and FYRs will no longer be required.

Community Involvement

EPA actively engaged with the community and strived to advocate and strengthen early and meaningful community participation throughout EPA's remedial activities at the South Minn. Site, satisfying the provisions of Sections 113(k) and 117 of CERCLA, 42 U.S.C. 9613(k) and 9617.

EPA developed a Community Involvement Plan (CIP) for the South Minn. Site in July 2005. The CIP outlined the community involvement activities that EPA conducted and would continue to undertake during the remedial activities planned for the South Minn. Site.

Since 2004, the year that EPA became involved with the South Minn. Site, EPA held 22 public meetings and availability sessions about the South Minn. Site investigations and cleanup. EPA held major meetings at the YWCA located at 2121 East Lake Street in Minneapolis, and other meetings at other locations throughout the affected area in an effort to make the meetings more available to all of the communities impacted by the South Minn. Site. EPA held meetings at Powderhorn Park, the Franklin Avenue Safety Center, and the Minneapolis Public Library Lake Street Branch.

EPA issued its proposed cleanup plan for the South Minn. Site and held a public comment period on its proposal from June 2, 2008 to July 1, 2008. EPA also held a public meeting on June 11, 2008 at the YWCA to discuss the contamination at the South Minn. Site, the cleanup alternatives being considered, and to answer questions and accept public comments on the proposed cleanup plan. Approximately 40 people attended the meeting. EPA

received approximately 31 public comments during the comment period.

EPA mailed out post cards announcing the public meetings and fact sheets updating the community on the status of the project throughout the entire removal and remedial process. EPA sent mailings out to approximately 10,000 homes. Because of the multi-lingual nature of the area EPA translated the mailings into four languages: English, Spanish, Hmong and Somali. EPA eventually limited the translations to English and Spanish, but continued to make Hmong and Somali translations available upon request.

EPA developed and maintained public local information repositories for the South Minn. Site at four locations: (1) Green Institute, 2801 21st Ave. S, Suite 100, Minneapolis, MN; (2) City of Minneapolis Police Department, 1201-B E Franklin Ave., Minneapolis, MN; (3) Minneapolis Central Library, 300 Nicollet Mall, 2nd Floor Minneapolis, MN; and (4) Minneapolis Public Library, East Lake Branch, 2727 E Lake St., Minneapolis, MN. EPA also developed and maintains a web page for the South Minn. Site located at: <http://epa.gov/region5/sites/cmcheartland>.

EPA involved state and local government officials in the 2014 and 2019 FYR process by notifying them at the start of the FYR. EPA interviewed the former 9th Ward Alderman of the City of Minneapolis, the Minneapolis City Engineer, and an MDH Environmental Research Scientist during the 2014 FYR and included summaries of the interviews in the FYR Report. EPA conducted the 2014 and 2019 FYR site inspections jointly with MDA project staff and provided MDA an opportunity to review and provide input on the FYRs.

EPA notified the community about the 2014 FYR by publishing a newspaper announcement in the Minneapolis Southside Pride at the start of the FYR. The newspaper announcement invited the community to submit any concerns about the South Minn. Site to EPA and directed the community to EPA contacts and the South Minn. Site's web page for additional information. EPA notified the community about the 2019 FYR by publishing a newspaper announcement in the Minneapolis Star Tribune.

EPA made copies of the 2014 and 2019 FYR Reports available on the internet and at the information repository located at the Minneapolis Central Library.

EPA satisfied public participation activities for this partial deletion of the South Minn. Site as required by CERCLA section 113(k), 42 U.S.C.

9613(k), and CERCLA section 117, 42 U.S.C. 9617. EPA published a document announcing this proposed direct final Partial Deletion and announcing the 30-day public comment period in the Minneapolis Star Tribune concurrent with publishing this partial deletion in the **Federal Register**.

Documents in the deletion docket, which EPA relied on for recommending the partial deletion of the South Minn. Site from the NPL, are available to the public in the information repositories and at <http://www.regulations.gov>. Documents in the Docket include maps which identify the South Minn. Site boundary, the contamination detected at the South Minn. Site and the nine properties that are not included as part of this partial deletion, which are also listed in Table 1 in the Docket.

Determination That the Criteria for Partial Deletion Have Been Met

All properties located within the boundary of the South Minn. Site except for the nine properties that still require sampling and/or remediation due to access issues meet all of the site completion requirements specified in Office of Solid Waste and Emergency Response (OSWER) Directive 9320.22, Close-Out Procedures for National Priorities List Sites for all media. The properties that are not included in this partial deletion are shown generally on the figure labeled South Minneapolis Remedial Action and are listed in Table 1 in the Docket and include: Three properties that still require remediation (located on East 23rd Street, East 21st Street and East 22nd Street); five properties that still require sampling [located on East 26th Street, 12th Avenue South (two properties, one of which is now a community garden), 30th Avenue South and 14th Avenue South]; and one partially sampled property located on 19th Avenue South. All parks, schools, community gardens (except the community garden located on 12th Avenue South that is one of the nine properties that still requires sampling and/or remediation), playgrounds associated with church schools and the cemetery located within the South Minn. Site boundary also meet all of the site completion requirements specified in Office of Solid

Waste and Emergency Response (OSWER) Directive 9320.22, Close-Out Procedures for National Priorities List Sites for all media.

All cleanup actions and remedial action objectives for the properties included in this partial deletion as set forth in the ROD have been implemented for all pathways of exposure. The selected remedial action, remedial action objectives and associated cleanup levels for surface and subsurface soil for these properties are consistent with EPA policy and guidance. No further Superfund response is necessary to protect human health or the environment at the residential properties, parks, schools, community gardens, playgrounds associated with church schools or the cemetery located within the boundary of the South Minn. Site, excluding the nine properties that still require sampling and/or remediation.

Section 300.425(e) of the NCP states that a Superfund site or a portion of a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Minnesota, has determined that all required response actions have been implemented for all residential properties, parks, schools, community gardens, playgrounds associated with church schools and the cemetery located within the boundary of the South Minn. Site, except for the nine properties that still require sampling and/or remediation, and that no further response action by EPA is appropriate for these properties.

V. Deletion Action

EPA, with concurrence of the State of Minnesota, through the MDA, has determined that all appropriate response actions under CERCLA have been completed for all residential properties, parks, schools, community gardens, playgrounds associated with church schools and the cemetery located within the boundary of the South Minn. Site, excluding the nine properties that still require sampling and/or remediation. Therefore, EPA is deleting all residential properties, parks, schools, community gardens, playgrounds associated with church schools and the cemetery located within

the boundary within the boundary of the South Minn. Site from the NPL except for the nine properties that still require sampling and/or remediation.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *September 30, 2019* unless EPA receives adverse comments by *August 30, 2019*. If adverse comments are received within the 30-day public comment period, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and the partial deletion will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

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.

Dated: July 19, 2019.

Cheryl Newton,

Acting Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9675; 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.

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry under “South Minneapolis Residential Soil Contamination”, “MN” to read as follows:

Appendix B to Part 300—[Amended]

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
MN	South Minneapolis Residential Soil Contamination	Minneapolis	P

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
*	*	*	*
(a) * * *			
* P = Sites with partial deletion(s).			
[FR Doc. 2019–16192 Filed 7–30–19; 8:45 am]			
BILLING CODE 6560–50–P			
ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 300 [EPA–HQ–SFUND–1983–0002; FRL–9997–54–Region 5] National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Buckeye Reclamation Landfill Superfund Site AGENCY: Environmental Protection Agency (EPA). ACTION: Direct final rule.			
SUMMARY: The Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Deletion of the Buckeye Reclamation Landfill Superfund Site (Buckeye Site), located in St. Clairsville, Ohio from the National Priorities List (NPL). 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). This direct final deletion is being published by EPA with the concurrence of the State of Ohio (Ohio), through the Ohio Environmental Protection Agency (OEPA), because EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.			
DATES: This direct final deletion is effective September 30, 2019 unless EPA receives adverse comments by August 30, 2019. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the Federal Register informing the public that the deletion will not take effect.			
ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002 by one of the following methods:			
<p><i>https://www.regulations.gov.</i> Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from <i>Regulations.gov</i>. 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>i.e.</i>, 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 <i>https://www2.epa.gov/dockets/commenting-epa-dockets</i>.</p> <p><i>Email:</i> <i>cano.randolph@epa.gov</i>. <i>Mail:</i> Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (ST–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–6036.</p> <p><i>Hand deliver:</i> Superfund Records Center, U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604, (312) 886–0900. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.</p> <p><i>Docket:</i> All documents in the docket are listed in the <i>https://www.regulations.gov</i> index. Although listed in the index, some information is not publicly available, <i>e.g.</i>, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <i>https://www.regulations.gov</i> or in hard copy at:</p>			
<p>U.S. Environmental Protection Agency, Region 5, Superfund Records Center, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604. Phone: (312) 886–0900. Hours: Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.</p> <p>St. Clairsville Public Library, 108 W Main Street, St. Clairsville, OH 43950. Phone: (740) 695–2062. Hours: Monday through Wednesday, 9 a.m. to 8 p.m., Thursday through Friday, 9 a.m. to 6 p.m., Saturday 10 a.m. to 2 p.m., Sunday closed.</p> <p>FOR FURTHER INFORMATION CONTACT: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (ST–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–6036, or via email at <i>cano.randolph@epa.gov</i>.</p> <p>SUPPLEMENTARY INFORMATION:</p> <p>Table of Contents</p> <p>I. Introduction II. NPL Deletion Criteria III. Deletion Procedures IV. Basis for Site Deletion V. Deletion Action</p> <p>I. Introduction</p> <p>EPA Region 5 is publishing this direct final Notice of Deletion of the Buckeye Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to Section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of 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 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.</p> <p>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 Buckeye Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Buckeye Site from the NPL unless adverse comments are received during the public comment period.</p>			

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), 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, 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. EPA conducts such five-year reviews even if a site is deleted from the NPL. 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 deletion of the Buckeye Site:

(1) EPA consulted with Ohio prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided Ohio 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and Ohio, through the OEPA, has concurred on the deletion of the Buckeye Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, an advertisement of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, The Times-Leader. The newspaper advertisement announces the 30-day public comment period

concerning the Notice of Intent to Delete the Buckeye Site from the NPL.

(4) 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 Buckeye Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

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 EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist 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 Site Deletion

The following information provides EPA's rationale for deleting the Buckeye Site from the NPL:

Site Background and History

The Buckeye Site (CERCLIS ID: OHD980509657) is located approximately 4 miles southeast of the City of St. Clairsville and 1.2 miles south of Interstate 70 in Belmont County, Ohio. The northeast corner of the Buckeye Site is bordered by Interstate 470, which is located about 3,000 feet north of the landfill.

The Buckeye Site occupies approximately 100 acres of land surrounded by a chain link fence. The Buckeye Site extends approximately 0.70 miles from north to south and varies from 500 to 1,000 feet wide (see Figure 1 in the Docket). Access is provided by a road located at the north entrance of the Buckeye Site.

The Buckeye Site is situated in the Kings Run drainage ravine and is bordered by Kings Run to the east and an unnamed stream to the west. Kings Run flows to the south and empties into Little McMahan Creek. The property surrounding the Buckeye Site to the east and west is hilly and mostly forested. Farmland and a strip mine are located west of the property. The land to the south is forested with steep slopes

cleared for industrial use along the stream valleys and roadways. An environmental transfer station and additional farmland extend to the north and northeast of the Buckeye Site.

The groundwater at the Buckeye Site is not being used as a source of drinking water, and the Belmont County Water and Sewer District supplies the nearest neighborhood with drinking water. Residents closest to the Buckeye Site, including a nearby resident downstream of Kings Run, obtain drinking water from the county and not private wells.

The Buckeye Site was used for deep underground coal mining activities until the early 1950s. In 1971, the Belmont County Health Department licensed the Buckeye Site for use as a municipal solid waste landfill. The landfill was operated by the Ohio Resources Corporation under the name of Buckeye Reclamation Company.

The landfill accepted municipal solid waste, as well as industrial sludge and liquids, most of which were received between 1976 and 1979. The industrial wastes were disposed in a 50-acre waste pit located in the northern section of the landfill.

EPA and OEPA began investigating the Buckeye Site in the 1980s to determine whether the landfill posed a potential risk to public health and the environment. EPA and OEPA identified 12 contaminants of concern (COCs) in the waste pit, soil, leachate, groundwater, and surface water. These COCs accounted for the majority of the health-based risk posed by the Buckeye Site. The COCs included the inorganic contaminants arsenic, beryllium, lead, cadmium, chromium, and nickel. The organic COCs were benzene, trichloroethene, carbon tetrachloride, 1,1-dichloroethene, polycyclic aromatic hydrocarbons, and toluene.

EPA proposed the Buckeye Site to the NPL on December 30, 1982 (47 FR 58476). EPA finalized the NPL listing for the Buckeye Site on September 8, 1983 (48 FR 40658).

Current use of the 91.1-acre landfill area and an additional 349.6 acres of surrounding property affected by the landfill is restricted by an Ohio Uniform Environmental Covenants Act (UECA) restrictive covenant. The restrictive covenant applies to four parcels of land (see Figure 3 in the Docket). The covenant prohibits drilling, digging, and construction on the parcels; restricts parcel use to commercial/industrial uses; and prohibits the consumption of groundwater. The neighborhood closest to the Buckeye Site is supplied with drinking water by the Belmont County Water and Sewer District.

Remedial Investigation (RI)/Feasibility Study (FS)

EPA identified several potentially responsible parties (PRPs) for the landfill including the landfill operator and several waste generators. In 1985, a group of the PRPs agreed to conduct a remedial investigation and feasibility study (RI/FS) at the Buckeye Site pursuant to an administrative order on consent. The purpose of the RI/FS was to define the nature and extent of the contamination at the landfill, assess risks, and evaluate cleanup alternatives.

The PRPs investigated the contaminant source area (the landfill), soil, surface water, sediment, leachate, groundwater, and air. The RI found various levels of carcinogenic and noncarcinogenic chemicals in all media sampled, except air. The RI indicated that there were three sources of contamination at the Buckeye Site: (1) Industrial waste disposed in or around the waste pit, (2) solid waste disposed in the general landfill area, and (3) coal mine refuse placed in the area before landfilling operations began. The PRPs completed the RI in 1989.

The PRPs conducted an endangerment assessment (EA) to determine the extent of the threat to public health and the environment posed by the Buckeye Site under present and future conditions, and to determine which aspects of the Buckeye Site warranted remediation. The PRPs submitted a draft EA Report in 1989. EPA and OEPA had a significant number of comments on the EA Report and did not approve the report. EPA retained a contractor to address EPA's and OEPA's comments on the draft EA Report. EPA's contractor completed a final EA Report in 1990.

The EA Report concluded that three significant exposure and contaminant routes existed at the Buckeye Site. These routes were: (1) Dermal contact, inhalation and ingestion of surface soils, (2) migration of contaminants from surface and subsurface soils into groundwater and surface water, and (3) ingestion of contaminated groundwater and surface water.

The EA indicated that the Buckeye Site posed an unacceptable cancer risk to current adult and adolescent dirt-bike riders at the landfill. The unacceptable cancer risks were primarily due to dust inhalation and ranged from 3.76×10^{-4} to 1.05×10^{-3} for average and maximum chemical concentrations. The EA did not identify any noncancer risks under the current exposure scenario, or any cancer or noncancer risks to current off-site well users.

The EA identified unacceptable cancer and noncancer risks to future residents at the Buckeye Site under a potential future residential scenario. The risks were due to exposure to contaminated soil, groundwater and surface water. The cancer risks for potential future residential exposure ranged from 6.53×10^{-3} for average chemical concentrations to 1.48×10^{-2} for maximum chemical concentrations. The estimated noncancer risks for potential future residential exposure were a hazard index (HI) of 7.81 to 21.3 assuming average and maximum chemical concentrations. EPA generally considers a cancer risk greater than 1×10^{-4} or an HI greater than 1 as an unacceptable risk which may require action.

The RI showed that most of the groundwater underlying the Buckeye Site migrates laterally into the coal mine refuse at the Buckeye Site and is discharged as leachate to Kings Run. This means that most of the groundwater at the Buckeye Site becomes surface water before leaving the property. Therefore, EPA and OEPA determined that groundwater and surface water could be treated under a single remedial action objective (RAO).

The PRPs conducted a macroinvertebrate population survey and a fish population survey as part of the EA. The survey documented that the Buckeye Site was impacting nearby streams and stream beds. Where organisms were present at all, the communities were dominated by pollution-tolerant species. The monitoring data, however, was not able to distinguish between environmental impacts due to the waste disposal practices at the landfill or to the acid mine drainage from past mining operations at the Buckeye Site.

The PRPs completed an FS to develop and evaluate cleanup alternatives to address the unacceptable risks posed by the Buckeye Site in 1990. The FS evaluated five cleanup alternatives: No action; hazardous waste landfill cap and groundwater and surface water collection with chemical treatment; hazardous waste landfill cap and groundwater and surface water collection with wetlands treatment; solid waste landfill cap and groundwater and surface water collection with chemical treatment; and solid waste landfill cap and groundwater and surface water collection with wetlands treatment.

Selected Remedy

EPA selected a cleanup remedy for the Buckeye Site in an August 19, 1991 Record of Decision (ROD). EPA's RAO

for the cleanup is to protect public health and the environment from contaminants in surface and subsurface soil, groundwater and surface water at the Buckeye Site by: (1) Limiting direct physical contact with contaminated soils to reduce the threat of dermal contact, inhalation, and ingestion; and (2) Restoring the groundwater and surface water to a useful, less threatening state by reducing the levels of contamination.

EPA selected Alternative 4B as the cleanup remedy. Alternative 4B involves the following remedial components: (1) Solid waste landfill cap; (2) Institutional controls; (3) Fencing; (4) Groundwater collection; (5) Surface leachate seep collection; (6) Groundwater monitoring; (7) Surface leachate seep monitoring; (8) Monitoring of Kings Run; and (9) Groundwater/leachate treatment by constructed wetlands (Option B). This option involves constructing a groundwater/leachate collection system to intercept leachate, groundwater and acid mine drainage from the landfilled area (all of which have low pH values) and channeling it to the wetlands treatment system.

During the remedial design (RD) phase of the project, the PRPs conducted several predesign studies to collect additional information to design and implement the selected remedy. The PRPs' predesign studies included hydrogeologic studies, a landfill cap study, a constructed wetlands study, borrow area studies and a slope stability study.

Based on the results of the predesign studies, EPA issued modifications to the selected remedy in a July 17, 1997 Explanation of Significant Differences (ESD). The remedy modifications included: (1) A reduction, from 97 to 37 acres, of the area over which a solid waste landfill cap would be constructed; (2) Construction of a vegetated soil cap over an area of 24 acres; (3) Repair of the existing cap over approximately 29 acres; (4) Modification of the slope of the cap bordering a portion of Kings Run; (5) Realignment and lining of Kings Run; (6) Elimination of the Northern Impoundment; (7) Deferral of the groundwater/leachate treatment system until after cap construction and monitoring to determine if a treatment system is required [to be conducted as Phase II of the remedial action (RA)]; and (8) Modification of the description of groundwater samples to be used for determination of background levels in groundwater.

EPA and 14 PRPs signed a Consent Decree that became effective on March 17, 1998. The Consent Decree required

the PRPs to implement the selected remedy in the 1991 ROD, as modified by the 1997 ESD. The PRPs conducted the RA in two phases.

During the Phase I RA, the PRPs implemented all aspects of the selected remedy except the deferred groundwater/leachate wetlands treatment system. The PRPs also conducted four rounds of quarterly groundwater, surface water and leachate monitoring. Based on the monitoring data, EPA issued a second ESD for the Buckeye Site on August 15, 2003. The 2003 ESD documented the following decisions and additional changes to the remedy:

(1) The low pH values in surface water and leachate are directly related to acid mine drainage and are considered background;

(2) The flows from Kings Run and the landfill leachate collection system will be combined for off-site discharge to Little McMahon Creek;

(3) The Ohio criteria, as modified by the Ohio Revised Code Chapter 6111 Water Pollution Control Act, reflect the current OEPA risk and ecological information and these changes in general improve the quality of surface waters in Ohio. These new criteria replace the "Final Effluent Limitations and Monitoring Requirements for the Buckeye Site provided in Sections A.1 and A.2 of ROD Attachment A;

(4) Monitoring of the combined flow will be conducted monthly at a location downgradient of the combined flows, for two years starting in February 2004. At the end of two years the data will be evaluated, and the monitoring requirements reviewed. If the discharge standards are not met during or at the end of the two-year monitoring period, the provisions for surface water treatment will be revisited; and

(5) No additional groundwater/leachate collection mechanisms will be required.

EPA issued a third ESD for the Buckeye Site on September 16, 2011. The 2011 ESD documents EPA's decision, based on seven years of monitoring data and other information, that it was necessary to construct the treatment wetlands to treat the groundwater/leachate at the Buckeye Site. The 2011 ESD also documented a significant change in the design and operation and maintenance (O&M) requirements of the treatment wetlands compared to the ROD's description of this component of the remedy.

Based on the post-ROD monitoring data, the 2011 ESD modified the total size and cell composition of the wetlands to reflect the actual treatment necessary to address current Buckeye

Site conditions. The 2011 ESD also allows for future changes to wetlands performance monitoring frequency and/or monitoring parameters as approved by EPA.

Remedy Implementation

The PRPs began the Phase I RA construction work in April 1999. EPA and OEPA conducted a pre-final inspection on August 29, 2001, and a final inspection on September 27, 2001. During the final inspection EPA and OEPA determined that the PRPs constructed the remedy in accordance with the Phase I RD plans and specifications.

The Phase I RA construction work included the following: (1) Construction of a solid waste landfill cap over approximately 37 acres with a passive landfill gas collection and venting system; (2) Construction of a vegetated cap over approximately 24 acres; (3) Repair of existing cover where necessary over approximately 29 acres; (4) Realignment and lining of Kings Run; (5) Elimination of the Northern Impoundment; (6) Installation of surface water management structures; (7) Construction of access roads; (8) Installation of perimeter fencing; and (9) Installation of groundwater/leachate seep collection boxes, a French drain, and a groundwater/leachate transport pipe.

EPA signed a Preliminary Close Out Report (PCOR) on May 14, 2003 documenting that the RA construction at the Buckeye Site was complete. The completion of the Phase I RA and documentation of the Phase I RA Construction Quality Control/Quality Assurance Program is provided in the PRPs' November 7, 2001 Phase I Remedial Action Construction Completion Report.

Based on the quarterly leachate monitoring data available at the time of the PCOR, EPA believed that the Phase II RA work was not required. Additional monitoring conducted subsequent to the PCOR, however, indicated that the Phase II RA work was needed, which EPA documented in the 2011 ESD.

The PRPs initiated the Phase II RA construction work on September 12, 2011. The Phase II RA involved constructing the treatment wetlands for the collected groundwater and leachate. EPA approved the PRPs' wetlands design plans in September 2011. The PRPs substantially completed the Phase II RA construction work by November 14, 2011.

The treatment wetlands system is designed to capture the flow from the Groundwater/Leachate Transport Pipe, Kings Run French Drain, Seep L-4, and

Seep A and treat the water in two wetland cells. The cells are partially lined with limestone and the collected groundwater/leachate flows from one treatment cell to the other via gravity flow. The treated water then discharges into the existing principal spillway and into Kings Run, which discharges into Little McMahon Creek. The Phase II RA also included the construction of planting shelves and discharge and outfall structures. See Figure 2 in the Docket.

The objective of the treatment system is to raise the pH of the collected water, reduce the concentrations of COCs to acceptable levels prior to discharge, and meet the surface water discharge limits in Attachment B of the 2003 ESD. In addition, the wetlands system uses passive aeration and pH-adjustment to precipitate and remove dissolved iron and other metals from the groundwater/leachate, resulting in a reduction of the orange/red color and iron precipitate embedment observed in Kings Run.

Documentation of the PRPs' Phase II RA and Phase II Construction Quality Control/Quality Assurance Program is provided in the PRPs' June 20, 2012 Phase II Remedial Action Construction Completion Report.

Cleanup Levels

The remedy for the landfill materials and contaminated soil at the Buckeye Site is a containment remedy; therefore, the 1991 ROD does not establish cleanup levels for the landfill materials or soil.

The contaminated groundwater/leachate at the Buckeye Site is addressed by the constructed wetlands collection and treatment system. The 1991 ROD did not establish specific quantitative performance criteria for groundwater/leachate treatment. Instead, the ROD included final effluent limitations and monitoring requirements for the discharge of the treated groundwater and leachate to Little McMahon Creek.

EPA updated the discharge requirements for the Buckeye Site in the 2003 ESD (see Attachment B of the 2003 ESD, ESD Limits and Monitoring Requirements for Buckeye Reclamation Landfill Authorized Discharges, in the Docket). The updated discharge requirements are based on the regulations in the Ohio Revised Code Chapter 6111 Water Pollution Control Act and apply to the combined flow from Kings Run and the landfill groundwater/leachate wetlands treatment system at location KR-2, prior to discharging to Little McMahon Creek (see Figure 2 in the Docket).

EPA issued a third ESD, which addressed discharge requirements, in 2011. The 2011 ESD allows for future changes to the monitoring frequency and/or monitoring parameters if approved in writing by EPA. In 2014, as allowed by the 2011 ESD, EPA approved a reduction in the monitoring frequency for KR-2, from monthly to every two months.

Wetland and surface water monitoring data collected by the PRPs from December 2011 to December 2016 indicate that the wetlands are generally operating in accordance with the 2011 Engineering Design objectives. The key wetlands design objective is 20 to 40 percent iron removal, and the wetlands are typically achieving a 50 to 60 percent iron removal. Frequent low-pH values are detected in the wetlands discharge during periods of low flow and are most likely due to iron hydroxide precipitation/accumulation coupled with the influence of less buffering and retention capacity in wetlands treatment Cell #2. In 2015, the PRPs augmented the wetlands with additional limestone to mitigate this effect.

The surface water monitoring data collected downstream from the constructed wetlands at location KR-2 have demonstrated ongoing compliance with the discharge limits except for low pH and occasional exceedances of Whole Effluent Toxicity (WET) test limits. Similar to the pH values found in the wetlands samples, low pH values in the surface water samples tend to correspond with periods of low flow and low precipitation. Overall, discharge water quality has improved since the construction of the treatment wetlands system, as demonstrated by an overall improvement in the WET test results and the removal of significant amounts of iron (approximately 20 tons per year), indicating that the system is working effectively.

Additional information concerning the wetlands and surface water monitoring data is available in the 2018 6th Annual Wetland/SWCMP Report in the Docket.

Although there are no cleanup standards for groundwater, the PRPs conduct semiannual long-term groundwater monitoring at the Buckeye Site in accordance with the January 2004 Phase I RA O&M Plan. Approximately 32 rounds of groundwater monitoring data have been collected at the Buckeye Site since the Phase I RA construction work was completed in 2001.

The groundwater monitoring well network consists of 15 monitoring wells in the three hydrogeologic units of

concern at the Buckeye Site: The Unconsolidated Materials/Mine Refuse unit, the Benwood Limestone unit, and the Redstone Limestone unit (see Figure 1.1 in the Docket). The groundwater monitoring indicates that a few organic compounds continue to be very infrequently detected at low estimated concentrations that do not exceed Maximum Contaminant Levels (MCLs). Arsenic continues to be detected above MCLs in a groundwater monitoring well installed in the Unconsolidated Materials/Mine Refuse unit, but was not detected in any of the other groundwater monitoring wells or hydrogeological units. A few other metals and general chemistry parameters are also present at levels above secondary MCLs. See Figures 2.1 to 2.3 and Table 1.1 in the Docket.

The primary COCs identified at concentrations above MCLs and/or above background values in all three hydrogeological units at the Buckeye Site are: Sulfate, iron, chloride, manganese, total dissolved solids, and di(2-ethylhexyl) phthalate. These COCs have only secondary MCLs. Arsenic is present at concentrations above the MCL, but only in one well located in the Unconsolidated Materials/Mine Refuse unit.

The concentrations of the groundwater constituents decrease to below detection limits before moving beyond the Buckeye Site boundaries. In addition, the concentrations of the significant groundwater constituents at the Buckeye Site have been relatively stable over the past eight years. Groundwater at the Buckeye Site is not used as a source of drinking water, and the closest neighborhood is supplied with water from the Belmont County Water and Sewer District.

The most recent groundwater monitoring results for the Buckeye Site are available in the 2019 Groundwater Monitoring Program Report, Year 17, Round 2, in the Docket.

On December 1, 2017, EPA's Office of Superfund Remediation and Technology Innovation (OSRTI) and Region 5 held a conference call to discuss the proposal for Per- and Polyfluoroalkyl Substances (PFAS) sampling at the Buckeye Site prior to proposing the Buckeye Site for deletion from the NPL. Based on the waste that was deposited at the Buckeye Site and the length of time that the landfill was open, OSRTI concurred that sampling was warranted to determine whether PFAS is present.

On June 5, 2018, EPA approved the PRPs' Quality Assurance Project Plan (QAPP), Per- and Polyfluoroalkyl Substances Amendment, Revision No. 5. In July 2018, with EPA field oversight,

the PRPs collected samples for PFAS analysis from the complete network of 15 groundwater monitoring wells (shown on Figure 4 in the Docket) and from three surface water monitoring locations (KR-1, KR-2 and KR-3, shown on Figure 2 in the Docket). The PRPs submitted the samples to TestAmerica Laboratories, Inc. to run analytical method EPA 537 Modified. EPA collected split samples at each sample location and submitted the samples to its Chicago Regional Lab (CRL) to run CRL Standard Operating Procedure OM021, which references American Society for Testing and Materials Method 7979.

Because many materials potentially can contain PFAS, a conservative PFAS sampling protocol was implemented to avoid cross-contamination. It is important to note that at the time of the PFAS sampling, there were no EPA-approved methods for the preparation and analysis of PFAS samples in media other than drinking water. (EPA's approved method for PFAS in drinking water is EPA Method 537.) The groundwater and surface water that was sampled is not drinking water.

Review of the two data sets, the PRPs' and EPA's, indicate comparable results with no major differences or significant data issues. The majority of the EPA sample results for the sum of the concentrations for two main PFAS substances, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), were non-detect, while the PRPs' sample results had more detections. In both cases, the sums of the concentrations of PFOA and PFOS for EPA's and the PRPs' individual samples, were well below 70 nanograms per liter (ng/L) (equivalent to 70 parts per trillion), which is EPA's non-regulatory lifetime Health Advisory for drinking water.

The maximum concentration of the sum of PFOA/PFOS detected in EPA's groundwater samples was 12.8 ng/L. The maximum concentration of the sum of PFOA/PFOS detected in the PRPs' groundwater samples was 16.8 ng/L.

EPA's surface water results at surface water sampling locations KR-3 (upstream of the Buckeye Site) and KR-1 (adjacent to the Buckeye Site) for the sum of PFOA/PFOS were non-detect. EPA's surface water sampling result for the sum of PFOA/PFOS at location KR-2 (downstream of the Buckeye Site) was 11.7 ng/L. The PRPs' surface water results for the sum of PFOA/PFOS at the three surface water sampling locations were: 5.3 ng/L at KR-3, 6.50 ng/L at KR-1, and 10.6 ng/L at KR-2.

Based on the PFAS data, EPA believes that PFAS is not significantly present at

the Buckeye Site. Additionally, groundwater at the Buckeye Site is not used as a source of drinking water and the closest residential area to the Buckeye Site is supplied with water from the Belmont County Water and Sewer District. EPA has therefore concluded that further PFAS investigation at the Buckeye Site is not warranted and that the Buckeye Site remains eligible for NPL deletion.

Operation and Maintenance

The PRPs' contractor conducts long-term O&M at the Buckeye Site in accordance with the revised January 2004 O&M Plan for the Phase I RA work and the June 2012 O&M Plan for the Phase II RA work (Appendix B of the 2012 Phase II RA and Construction Completion Report).

The selected remedy does not include any actively-operating systems. Phase I O&M activities for the Buckeye Site address the Phase I remedial components (e.g., landfill cap, passive gas collection system components, channels, roads, fence, etc.) and include regular inspections, routine and unscheduled maintenance, quarterly Buckeye Site inspections, long-term groundwater monitoring, and annual explosive gas monitoring and reporting. Phase II O&M activities for the Buckeye Site include wetlands performance and surface water monitoring.

Additional information about the O&M activities and monitoring results at the Buckeye Site is available in the Docket in the 2016 Phase I and II Remedial Action Post Closure Operation and Maintenance Inspection Report, the 2018 6th Annual Wetland/SWCMP Report, and the 2019 Groundwater Monitoring Program Report, Year 17, Round 2.

The selected remedy includes institutional controls (ICs) as a remedy component. EPA determined that ICs in the form of proprietary controls were needed for all properties affected by the approximately 100-acre landfill cap at the Buckeye Site. The proprietary control implemented on these parcels is a Uniform Environmental Covenants Act (UECA) restrictive covenant. On February 21, 2013, the property owner recorded an Environmental Covenant with the Belmont County Recorder's Office, Instrument No. 2013000020080. Four (4) parcels of real property which together contain 440.658 acres are subject to the covenant.

The environmental covenant prohibits drilling, digging, and construction on the parcels, restricts parcel use to commercial/industrial, and prohibits the consumption of groundwater. A copy of the environmental covenant is

provided in the Docket. The covenant is an effective control to assure long-term protectiveness for any areas of the Buckeye Site which do not allow for unlimited use and unrestricted exposure (UU/UE).

Long-term stewardship is addressed at the Buckeye Site through the implementation of the environmental covenant, in conjunction with engineering controls and routine O&M inspections, to ensure that the remedy continues to function as intended. The Buckeye Site achieved EPA's Site-Wide Ready for Anticipated Use designation on May 1, 2013.

Five-Year Review

The Buckeye Site requires statutory five-year reviews (FYRs) due to the fact that hazardous substances, pollutants, or contaminants remain at the Buckeye Site above levels that allow for UU/UE.

EPA completed the third FYR for the Buckeye Site in May 2014. The 2014 FYR found that the site-wide remedy is protective of human health and the environment. Exposure pathways that could result in unacceptable risks are being controlled and monitored. An environmental covenant is in place and restricts parcel use that would defeat or impair the effectiveness of the remedial measures. The environmental covenant prohibits drilling, digging, and construction on the parcels, restricts parcel use to commercial/industrial activities, and prohibits the consumption of groundwater.

The 2014 FYR did not identify any issues that affect the protectiveness of the remedy at the Buckeye Site. The FYR, however, noted that further data collection and evaluation are needed to determine the effectiveness of the constructed wetlands and the achievement of the design goals over the long-term.

In 2016, the PRPs addressed the concerns identified in the 2014 FYR by removing sediment from the wetland, replacing the iron-encrusted limestone in Cell #1 with fresh limestone, and placing limestone in Cell #2. In 2017, the PRPs also implemented additional monitoring to assist in further evaluating the low pHs observed in the wetlands discharge and at KR-2 and to evaluate other wetlands performance and surface water quality conditions.

Over time, long-term trends for the constructed wetland will be available from the continued required monitoring and reporting, such as the effects of seasonal weather conditions on the efficiency of the wetland, the effectiveness of the wetlands in adjusting the pH and removing iron from the collected groundwater/

leachate, and the impact of the wetlands system on the water quality of Kings Run and Little McMahon Creek.

Copies of the 2004, 2009 and 2014 FYR Reports are available in the Docket. EPA expects to complete the next FYR for the Buckeye Site in 2019.

Community Involvement

EPA satisfied public participation activities for the Buckeye Site as required by Sections 113(k)(2)(B)(i-v) and 117 of CERCLA, 42 U.S.C. 9613(k)(2)(B)(i-v) and 9617. EPA established local information repositories for the Buckeye Site at the St. Clairsville Public Library in Clairsville, Ohio and at the Neffs Branch of the Martins Ferry Public Library in Neffs, Ohio. EPA maintains a copy of the administrative record documents for the Buckeye Site at the local information repositories and at EPA's Region 5 office.

EPA released the FS Report and its proposed cleanup plan for the Buckeye Site to the public in May 1991 at the start of the public comment period. EPA published newspaper announcements advertising the proposed cleanup plan for the Buckeye Site, the 30-day public comment period, and the availability of a public meeting, in The Times Leader, Martins Ferry, Ohio and in The Intelligencer, in Wheeling, West Virginia. EPA also mailed a fact sheet summarizing the proposed cleanup plan to individuals on the Site mailing list.

EPA and OEPA conducted a public meeting on May 30, 1991, to explain the details of the Buckeye Site RI/FS and proposed cleanup plan, answer questions from the community, and accept public comments. A court reporter was present to record the meeting. EPA also distributed copies of the Proposed Plan fact sheet at the meeting.

EPA received a request for a 10-day extension to the public comment period on May 31, 1991. EPA granted the extension, which ran until June 26, 1991. EPA placed a public notice in The Intelligencer and The Times Leader announcing the extension to the public comment period. EPA responded to the comments received during the public comment period in a Responsiveness Summary attached to the 1991 ROD.

As part of the FYR process, EPA published advertisements announcing EPA's FYRs for the Buckeye Site in the local newspaper, The Times Leader, on October 23, 2008 and February 2, 2014. The newspaper announcements informed the community about the start and purpose of the FYRs and invited the public to submit comments and concerns about the Buckeye Site to EPA.

EPA placed copies of the 2004, 2009 and 2014 FYR Reports in the local information repositories in the St. Clairsville and Martins Ferry public libraries, and made them available on EPA's website.

EPA arranged to publish an advertisement announcing the publication of this rule and the 30-day public comment period in The Times Leader concurrent with publishing this deletion in the **Federal Register**. Documents in the deletion docket, which EPA relied on to support the deletion of the Buckeye Site from the NPL, are available to the public at the Buckeye Site information repositories and at <http://www.regulations.gov>.

Determination That the Site Meets the Criteria for Deletion in the NCP

The June 21, 2019, Final Close Out Report documents that the PRPs have successfully implemented all appropriate response actions at the Buckeye Site in accordance with the 1991 ROD, the 1997, 2003 and 2011 ESDs, and EPA's Close Out Procedures for National Priorities List Sites (OLEM Directive 9320.2–22, May 2011).

The cleanup actions specified in 1991 ROD and the 1997, 2003 and 2011 ESDs have been implemented and the Buckeye Site meets acceptable risk levels for all media and exposure pathways. The environmental covenant and long-term stewardship actions required at the Buckeye Site are consistent with EPA policy and guidance.

The landfill materials and contaminated soil at the Buckeye Site are contained with a low-permeability solid waste cap. Contaminated groundwater and leachate are collected and treated by the constructed wetlands collection and treatment system prior to discharging to King's Run and Little McMahon Creek. Surface water compliance sampling confirms that the Buckeye Site is meeting discharge criteria except for occasional detections of low pH and exceedances of WET test limits, which tend to correspond with periods of low flow and low precipitation. Overall, the quality of the discharge water has improved since the construction of the treatment wetlands system, as demonstrated by an overall improvement in the WET test results and the removal of significant amounts of iron (approximately 20 tons per year), indicating that the system is working effectively.

Routine O&M, groundwater and surface water monitoring, the environmental covenant and FYRs confirm that the Buckeye Site no longer poses a significant threat to human

health or the environment. Therefore, EPA has determined that no further Superfund response is necessary at the Buckeye Site.

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Ohio, has determined that all required response actions have been implemented at the Buckeye Site and that no further response action is appropriate.

V. Deletion Action

The EPA, with concurrence of the State of Ohio through the OEPA, has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed at the Buckeye Site. Therefore, EPA is deleting the Buckeye Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 30, 2019 unless EPA receives adverse comments by August 30, 2019. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

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.

Dated: July 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9675; 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.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry “OH”, “Buckeye Reclamation”, “St. Clairsville”.

[FR Doc. 2019–16197 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 74

[AU Docket No. 19–61, GN Docket No. 12–268, MB Docket No. 16–306; DA 19–477]

Auction of Construction Permits for Low Power Television and TV Translator Stations Scheduled for September 10, 2019; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 104

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes the procedures, terms and conditions, together with the upfront payment amounts and minimum opening bid amounts, for an upcoming auction of construction permits for low power television station (LPTV) and TV translator stations. The Public Notice summarized here also provides an overview of the post-auction application and payment processes governing Auction 104.

DATES: Applications to participate in Auction 104 were required to be submitted prior to 6 p.m. Eastern Time (ET) on July 22, 2019. Upfront payments for Auction 104 must be received by 6 p.m. ET on August 14, 2019. Bidding in Auction 104 is scheduled to start on September 10, 2019.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Lynne Milne in the Office of Economics and Analytics' Auctions Division at (202) 418–0660. For auction process and procedures, the Auctions Hotline at (717) 338–2868. For LPTV and translator station service questions, Shaun Maher or Hossein Hashemzadeh in the Media Bureau's Video Division at (202) 418–1600. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 104 Procedures*

Public Notice, released June 6, 2019. The complete text of the *Auction 104 Procedures Public Notice*, including attachment and any related document, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The *Auction 104 Procedures Public Notice* and related documents also are available on the internet at the Commission's website: www.fcc.gov/auction/104, or by using the search function for AU Docket No. 19-61 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/ecfs/>.

I. General Information

1. Background. Certain LPTV stations and TV translator stations (collectively referred to as LPTV/translator stations) were displaced by the broadcast incentive auction which resulted in channel reassignments of certain full power and Class A television stations. As a result, a number of LPTV/translator stations were displaced from their channels.

2. Displacement applications for eligible LPTV/translator stations filed during the 2018 Special Displacement Window permitted staff to determine which applicant engineering proposals were mutually exclusive with other applicant proposals. After opportunity to resolve mutual exclusivity (MX) by settlement or technical modification of their engineering proposals, the MX LPTV/translator engineering proposals that remain will be resolved by competitive bidding.

3. The Incentive Auction Task Force (IATF) and Media Bureau (MB), in conjunction with the Office of Economics and Analytics (OEA), released a public notice seeking comment on competitive bidding procedures to be used in Auction 104 to resolve the then-remaining 6 groups of MX applications. A summary of that public notice was published at 84 FR 15167, April 15, 2019.

4. Five entities with pending MX LPTV applications filed six comments and/or reply comments in response to the *Auction 104 Comment Public Notice*. Several commenters request that the Commission resolve prior to the start of the auction outstanding pleadings that were filed against applicants in the MX groups to provide potential bidders with greater certainty and to encourage settlements. On April 26, 2019, the Media Bureau issued rulings denying the outstanding

pleadings. In light of those actions, comments seeking action on the informal objections are now moot. In addition, one reply commenter argued that the Commission should allow those decisions, and any subsequent petitions for reconsideration or applications for review, to become final before bidding in the auction begins. The Media Bureau, however, has acted on all outstanding pleadings and settlement proposals that involve parties that can become eligible to bid in Auction 104. There will be no delay in bidding to await final resolution of any such legal challenges.

5. Starting on April 18, 2019, the freeze was lifted on the filing of displacement and digital companion channel applications related to LPTV/translator stations. Applicants listed in Attachment A of the *Auction 104 Procedures Public Notice* were free to continue to enter into and submit settlement agreements for their MX groups up until 6 p.m. on July 22, 2019, the short-form application deadline for Auction 104. At that point, the prohibition on certain communications between auction applicants applies and no further discussions with other Auction 104 applicants regarding the auction, including settlements and bids or bidding strategies, will be permitted until after the close of the auction when the prohibition no longer applies. Thus, after 6 p.m. ET on July 22, 2019, applicants listed in Attachment A will not be able to resolve their application's mutual exclusivity except through the competitive bidding process, including payment of the applicable minimum opening bid.

6. Relevant Authority. An applicant listed in Attachment A of the *Auction 104 Procedures Public Notice* may become qualified to bid only if it complies with the competitive bidding filing, qualification, and payment requirements, and otherwise conforms to applicable rules, policies, and procedures. Accordingly, Auction 104 applicants should familiarize themselves thoroughly with the Commission's general competitive bidding rules (47 CFR part 1, subpart Q), including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Applicants should also familiarize themselves with the Commission's rules relating to the television broadcast service, as well as Commission orders concerning competitive bidding for broadcast construction permits. Applicants must also be thoroughly

familiar with the procedures, terms and conditions contained in the *Auction 104 Procedures Public Notice* and any future public notices that may be released in this proceeding.

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and it will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

8. Construction Permits and Entities Eligible to Participate in Auction 104. Auction 104 is a closed auction; only those individuals or entities listed in Attachment A to the *Auction 104 Procedures Public Notice* are eligible to complete the remaining steps to become applicants qualified to bid in this auction. Each listed applicant may become a qualified bidder only for the construction permit(s) specified for that applicant in Attachment A of the same public notice. Each of the engineering proposals within each MX group is directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Once mutually exclusive applications are accepted and thus mutual exclusivity exists for auction purposes, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.

9. If parties entered into and submitted prior to 6 p.m. on July 22, 2019, a settlement agreement and supporting documentation that is determined to be fully in accordance with the Commission's rules and which completely resolves the mutual exclusivity, that MX group will be removed from the auction and any remaining engineering proposals of that MX group will be processed under standard licensing procedures.

II. Applying To Participate in Auction 104

10. General Information Regarding Short-Form Applications. An application to participate in Auction 104, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of

the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below.

11. A party whose engineering proposal is listed on Attachment A of the *Auction 104 Procedures Public Notice* who wished to participate in the bidding in Auction 104 was required to file a short-form application (FCC Form 175) electronically via the Auction Application System prior to 6 p.m. ET on July 22, 2019, following the instructions prescribed in Attachment B to the *Auction 104 Procedures Public Notice*. Applications could have been filed for Auction 104 at any time beginning at noon ET on July 16, 2019, until the filing window closed at 6 p.m. ET on July 22, 2019. Applicants were strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on July 22, 2019.

12. An applicant must always click on the CERTIFY & SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. The Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the auction application system. However, there are occasions when auction-related systems may be temporarily unavailable.

13. An applicant bears full responsibility for submitting an accurate, complete and timely short-form application. Each applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a license. Each applicant should read carefully the instructions set forth in Attachment B to the *Auction 104 Procedures Public Notice* and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included within its short-form application.

14. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

15. Each applicant should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

16. Authorized Bidders. An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant. Accordingly, the same individual may not be listed as an authorized bidder in more than one FCC Form 175 for Auction 104.

17. Construction Permits in Short-Form Application. Auction 104 applicants will not select permits when filing the FCC Form 175; the permit(s) on which the applicant is eligible to bid will automatically display on the FCC Form 175.

18. Disclosure of Agreements Relating to Permits Subject to Auction. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnership, joint venture, consortium, or agreement, arrangement, or understanding of any kind relating to the LPTV/translator station permits that may be subject to auction, including any agreement that addresses or communicates directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permit(s) or license(s) on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. For this purpose, a controlling interest includes all individuals or entities with positive or negative de jure or de facto control of the applicant or licensee. In connection with the agreement disclosure requirements, the applicant must certify

under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any agreement, arrangement, or understanding of any kind relating to the permits being auctioned or relating directly or indirectly to bidding at auction with any other applicant, among others, into which the applicant has entered, or any party that it controls or is controlled by it, has entered. An auction applicant that enters into any agreement relating to the licenses being auctioned during an auction is subject to the same disclosure obligations it would be for agreements existing at the FCC Form 175 filing deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.

19. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. However, if the parties have not agreed in principle by the FCC Form 175 filing deadline, they should not describe, or include the names of parties to, the discussions on their applications.

20. In connection with 2015 amendments to the Part 1 competitive bidding rules, the Commission now prohibits any joint bidding arrangement, including arrangements relating to the permits being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure. Joint bidding arrangements include arrangements relating to the construction permits or licenses being auctioned that address or communicate, directly or indirectly, bids or bidding strategies, including arrangements regarding price or the specific construction permits or licenses on which to bid, as well as any such arrangements relating to the post-auction market structure. The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. An applicant may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely

operational or that provide for transfer or assignment of licenses, provided that such agreements, arrangements or understandings are disclosed on its application and do not both relate to the permits at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

21. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an agreement that has been excepted under the provisions of 47 CFR 1.2105(a)(2)(ix)(A)–(C), and that has been disclosed in that applicant's FCC Form 175, the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

22. Each applicant that is a winning bidder will be required following the close of the auction to disclose in an amendment to its displacement application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed. This applies to any bidding consortia, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the permits being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific permits on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. Failure to comply with the Commission's rules can result in enforcement action.

23. Ownership Disclosure Requirements. Each applicant must comply with the uniform part 1 ownership disclosure requirements and provide information required by 47 CFR 1.2105 and 1.2112, and, where applicable, 47 CFR 1.2110. Specifically, in completing the FCC Form 175, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in 47 CFR 1.2105 and 1.2112, and, where applicable, 47 CFR 1.2110. Each applicant is responsible for ensuring

that information submitted in its FCC Form 175 is complete and accurate.

24. Foreign Ownership Disclosure Requirements. Section 310 of the Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. In completing the FCC Form 175, an applicant will be required to certify that it is in compliance with the foreign ownership provisions contained in 47 U.S.C. 310. See 47 CFR 1.2105(a)(2)(vi).

25. Prohibited Communications. The rules prohibiting certain communications set forth in 47 CFR 1.2105(c) and 73.5002(d) and (e) of the rules apply to each applicant that files a short-form application (FCC Form 175) in Auction 104. Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

26. Entities Subject to 47 CFR 1.2105(c). An applicant for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10% or more of that entity.

27. A party that submits an application becomes an applicant under the rule at the application filing deadline and that status does not change based on later developments. Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an applicant for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

28. Scope of Prohibition on Communications. The Commission updated and revised 47 CFR 1.2105(c)'s prohibition on communications by auction applicants in recent years. Significantly, the Commission in 2015 amended 47 CFR 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area or market.

29. In addition to express statements of bids and bidding strategies, the prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

30. Parties subject to 47 CFR 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

31. Subject to the exception described above, 47 CFR 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. Moreover, a communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties.

32. Business discussions and negotiations that are unrelated to bidding in Auction 104 and that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant in either auction, are not prohibited by the rule. While 47 CFR 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are not auction related, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

33. Communicating with Third Parties. Section 1.2105(c) does not prohibit an applicant from

communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

34. In the case of an individual, the objective precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. Whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

35. Applicants may discuss the short-form application or bids for specific permits with their counsel, consultant, or expert of their choice before the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form application deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

36. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in this auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a 47 CFR 1.2105 violation. Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding could also violate the rule.

37. Section 1.2105(c) Certification. By electronically submitting its FCC Form 175, each applicant in Auction 104 certifies its compliance with 47 CFR 1.2105(c) and 73.5002(d) of the rules. However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

38. Reporting Requirements. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

Procedures for Reporting Prohibited Communications. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 104 Procedures Public Notice*. For Auction 104, such reports must be filed with the Chief of the Auctions Division, OEA, by the most expeditious means available. Any such report should be submitted by email to Margaret W. Wiener at the following email address: auction104@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions Division, OEA, FCC, 445 12th Street SW, Washington, DC 20554.

40. A party reporting any communication pursuant to 47 CFR 1.65 or 1.2105(a)(2) or (c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.

41. Compliance with Antitrust Laws. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Applicants should note that conduct that is permissible under the Commission's rules may be prohibited by the antitrust laws. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

42. New Entrant Bidding Credit. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full-power noncommercial educational (NCE) stations, on both reserved and

non-reserved channels, are included among media of mass communication.

43. In Auction 104, the bidder's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership change, such as resignation of positional interests (officer or director), in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the FCC Form 175 filing deadline. If, for example, on July 22, 2019, an auction applicant has a pending or granted application to assign or transfer control of a media interest, the applicant will not avoid attribution with respect to that interest. To avoid attribution, an applicant must have consummated the transaction before the FCC Form 175 filing deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form application filing deadline. See 47 CFR 73.5007(a). Each prospective bidder is reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately. Each applicant has a duty to continuously maintain the accuracy of information submitted in its auction application.

44. The attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33% of the total asset value of the applicant, even if such an interest is non-voting. The Commission will allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33% threshold without triggering attribution provided (1) the combined equity and debt in the eligible entity is less than 50%; or (2) the total debt in the eligible entity does not exceed 80% of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555.

45. Application Requirements. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

46. Bidding Credit Size. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the construction permit proposed in this auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. Any existing media of mass communications will be considered in the same area as a facility proposed in this auction if the relevant defined service areas of the existing mass media facilities partially overlap, or are partially overlapped by, the proposed facility's relevant contour. See 47 CFR 73.5007(b). For purposes of determining whether a construction permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using

maximum class facilities at the applicant-specified site coordinates, and with the relevant contour defined in 47 CFR 73.5007(b).

47. Bidding credits are not cumulative; qualifying applicants receive either the 25% or the 35% bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

48. Provisions Regarding Former and Current Defaulters. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 104. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that the applicant, any of its affiliates, any of its controlling interests, and any of the affiliates of its controlling interests, are not in default on any payment for a Commission construction permit or license (including down payments) and that are not delinquent on any non-tax debt owed to any Federal agency. For purposes of this certification, the term affiliate is defined in 47 CFR 1.2110 and the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

49. Under the Commission's revised rule regarding applications filed by former defaulters, an applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 filing deadline, it or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. A former defaulter or delinquent who has remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the FCC Form

175 filing deadline in this auction may participate so long as it is otherwise qualified, if the applicant makes an upfront payment that is 50% more than would otherwise be required. For this reason, an applicant must certify under penalty of perjury whether it (along with any of its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described in 47 CFR 1.2105(a)(2)(xii). For purposes of evaluating the certifications under 47 CFR 1.2105(a)(2)(xi) and (xii), non-tax debt owed to any Federal agency includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund (USF), Telecommunications Relay Services Fund, and the North American Numbering Plan Administration. For purposes of making this certification, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

50. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license as well as any cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

51. Applicants should review previous guidance provided on default and delinquency disclosure requirements in the context of the auction short-form application process. Applicants also are advised to consult with Auctions Division staff if they have questions about delinquency or default disclosure requirements.

52. **Optional Applicant Status Identification.** An applicant owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), or rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify itself regarding this status in filling out its FCC Form 175. This applicant status information is collected for statistical

purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

53. **Minor Modifications to Short-Form Applications.** After the initial application filing deadline, an applicant will be permitted to make only minor modifications to its short-form application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, or change in the applicant's selected bidding option (electronic or telephonic). A major modification to an FCC Form 175 application (e.g., change the engineering proposal(s), change the certifying official, change control of the applicant (e.g., any change in ownership or control that would constitute an assignment or transfer of control of the applicant), or claim eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline.

54. Any change in control of the applicant will be considered a major amendment. If an applicant makes a major amendment, as defined by 47 CFR 1.2105(b)(2), the major amendment may result in the disqualification of the applicant from participating in the bidding. Even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the prohibitions on certain communications of 47 CFR 1.2105(c) until the down payment deadline for this auction. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

55. **Maintaining Current Information in Short-Form Applications.** Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application in a competitive bidding proceeding. An auction applicant must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs.

56. An applicant's obligation to make modifications to a pending auction application in order to provide additional or corrected information continues in accordance with the

Commission's rules. An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

III. Preparing for Bidding

57. **Due Diligence.** Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permit(s) it is seeking in this auction. The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

58. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 104 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act, 47 CFR part 1, subpart I.

59. Each applicant should continue to conduct its own research throughout Auction 104 in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each Auction 104 applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in the *Auction 104 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to

undertake, depending upon specific facts and circumstances related to its interests.

60. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 104. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

61. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

62. Online Tutorial on Auction Process. An educational auction tutorial was available starting on July 8, 2019, on the Education tab of the Auction 104 website. This tutorial will remain available and accessible anytime for reference.

63. Application Processing and Corrections of Deficiencies. After the deadline for filing auction applications, Commission staff will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. Subsequently, a public notice will be issued to identify applications that are complete and those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications. A paper copy of this public notice identifying initial application status will be sent to the contact address listed in the FCC Form 175 for each applicant by overnight delivery. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and

phone number of a Commission staff member who can answer questions specific to the application.

64. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to auction104@fcc.gov. In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175.

65. After Commission staff review resubmitted applications for Auction 104, Commission staff will release a public notice identifying applicants that have become qualified bidders before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Forms 175 that are deemed timely filed and found to comply with the Commission's competitive bidding rules and other requirements set forth in the *Auction 104 Procedures Public Notice*, and comply with applicable Commission rules, and which have made a timely and sufficient upfront payment (as described below).

66. Upfront Payments. In order to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, February 2003 edition) must be submitted by 6 p.m. ET on August 14, 2019, following the procedures and instructions outlined below and the instructions in Attachment C to the *Auction 104 Procedures Public Notice*.

67. Making Upfront Payments by Wire Transfer. All upfront payments must be made by wire transfer. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's account at the U.S. Treasury. No other payment method is acceptable. The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments. All payments must be made in U.S. dollars. Upfront payments for Auction 104 go to a U.S. Treasury account number different from the accounts used in previous FCC auctions. This wire transfer must include the information specified and comply with

the instructions provided in the *Auction 104 Procedures Public Notice*. The beneficiary account number is specific to the upfront payments for Auction 104. Do not use a beneficiary account number from a previous auction.

68. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete Form 159. To avoid untimely payments, an applicant should discuss arrangements and deadlines with its financial institution (including that financial institution's specific wire transfer requirements) several days before they plan to make the wire transfer, and well ahead of the due date, as well as allowing sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. Contact information for relevant staff is supplied in this public notice.

69. Failure to deliver a sufficient upfront payment as instructed herein by the August 14, 2019, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

70. Completing and Submitting FCC Form 159. An accurate and complete Form 159 (February 2003 edition) must be sent to the FCC to accompany each upfront payment. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed Form 159 to the FCC at (202) 418-2843. On the fax cover sheet, write Wire Transfer—Auction Payment for Auction 104. Alternatively, the completed form can be scanned and sent as an attachment to an email to RROGWireFaxes@fcc.gov.

71. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 104 at the U.S. Treasury before the deadline. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C of the *Auction 104 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after

submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate.

72. Upfront Payments and Bidding Eligibility. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of the *Auction 104 Procedures Public Notice*. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permit(s) on which they will bid. The amount of the upfront payment determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of the *Auction 104 Procedures Public Notice* for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction 104 Procedures Public Notice*, or else the applicant will not be eligible to participate in the auction. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

73. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of the *Auction 104 Procedures Public Notice*, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

74. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that number of bidding units. A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of the *Auction 104 Procedures Public Notice*. In order to make this calculation, an applicant

should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

75. Applicants that are former defaulters, as described above, must pay upfront payments 50% greater than non-former defaulters. For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included. For this purpose, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i). If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

76. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction 104 Procedures Public Notice*, the applicant will not be eligible to participate in the auction. This applicant will retain its status as an applicant in Auction 104 and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

77. Auction Registration. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. For security reasons, the mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, an FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

78. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on September 4, 2019, a qualified bidder must call the Auctions Hotline. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

79. In the event that SecurID® tokens are lost or damaged, only a person who

has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auctions Hotline.

80. Each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 104.

81. Remote Electronic Bidding via the FCC Auction Bidding System. Only qualified bidders are permitted to bid. All bidding will take place remotely. There will be no on-site bidding during Auction 104. Qualified bidders will be able to place bids in Auction 104 over the internet using the FCC auction bidding system. Telephonic bidding will be available as well. All telephone calls are recorded. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

82. The Commission makes no warranties whatsoever with respect to the FCC auction application system and the auction bidding system. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC auction systems that are accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

83. To the extent an issue arises with the Auction System itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. The Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the

weekends, every effort is made to minimize any downtime to auction-related systems, including the Commission's bidding system. However, there are occasions when auction-related systems may be temporarily unavailable. Should an issue arise that is outside the Auction System or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the Auction System, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the Auction System.

84. **Mock Auction.** All qualified bidders will be eligible to participate in a mock auction on September 6, 2019. The mock auction will enable qualified bidders to become familiar with the FCC auction bidding system prior to the auction. We strongly recommend that all authorized bidders participate in the mock auction. Details will be announced by public notice.

IV. Bidding

85. **Simultaneous Multiple Round Auction.** The Commission's standard simultaneous multiple-round auction format will be used for Auction 104. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

86. **Auction Bidding System.** An Auction 104 bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits designated for that applicant in Attachment A of the *Auction 104 Procedures Public Notice* and (2) the bidder's bidding eligibility measured in bidding units. The FCC auction bidding system will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of the *Auction 104 Procedures Public Notice*.

87. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during a bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

88. **Round Structure.** The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which will be released at least one week before the start of bidding in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

89. **IATF, MB and OEA** retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, may be changed depending upon bidding activity and other factors, by prior announcement.

90. **Eligibility and Activity Rules.** For Auction 104, the amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the *Auction 104 Procedures Public Notice*. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of the *Auction 104 Procedures Public Notice* as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

91. To ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Note that the

bidding units associated with construction permits for which the bidder has removed bids in that round do not count towards current activity.

92. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round. A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after the given round.

93. In Auction 104, a bidder is required to be active on 100% of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

94. **Activity Rule Waivers.** Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. In Auction 104, each bidder is provided with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic.

95. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

96. A bidder with insufficient activity may wish to reduce its bidding

eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the Auction 104 activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

97. Also, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bid is placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid or a proactive waiver will not keep the auction open.

98. Auction Stopping Rule. For Auction 104, a simultaneous stopping rule approach will be employed, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.

99. Alternative versions of the simultaneous stopping procedure also may be employed for Auction 104. (1) The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule. (3) The auction would close using a modified version of the simultaneous stopping rule that combines options (1) and (2). (4) The auction would close after

announcement of a specified number of additional rounds (special stopping rule). If this special stopping rule is invoked, bids in the specified final round(s) will be accepted, after which the auction will close. (5) The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

100. These options will be exercised only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, it is likely that there will be an attempt to change the pace of the auction, such as, changing the number of bidding rounds per day and/or the minimum acceptable bids. IATF, MB and OEA retain the discretion to exercise any of these options with or without prior announcement during the auction.

101. Auction Delay, Suspension or Cancellation. By public notice and/or by announcement through the FCC auction bidding system, IATF, MB and OEA may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, IATF, MB and OEA, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause us to delay or suspend the auction. This authority will be exercised solely at the discretion of IATF, MB and OEA, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

102. Bid Amounts. If the qualified bidder has sufficient eligibility to place a bid on a particular construction permit, eligible bidders will be able to place bids on a given construction permit in each round in any of up to nine pre-defined bid amounts. For each construction permit, the FCC auction bidding system interface will list the 9 acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid

amounts. The FCC auction bidding system also includes an upload function that allows bidders to upload text files containing bid information.

103. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined as described below.

104. During a round, an eligible bidder may submit bids for construction permits (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round.

105. Reserve Price and Minimum Opening Bids. Normally a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. Auction 104 will be conducted without reserve prices for specific construction permits. In contrast to a reserve price, a minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. The specific minimum opening bid amounts for each of the construction permits in Auction 104 are specified in Attachment A to the *Auction 104 Procedures Public Notice*.

106. Minimum Acceptable Bids. For calculation of the 9 acceptable bid amounts for each construction permit, Auction 104 will begin with a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5%. In Auction 104, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—e.g., provisionally winning bid amount * 1.10, rounded using the Commission's standard rounding procedures for auctions as described in the *Auction 104 Procedures Public Notice*.

107. Additional Bid Amounts. In Auction 104, the FCC auction bidding system will calculate the 8 additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of

5%, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. With an additional bid increment percentage of 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) * (0.05), rounded using the Commission's standard rounding procedures for auctions as described in the *Auction 104 Procedures Public Notice*. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2 * (additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3 * (additional increment amount)); etc.

108. Bid Amount Changes. IATF, MB and OEA retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if circumstances so dictate. Further, IATF, MB and OEA retain the discretion to do so on a construction permit-by-construction permit basis. IATF, MB and OEA also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids could be set. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, then the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. If any such discretion is exercised, bidders will be alerted by announcement in the FCC auction bidding system during the auction.

109. Provisionally Winning Bids. In Auction 104, the FCC auction bidding

system at the end of each bidding round will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round.

Provisionally winning bids at the end of the auction become the winning bids.

110. The FCC auction bidding system will assign a pseudo-random number to each bid upon submission. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), the tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

111. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.

112. Bid Removal and Bid Withdrawal. Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively unsubmitted the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

113. In Auction 104, bidders are prohibited from withdrawing any bid after close of the round in which that bid was placed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

114. Auction Announcements. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

V. Post-Auction Procedures

115. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and minor amendments to each winning bidder's pending displacement application filed initially in the 2018 Special Displacement Window.

116. Down Payments. As required by 47 CFR 1.2107(b), within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 104 to 20% of the net amount of its winning bids (gross bid(s) less any applicable new entrant bidding credit(s)).

117. Final Payments. As required by 47 CFR 1.2109(a), each winning bidder must submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.

118. Long-Form Applications. Each party eligible to apply for Auction 104 has already filed a displacement application, Schedule C (Schedule for a Construction Permit for a LPTV or TV Translator Broadcast Station) of FCC Form 2100 (Application for Media Bureau Video Service Authorization) during the 2018 Special Displacement Window. A winning bidder will not be required to submit a separate long-form application following close of bidding in Auction 104. A winning bidder, however, will be required to submit minor amendments to their previously filed displacement application by a deadline to be determined after the close of the auction. Amendments must be filed electronically in the Media Bureau's Licensing and Management System (LMS). As required by 47 CFR 73.5006, winning bidders' applications, as amended, will be placed on public notice, triggering the appropriate period for the filing of petitions to deny pursuant to 47 CFR 73.5006. Further instructions will be provided to winning bidders in the auction closing public notice.

119. Default and Disqualification. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment by the specified deadline, fails to make a full and timely final payment, fails to timely amend its pending displacement application, or is otherwise disqualified) is liable for

default payments as described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 104 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for a default in Auction 104 is 20% of the applicable bid.

120. In the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant. See 47 CFR 1.2109(d).

121. Refund of Remaining Upfront Payment Balance. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. This written authorization must comply with the refund instructions in the *Auction 104 Procedures Public Notice*.

VI. Procedural Matters

122. Paperwork Reduction Act. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. See 44 U.S.C. 3506(c)(4).

123. Congressional Review Act. The Commission will send a copy of the Auction 104 Procedures Public Notice in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

124. Supplemental Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the Broadcast

Competitive Bidding Notice of Proposed Rulemaking (NPRM) and other Commission NPRMs (collectively Competitive Bidding NPRMs) pursuant to which Auction 104 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the Broadcast Competitive Bidding Order and other Commission orders (collectively Competitive Bidding Orders) pursuant to which Auction 104 will be conducted. In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 104 Comment Public Notice*, published at 84 FR 15167, April 15, 2019. The Commission sought written public comment on the proposals in the *Auction 104 Comment Public Notice*, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the Competitive Bidding Orders to reflect the actions taken in the *Auction 104 Procedures Public Notice* and conforms to the RFA.

125. *Need for, and Objectives of, the Public Notice.* The *Auction 104 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings. More specifically, the *Auction 104 Procedures Public Notice* provides an overview of the procedures, terms and conditions governing Auction 104 and the post-auction application and payment processes, as well as setting the minimum opening bid amount for the five construction permits for LPTV or TV translator stations available in Auction 104.

126. To promote the efficient and fair administration of the competitive bidding process for all Auction 104 participants, the *Auction 104 Procedures Public Notice* announces the following policies: (1) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances); (2) A specific minimum opening bid amount for each construction permit available in Auction 104; (3) A specific number of bidding units for each construction permit; (4) A specific upfront payment amount for each construction permit; (5) Establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity requirement in which a bidder is

required to be active on 100% of its bidding eligibility in each round of the auction; (7) Provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (8) Use of minimum acceptable bid amounts and additional acceptable increments, along with a proposed methodology for calculating such amounts, with IATF, MB and OEA retaining discretion to change the methodology if circumstances dictate; (9) A procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (10) No bid withdrawals are allowed in Auction 104; and (11) Establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

127. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the procedures and policies proposed in the Supplemental IRFA.

128. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments, 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 104 Comment Public Notice*.

129. *Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(a)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. 5 U.S.C. 601(6). In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA, 15 U.S.C. 632.

130. Auction 104 is a closed auction. The specific competitive bidding procedures and minimum opening bid

amounts described in the *Auction 104 Procedures Public Notice* will affect only the 10 individuals or entities listed in Attachment A to the *Auction 104 Procedures Public Notice* who are the only parties eligible to complete the remaining steps to become qualified to bid in this auction. These 10 individuals or entities for Auction 104 include firms of all sizes.

131. *Television Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999 and 70 had annual receipts of \$50 million or more. Based on this data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

132. The Commission has estimated the number of licensed commercial television stations to be 1,373. Of this total, 1,270 stations (or about 92.5%) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey, Inc. Media Access Pro Television Database in November of 2018, therefore qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE television stations to be 388. These stations are non-profit, and therefore are considered to be small entities. There are also 2,295 LPTV stations, including Class A stations, and 3,654 TV translators. Given the nature of these services, it is presumed that all of these entities qualify as small entities under the SBA small business size standard.

133. The SBA size standard data does not enable us to make a meaningful estimate of the number of small entities who may participate in Auction 104. There are a maximum of 10 individuals or entities that may become qualified bidders in Auction 104, in which applicant eligibility is closed. The

specific procedures and minimum opening bid amounts announced in the *Auction 104 Procedures Public Notice* will affect directly all applicants participating in Auction 104.

134. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. Our estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 104 competitive bidding procedures may apply does not exclude any LPTV or TV translator station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, it is not possible at this time to define or quantify the criteria that would establish whether a specific LPTV station or TV translator applicant is dominant in its field of operation. In addition, it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

135. It is not possible to accurately develop an estimate of how many of these 10 individuals or entities are small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

136. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased application process for all spectrum auctions, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. More specifically as mentioned above, small entities and other Auction 104 applicants will be

qualified to bid in the auction only if they comply with the following: (1) Submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the construction permits for which it is designated as an applicant on Attachment A to the *Auction 104 Procedures Public Notice*. In accordance with the terms of 47 CFR 1.2105(b)(2), an applicant whose application is found to contain deficiencies will have a limited opportunity to bring their application into compliance with the Commission's competitive bidding rules during a resubmission window. All qualified bidders will automatically be registered for the auction and mailed the necessary registration materials.

137. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of: (1) 47 CFR 1.2107(b) by submitting within 10 business days of release of the auction closing public notice as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 104 to 20% of the net amount of its winning bid or bids; and (2) 47 CFR 1.2109(a) by submitting within 10 business days after the down payment deadline the balance of the net amount for each of its winning bids. Further, as required by 47 CFR 1.2105(c), reports concerning a prohibited communication must be filed with the Chief of the Auctions Division as detailed in 47 CFR 1.2105(c)(4).

138. The processes and procedures adopted in the *Auction 104 Procedures Public Notice* should minimize the need for small entities to hire attorneys, engineers, consultants, or other professionals. While we are unable to quantify the cost of compliance with the requirements, we do not believe that such costs of compliance will unduly burden small entities. The processes and procedures are consistent with existing Commission policies and requirements used in prior auctions for broadcast construction permits. Thus, some small entities may already be familiar with such policies and requirements and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that have been made available, including but not limited to, the availability of a mock auction,

remote electronic or telephonic bidding, and access to hotlines for both technical and auction assistance, should help facilitate participation while minimizing the need to rely on assistance from outside professionals and consultants.

139. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. See 5 U.S.C. 603(c)(1)–(4).

140. We believe that the steps described below to facilitate participation in Auction 104 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures adopted for Auction 104 should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the processes and systems that will be utilized in Auction 104. During the auction, participants will be able to access and participate in the auction via the internet using a web-based system, or telephonically, providing two cost effective methods of participation avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of an auctions hotline for assistance with auction processes and procedures as well as a technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, small business entities as well as other auction participants, will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process.

141. Another step implemented in the *Auction 104 Procedures Public Notice* that can minimize the economic impact for small entities is the inclusion of the New Entrant Bidding Credit adopted in the 1998 Broadcast Competitive Bidding Order to implement the statutory provisions of section 309(j) regarding opportunities for small, minority-and women-owned businesses. Applicants that qualify for the New Entrant Bidding Credit are eligible to discount the amount of a winning bidder's total bids. The size of a New Entrant Bidding Credit will depend on the number of ownership interests in other media of mass communications that are attributable to the bidder entity and its attributable interest holders. See 47 CFR 73.5007, 73.5008. An applicant can qualify for a 35% New Entrant Bidding Credit if it can certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications or a 25% New Entrant Bidding Credit if it can certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications. Because eligibility for a New Entrant Bidding Credit is not based on the size of the individual or entity requesting the bidding credit, some applicants for Auction 104 that claim eligibility for a New Entrant Bidding Credit may meet the definition of small entity or small business, as defined above.

142. The above mechanisms are made available to facilitate participation in Auction 104 by all qualified bidders and may result in significant cost savings for small business entities that use these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction 104, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

143. *Notice to Chief Counsel for Advocacy of SBA.* The Commission will send a copy of the *Auction 104 Procedures Public Notice*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 604(b).

Federal Communications Commission.

William Huber,

Associate Chief, Auctions Division, Office of Economics and Analytics.

[FR Doc. 2019–15811 Filed 7–30–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 18–119; FCC 19–40]

FM Translator Interference

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, information collection requirements adopted in the Commission's *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Dkt. No. 18–119, FCC 19–40, (FM Translator Interference Report and Order). This document is consistent with the FM Translator Interference Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the rules.

DATES: The rule amendments to 47 CFR 74.1203(a)(3) and 47 CFR 74.1204(f), published at 84 FR 27734 on June 14, 2019 (corrected at 84 FR 29806 (June 25, 2019)), are effective on August 13, 2019.

FOR FURTHER INFORMATION CONTACT:

Cathy Williams by email at Cathy.Williams@fcc.gov and telephone at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the new or modified information collection requirements contained in 47 CFR 74.1203(a)(3) and 47 CFR 74.1204(f), as adopted in the FM Translator Interference Report and Order, FCC 19–40, published at 84 FR 27734 (date correction published at 84 FR 29806 (June 25, 2019)). OMB approved OMB Control Number 3060–1263 on July 16, 2019, and OMB Control Number 3060–0405 on July 17, 2019. The Commission publishes this notice as an announcement of the effective date of those information collection requirements.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on July 16, 2019, and on July 17, 2019, for the new or modified information collection requirements contained in 47 CFR 74.1203(a)(3) and 47 CFR 74.1204(f), as

amended, in the FM Translator Interference Report and Order, MB Dkt. No. 18–119 FCC 19–40 (rel. May 9, 2019). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers are 3060–1263 and 3060–0405. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1263.

OMB Approval Date: July 16, 2019.

OMB Expiration Date: July 31, 2022.

Title: Sections 74.1203(a)(3), Interference, and 74.1204(f), Protection of FM broadcast, FM Translator and LP100 stations.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 270 respondents; 270 responses.

Estimated Time per Response: 3–5 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Total Annual Burden: 1,080 hours.

Total Annual Cost: \$924,100.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On May 9, 2019, the Commission adopted a Report and Order, *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, FCC 19–40, MB Docket No. 18–119 (FM Translator Interference Report and Order), adopting proposals to streamline the rules relating to interference caused by FM translators and to expedite the translator interference complaint resolution process. These measures are designed to limit or avoid protracted and contentious interference disputes,

provide translator licensees additional investment certainty and flexibility to remediate interference, and provide affected stations earlier and expedited resolution of interference complaints. Under this new information collection, the following information collection requirements require OMB approval.

Specifically, the FM Translator Interference Report and Order pertains to this new Information Collection as it codifies the translator interference listener complaint requirements under section 74.1201(k) and sections 74.1203(a)(3) (actual interference) and 74.1204(f) (predicted interference) of the rules. The Commission defines the requirements for a listener complaint submitted with a translator interference claim in section 74.1201(k) as a complaint that is signed and dated by the listener and contains the following information: (1) The complainant's full name, address, and phone number; (2) a clear, concise, and accurate description of the location where the interference is alleged to occur; (3) a statement that the complainant listens to the desired station using an over-the-air signal at least twice a month, to demonstrate the complainant is a regular listener; and (4) a statement that the complainant has no legal, employment, financial, or familial affiliation or relationship with the desired station, to demonstrate the complainant is disinterested. Electronic signatures are acceptable for this purpose.

The FM Translator Interference Report and Order establishes a minimum number of listener complaints ranging from 6 to 25 depending on the population served within the protected contour of the complaining station. The Commission explains that a proportionate approach, which was supported by multiple commenters, would be fairer and more effective than a single minimum number for all complaining stations. In addition to the required minimum number of valid listener statements, a station submitting a translator interference claim package pursuant to either section 74.1203(a)(3) or 74.1204(f) must include: (1) A map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station; (2) a statement that the complaining station is operating within its licensed parameters; (3) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (4) U/D data demonstrating that at each listener location the ratio of undesired to

desired signal strength exceeds –20 dB for co-channel situations, –6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's standard contour prediction methodology set out in Section 73.313.

In the FM Translator Interference Report and Order, the Commission outlines two paths for resolving interference if the translator decides to continue operation on its original channel. First, a translator operator may resolve each listener complaint by working with a willing listener to resolve reception issues. The translator operator must then document and certify that the desired station can now be heard on the listener's receiver, *i.e.*, that the adjustment to or replacement of the listener's receiving equipment actually resolved the interference. Second, the translator operator may work with the complaining station to resolve station signal interference issues using rule-compliant suitable technical techniques. (The Commission provides flexibility to the parties to determine the testing parameters for demonstrating that the interference has been resolved, for example, the use of on-off testing or field strength measurements.) Once agreement is reached, the translator operator submits the agreed-upon remediation showing to the Commission.

OMB Control Number: 3060–0405.

OMB Approval Date: July 17, 2019.

OMB Expiration Date: July 31, 2022.

Title: Form 2100, Schedule 349—FM Translator or FM Booster Station Construction Permit Application.

Form Number: FCC Form 2100, Schedule 349.

Respondents: Business or other for-profit entities; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents and Responses: 1,350 respondents; 2,775 responses.

Estimated Time per Response: 1–1.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,775 hours.

Total Annual Cost: \$3,950,725.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: On May 9, 2019, the Commission adopted a Report and Order, Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference, FCC 19–40, MB Docket No. 18–119, adopting proposals to streamline the rules relating to interference caused by FM translators and to expedite the translator interference complaint resolution process. These measures are designed to limit or avoid protracted and contentious interference disputes, provide translator licensees additional investment certainty and flexibility to remediate interference, and provide affected stations earlier and expedited resolution of interference complaints.

In the FM Translator Interference Report and Order, the Commission adopted its proposal to offer additional flexibility to FM translator licensees, by allowing them to resolve interference issues using the effective and low-cost method of submitting a minor modification application to change frequency to any available same-band FM channel. This method will reduce the number of opposition pleadings filed and the obligation to defend an interference claim.

Specifically, the FM Translator Interference Report and Order pertains to this Information Collection as it modifies Section 74.1233(a)(1) of the rules to define an FM translator station's change to any available same-band frequency using a minor modification application, filed using FCC Form 349, upon a showing of interference to or from any other broadcast station. Prior to the FM Translator Interference Report and Order, if an existing FM translator caused actual interference, as prohibited by Section 74.1203(a), it was limited to remedial channel changes, filing FCC Form 349 as a minor change application, to only first, second, or third adjacent, or IF channels. A change to any other channel was considered a major change on FCC Form 349, which could only be submitted during a filing window. The FM Translator Interference Report and Order enables more translator stations to cure interference by simply changing channels within the same band by filing Form 349 as a minor change application, rather than other costlier and less efficient remedies.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2019–16334 Filed 7–30–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2019–0015;
FXES11130900000C6–190–FF09E42000]

RIN 1018–BD86

Endangered and Threatened Wildlife and Plants; Reinstatement of ESA Listing for the Grizzly Bear in the Greater Yellowstone Ecosystem in Compliance With Court Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that had the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the grizzly bear (*Ursus arctos horribilis*) in the Greater Yellowstone Ecosystem (GYE). Thus, this final rule is required to reflect the change effected by that order to the GYE grizzly bear population's status on the List of Endangered and Threatened Wildlife.

DATES: This action is effective July 31, 2019. However, the court order had legal effect immediately upon being filed on September 24, 2018.

ADDRESSES: This final rule is available:

- Electronically at <http://www.regulations.gov> in Docket No. FWS–R6–ES–2019–0015;
- From U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office, University of Montana, University Hall #309, Missoula, MT 59812; telephone 406–243–4903. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Dr. Hilary Cooley, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room #309, University of Montana, Missoula, MT 59812; telephone 406–243–4903. For Tribal inquiries, contact Anna Munoz, Native American Liaison, U.S. Fish and Wildlife Service; telephone 303–236–4510. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2017, we published a final rule establishing a distinct

population segment (DPS) of the grizzly bear (*Ursus arctos horribilis*) for the GYE and removing this DPS from the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) (82 FR 30502, June 30, 2017; “2017 delisting rule”). In the 2017 delisting rule, we determined that the GYE grizzly bear population was no longer an endangered or threatened population pursuant to the ESA, based on the best scientific and commercial data available. Additional background information on the grizzly bear in the GYE and on this decision, including previous Federal actions, is found in our 2017 delisting rule.

Subsequently, six lawsuits challenging our 2017 delisting rule were filed in Federal district courts in Missoula, Montana, and Chicago, Illinois. The Chicago lawsuit was transferred to Missoula, Montana, and all six lawsuits were consolidated as *Crow Indian Tribe, et al. v. United States, et al.*, case no. CV 17–89–M–DLC (D. Mont. 2018). Plaintiffs' allegations focused primarily on violations of the ESA and the Administrative Procedure Act (5 U.S.C. 500, *et seq.*).

On September 24, 2018, the Montana District Court issued an order in *Crow Indian Tribe, et al. v. United States, et al.*, 343 F.Supp.3d 999 (D. Mont. 2018), that vacated the 2017 delisting rule and remanded it back to the Service. Thus, this final rule is required to reflect the change in the GYE grizzly bear population's status effected by that order.

Rule Effective Upon Publication

This rulemaking is necessary to comply with the September 24, 2018, court order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impracticable and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d), that the agency has good cause to make this rule effective upon publication.

Effects of the Rule

Per the September 24, 2018, court order, any and all grizzly bears in the GYE are once again listed as a threatened species under the ESA. Because the Court vacated the entire 2017 delisting rule, all grizzly bears in the lower 48 States are again listed as threatened. Accordingly, we are revising the entry for grizzly bear in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). An existing rule under section 4(d) of the ESA governing the regulation of grizzly bears in the lower

48 States (50 CFR 17.40(b)) again applies to this entire population.

We are also taking this opportunity to correct an omission in the “Listing citations and applicable rules” column. Per 50 CFR 17.11(f), the information in this column “is for reference and navigational purposes only.” We have become aware that the list of citations in this column does not include a final rule that published in 2010: “Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Grizzly Bear in the Greater Yellowstone Ecosystem in Compliance With Court Order.” Therefore, we are adding this citation in chronological order to the list: 75 FR 14496, 3/26/2010. This change is purely

administrative and has no regulatory effect.

This rule will not affect the grizzly bear’s Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Amendment

Accordingly, in order to comply with the court order discussed above, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the first entry for “Bear, grizzly” under “Mammals” in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Mammals				
* Bear, grizzly	* <i>Ursus arctos horribilis</i>	* U.S.A., conterminous (lower 48) States, except where listed as an experimental population.	* T	* 32 FR 4001, 3/11/1967; 35 FR 16047, 10/13/1970; 40 FR 31734, 7/28/1975; 72 FR 14866, 3/29/2007; 75 FR 14496, 3/26/2010; 82 FR 30502, 6/30/2017; 84 FR [INSERT Federal Register PAGE WHERE THE DOCUMENT BEGINS], 7/31/2019; 50 CFR 17.40(b). ^{4d}
* 	* 	* 	* 	*

Dated: June 6, 2019.

Margaret E. Everson,

Principal Deputy Director, exercising the authority of the Director for the U.S. Fish and Wildlife Service.

[FR Doc. 2019–16350 Filed 7–30–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 190220141–9141–01]

RIN 0648–BI78

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions in Purse Seine Fisheries

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule establishes limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (EEZ) and on

the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The calendar year limit for 2019 is 1,616 fishing days. The calendar year limit for 2020 and subsequent years is 1,828 fishing days. This action is necessary for the United States to implement provisions of a conservation and management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party. NMFS is seeking comments on this interim final rule and will respond to those comments in a subsequent final rule.

DATES: Effective on July 31, 2019. Comments must be submitted in writing by August 30, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0056, and the regulatory impact review (RIR) prepared for the interim final rule, by either of the following methods:

• **Electronic submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2019-0056,

2. Click the “Comment Now!” icon, complete the required fields, and

3. Enter or attach your comments.

—OR—

• **Mail:** Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR, the programmatic environmental assessment (PEA), and supplemental environmental assessment (SEA) prepared for National Environmental Policy Act (NEPA) purposes are available at www.regulations.gov or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–725–5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention is concerned with the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC), which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures adopted by the Commission and other decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce

has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

WCPFC Decision on Tropical Tunas

At its Fifteenth Regular Session, in December 2018, the WCPFC adopted Conservation and Management Measure (CMM) 2018–01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2018–01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. It is a successor to CMM 2017–01, adopted in December 2017. These and other CMMs are available at: www.wcpfc.int/conservation-and-management-measures. CMM 2018–01 is similar in many respects to its predecessor WCPFC conservation and management measures for tropical tunas, and NMFS has already implemented most provisions of CMM 2018–01 through prior rulemaking.

The purpose of CMM 2018–01 is to ensure the sustainability of the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO until the establishment of specific harvest strategies for those stocks. CMM 2018–01 went into effect on February 13, 2019, and remains in effect until February 10, 2021.

The provisions of CMM 2018–01 implemented in this interim final rule are the limits on fishing effort by U.S. purse seine vessels in the U.S. EEZ and on the high seas between the latitudes of 20° N. and 20° S. in the Convention Area. CMM 2018–01 specifies a limit of 558 fishing days in the U.S. EEZ and a limit of 1,270 fishing days on the high seas for each of the calendar years 2019 and 2020 for U.S. purse seine vessels.

CMM 2018–01 also includes new provisions for fish aggregating device (FAD) management for purse seine vessels. These new provisions are: (1) Specific FAD design requirements to reduce the risk of entanglement of sharks, sea turtles and other species; and (2) language to clarify that sets on small amounts of plastic or small garbage that do not have a tracking buoy attached are not considered to be FAD sets during the prohibition periods in 2019 for setting on FADs.

Regarding the specific FAD design requirements: The FAD design

requirements do not need to go into effect until January 1, 2020, as specified in CMM 2018–01. They are not being implemented through this interim final rule; they may be implemented, as appropriate, in a separate rulemaking.

Regarding the language to clarify the nature of FAD sets: In 2018, NMFS implemented the provisions regarding the prohibition periods for setting on FADs set forth in CMM 2017–01, which are identical to the provisions set forth in CMM 2018–01. Under existing regulations, U.S. purse seine vessels are prohibited from setting on FADs in each calendar year from July 1 through September 30 in the area between 20° N latitude and 20° S latitude in the Convention Area, and for an additional two months on the high seas in that area (November and December). See 50 CFR 300.223(b). CMM 2018–01 included new language clarifying that sets on small amounts of plastic or garbage that do not have a tracking buoy are not considered to be FAD sets during the prohibition periods. The current definition of FAD at 50 CFR 300.211 states that FAD means “any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water,” excluding a vessel. NMFS has not in the past, and continues not to, interpret the current regulatory FAD definition to include “sets on small amounts of plastic or garbage that do not have a tracking buoy” during prohibition periods. Because the CMM’s language is consistent with NMFS’ interpretation of the existing regulatory definition, NMFS is not revising the existing FAD definition found at 50 CFR 300.211.

The Action

CMM 2018–01 includes purse seine fishing effort limits for calendar year 2019 and calendar year 2020. Because the Commission will likely continue to adopt similar management measures for future years, and to ensure that the conservation measures do not lapse, NMFS is implementing the limits in this interim final rule to remain effective until they are replaced or amended.

Under CMM 2018–01, the specified U.S. purse seine fishing effort limit for the U.S. EEZ is 558 fishing days per year and the specified limit for the high seas is 1,270 fishing days per year. CMM 2017–01 and CMM 2018–01 both include language that requires any overage of an annual limit to be deducted from the limit for the following year. The separate limits for

2018 were 1,370 fishing days for the high seas and 458 fishing days for the U.S. EEZ. As a result of the purse seine fishing effort limit for the high seas being reached, NMFS closed the high seas in the Convention Area to U.S. purse seine fishing on September 18, through the end of the calendar year (see 83 FR 45849; published September 11, 2018). NMFS estimates that the U.S. WCPO purse fleet fished for a total of 1,582 days on the high seas, which is 212 fishing days over the 2018 limit for the high seas.

In the past, NMFS has implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ as a single combined limit, rather than establishing separate limits for the two areas. For 2018 only, NMFS established separate limits for the U.S. EEZ and the high seas. This was done in response to a provision in CMM 2017–01 (not included in previous CMMs or CMM 2018–01) providing for the transfer of a limited number of the United States' EEZ fishing days to the high seas.

Because under CMM 2018–01 the United States is no longer limited by the transfer provision that was included in CMM 2017–01, NMFS is combining the purse seine fishing effort limits for the U.S. EEZ and the high seas, consistent with previous rulemakings. For 2019, this interim final rule establishes a limit of 1,616 fishing days (558 fishing days from the U.S. EEZ limit plus 1,270 days from the high seas limit less the 212 fishing day overage of the 2018 high seas limit) for the Effort Limit Area for Purse Seine (or ELAPS), which comprises the areas of the high seas and U.S. EEZ between 20° N. latitude and 20° S. latitude in the Convention Area. For 2020 and subsequent years, this interim final rule establishes a combined limit of 1,828 fishing days per calendar year for the ELAPS, which could be modified to take into consideration any overage of a previous year's limit.

Combining the high seas and EEZ limits is consistent with the objectives of CMM 2018–01. The Commission's limits on purse seine fishing effort are designed, in combination with other measures, to control fishing mortality on the tropical tuna stocks. The CMM has identified separate limits for EEZs and the high seas not for any stated conservation purpose, but rather to ensure effective implementation. The Commission decided that management of fishing effort in zones should be the responsibility of coastal members, and management of fishing effort on the high seas should be the responsibility of flag members. Accordingly, where as in the case of the United States, the member is

both a flag state and a coastal state, combining the EEZ and high seas limits meets the conservation objectives of the CMM provided that the sum of the two limits is not exceeded.

NMFS considered both the action alternative that would combine the two areas and another alternative that would not (see the PEA and the RIR for comparisons of the two alternatives). Because both alternatives would accomplish the objective of controlling fishing effort by the WPCFC-adopted amount (*i.e.*, by U.S. purse seine vessels operating on the high seas and by purse seine vessels in areas under U.S. jurisdiction, collectively), and because the alternative of combining the two areas is expected to result in greater operational flexibility to affected purse seine vessels and lesser adverse economic impacts, NMFS is implementing the alternative that would combine the two areas.

The meaning of "fishing day" is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch. NMFS notes the U.S. purse seine industry provided two comment letters in response to a notice issued by NOAA regarding streamlining regulatory processes and reducing regulatory burden (see 82 FR 31576; published July 7, 2017), requesting that the definition of fishing day be changed to the definition used by the Parties to the Nauru Agreement in the *Palau Arrangement for the Management of the Western Pacific Fishery Management Scheme (Purse Seine Vessel Day Scheme) as amended by the Parties to the Palau Arrangement (Arrangement)*.¹ NMFS continues to believe the existing definition at 50 CFR 300.211 is appropriate.

NMFS will monitor the number of fishing days spent in the ELAPS using data submitted in logbooks and other available information. If and when NMFS determines that the limit of 1,616 fishing days is expected to be reached by a specific future date in 2019, or the limit of 1,828 is expected to be reached by a specific future date in 2020 or subsequent years, it will publish a notice in the **Federal Register** announcing that the purse seine fishery in the ELAPS will be closed starting on a specific future date and will remain closed until the end of calendar year.

NMFS will publish that notice at least seven days in advance of the closure date.

As stated in existing regulations at 50 CFR 300.223(a)(4), starting on the announced closure date, and for the remainder of calendar year, it will be prohibited for U.S. purse seine vessels to fish in the ELAPS, except that such vessels are not prohibited from bunkering during the closure.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim final rule is consistent with the WPCFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because prior notice and the opportunity for public comment would be contrary to the public interest. This rule establishes limits on purse seine fishing effort for 2019 and future years that are similar to the limits in place from 2009 through 2018. Affected entities have been subject to fishing effort limits in the affected area—the ELAPS—since 2009, and are expecting imminent publication of the 2019 fishing effort limits. It is critical that NMFS publish the limit for 2019 as soon as possible to ensure it is not exceeded and the United States complies with its obligations with respect to CMM 2018–01. Based on data available to date, NMFS expects that the applicable limit of 1,616 fishing days in the ELAPS could be reached in the first half of the calendar year. Delaying this rule to allow for advance notice and public comment would bring a substantial risk that more than 1,616 fishing days would be spent in the ELAPS in 2019, constituting non-compliance by the United States with respect to the purse seine fishing effort limit provisions of CMM 2018–01. Because a delay in implementing this limit for 2019 could result in the United States violating its obligations with respect to the purse seine fishing effort limit provisions of CMM 2018–01, which are important for the conservation and management of tropical tuna stocks in the WCPO, allowing advance notice and the opportunity for public comment would be contrary to the public interest. NMFS will, however, consider public comments received on this interim final rule and issue a final rule, responding to comments as appropriate. Moreover, NMFS notes that the United States government shutdown in late 2018 and early 2019 affected NMFS' ability to

¹ See text of the Arrangement at <https://www.pnatuna.com/content/purse-seine-vds-text>.

proceed with this rulemaking in the usual timeframe after the Commission adopted CMM 2018–01.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule. As described above, NMFS must implement the purse seine fishing effort limits as soon as possible to ensure that they are not exceeded. A delay in implementing this limit for 2019 could result in the United States violating its obligations with respect to the purse seine fishing effort limit provisions of CMM 2018–01, which are important for the conservation and management of tropical tuna stocks in the WCPO.

Executive Order 12866

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

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no regulatory flexibility analysis was required and none has been prepared.

Paperwork Reduction Act

Although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of information requirements would apply in the Convention Area, under the following Control Number: 0648–0649, Transshipment Requirements under the WCPFC.

List of Subjects in 50 CFR Part 300

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

Dated: July 26, 2019.

Samuel D. Rauch III,

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

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

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

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.223, revise paragraphs (a)(1) through (3) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) For calendar year 2019, there is a limit of 1,616 fishing days in the ELAPS.

(2) Beginning in 2020, there is a limit of 1,828 fishing days in the ELAPS per calendar year.

(3) NMFS will determine the number of fishing days spent in the ELAPS in each calendar year using data submitted in logbooks and other available information. After NMFS determines that a limit in a calendar year is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a document in the **Federal Register** announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed starting on that specific future date and will remain closed until the end of the calendar year.

* * * * *

[FR Doc. 2019–16284 Filed 7–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XS006

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2019 Commercial Accountability Measure and Closure for South Atlantic Snowy Grouper

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial snowy grouper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial landings for snowy grouper will reach the commercial annual catch limit (ACL) by August 3, 2019. Therefore, NMFS closes the commercial sector for snowy grouper in the South Atlantic EEZ on August 3, 2019, and it will remain closed until the start of the next commercial fishing season on January 1, 2020. This closure is

necessary to protect the snowy grouper resource.

DATES: This rule is effective at 12:01 a.m., local time, on August 3, 2019, until 12:01 a.m., local time, on January 1, 2020.

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

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

The commercial ACL (commercial quota) for snowy grouper in the South Atlantic is 153,935 lb (69,824 kg), gutted weight, 181,644 lb (82,392 kg), round weight, for the current fishing year, January 1 through December 31, 2019, as specified in 50 CFR 622.190(a)(1)(v).

Under 50 CFR 622.193(b)(1), NMFS is required to close the commercial sector for snowy grouper when the commercial ACL is reached or projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projects that commercial landings of South Atlantic snowy grouper, as estimated by the Science and Research Director, will reach the commercial quota by August 3, 2019. Accordingly, the commercial sector for South Atlantic snowy grouper is closed effective at 12:01 a.m., local time, on August 3, 2019, until 12:01 a.m., local time, on January 1, 2020.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having snowy grouper on board must have landed and bartered, traded, or sold such snowy grouper prior to 12:01 a.m., local time, on August 3, 2019. During the commercial closure, harvest and possession of snowy grouper in or from the South Atlantic EEZ is limited to the bag and possession limits, as specified in § 622.187(b)(2)(ii) and (c)(1). Also during the commercial closure, the sale or purchase of snowy grouper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of snowy grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, on August 3, 2019, and were

held in cold storage by a dealer or processor.

For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limits and the sale and purchase provisions of the commercial closure for snowy grouper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

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

This action is taken under 50 CFR 622.193(b)(1) and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to close the commercial sector for snowy grouper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the implementing final rule for these AMs has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect snowy grouper since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

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

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

Dated: July 26, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019-16272 Filed 7-26-19; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190725-0004]

RIN 0648-BI11

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 13

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

ACTION: Final rule.

SUMMARY: The Gulf of Mexico (Gulf Council) and South Atlantic Fishery Management Councils (South Atlantic Council) (Councils) have submitted Amendment 13 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP), for review, approval, and implementation by NMFS. The purpose of Amendment 13 and this final rule is to align Federal regulations for spiny lobster that apply to the EEZ off Florida with Florida state regulations, re-establish a procedure for an enhanced cooperative management system, and update the regulations to aid law enforcement and the public.

DATES: This final rule is effective August 30, 2019, except for the amendments to §§ 622.403(b) and 622.413(b)(3), which are effective July 26, 2019. The incorporation by reference of certain materials listed in this rule is approved by the Director of the Federal Register as of August 30, 2019. The incorporation by reference of the material in § 622.413(b)(3), is approved by the Director of the Federal Register as of July 26, 2019.

ADDRESSES: Electronic copies of Amendment 13 may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-13-modifications-spiny-lobster-gear-requirements-and-cooperative-management>. Amendment 13 includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA)

analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT:

Kelli O'Donnell, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Councils manage the spiny lobster fishery under the FMP. The Councils prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*).

On April 2, 2019, NMFS published a notice of availability (NOA) for Amendment 13 and requested public comment (83 FR 12573). On April 18, 2019, NMFS published a proposed rule for Amendment 13 and requested public comment (84 FR 16233). Amendment 13 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 13 and implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule implements measures to modify the Federal regulations regarding spiny lobster to be compatible with Florida regulations concerning bully net gear requirements and commercial daily possession limits. This rule also clarifies outdated language in the spiny lobster Federal regulations and updates the incorporations by reference to the Florida regulations. In addition, Amendment 13 re-establishes a procedure for an enhanced cooperative management system to provide Florida a mechanism to propose spiny lobster regulations directly to NMFS for implementation.

Florida Bully Net Permit and Gear Marking Requirements and Prohibitions

This final rule aligns Federal and Florida bully net regulations to improve enforcement and reduce potential confusion among fishers. The rule requires commercial bully net vessels in the EEZ off Florida to have a bully net permit from Florida; requires such a vessel to be marked with the harvester's Florida bully net permit number using reflective paint or other reflective material; prohibits commercial bully net vessels from having trap pullers onboard; and prohibits the simultaneous possession of a bully net and any underwater breathing apparatus (not

including dive masks or snorkels) onboard a vessel used to harvest or transport spiny lobster for commercial purposes.

Commercial Spiny Lobster Bully Net and Diving Trip Limits

This final rule incorporates by reference the most recent Florida definition of commercial harvester, which is a person who holds a valid saltwater products license with a restricted species endorsement issued by the Florida Fish and Wildlife Conservation Commission (FWC) and (1) a valid crawfish license or trap number and lobster trap certificates, if traps are used to harvest spiny lobster; (2) a valid commercial dive permit if harvest is by diving; or (3) a valid bully net permit if harvest is by bully net. Under Florida's regulations, commercial harvesters are restricted to the commercial harvest limits when bully net gear or dive gear is used. Therefore, bully net and dive fishers would be restricted to the state bag limit regardless where the spiny lobster are harvested. However, to make the requirements in the EEZ off Florida more clear, this proposed rule would modify Federal regulations to specifically state the commercial vessel limit for spiny lobster harvested by bully net off all Florida counties, and harvested by diving off Broward, Dade, Monroe, Collier, and Lee Counties, Florida, is 250 spiny lobster per vessel per day.

Clarifications and Updates to Regulatory Language

This final rule also revises and clarifies language in the spiny lobster Federal regulations, including updating phone numbers and websites referenced in 50 CFR 622.413, and correcting a typographic mistake in 50 CFR 622.415. This rule also removes the phrase "during times other than the authorized fishing season" from 50 CFR 622.402(c)(1), to clarify that unmarked traps are illegal gear, regardless of the time of year, and may be removed in accordance with Florida regulations.

Incorporation by Reference

The final rule updates the incorporation by reference in 50 CFR 622.400(a)(1)(i) which provides the definition of commercial harvester.

The rule also updates the incorporation by reference of the Florida Administrative Code in 50 CFR 622.402(a)(1) and (2) to reflect the effective dates of the current Florida regulations, which mandate that vessel owners and/or operators who harvest spiny lobster by traps in the EEZ off

Florida comply with Florida vessel and gear identification requirements. The final rule designates a new incorporation by reference which specifies vessel identification requirements for commercial spiny lobster harvesters who use bully nets to the paragraph added at 50 CFR 622.402(a)(3). It similarly updates the incorporation by reference of the Florida Administrative Code in 50 CFR 622.403(b)(3)(i) and 622.405(b)(2)(i) to reflect the effective dates of the current Florida regulations and address derelict spiny lobster traps as well as the requirements for lawful spiny lobster trap pulling, respectively. The final rule adds new incorporation by reference of the Florida Administrative Code, in 50 CFR 622.404(e) and (f), which address the alignment of management measures with Florida's regulations, including prohibiting the simultaneous possession of a bully net and any underwater breathing apparatus, and prohibiting the possession of trap pullers, respectively, as discussed above.

The Florida regulations are available at <http://www.flrules.org> and the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399 (telephone: 850-487-0554).

Measures in Amendment 13 Not Codified Through This Final Rule

In addition to the measures in this final rule, Amendment 13 re-establishes a procedure that allows Florida to propose rules directly to NMFS, which will increase NMFS' ability to implement consistent Federal regulations in a timely manner.

Comments and Responses

During the public comment period, NMFS received one comment from the Florida Fish and Wildlife Conservation Commission (FWC) and two comments from individuals on Amendment 13 and the proposed rule. These comments, as well as NMFS' respective response, are detailed below. No changes are being made in response to the comments.

Comment 1: The Florida Fish and Wildlife Conservation Commission (FWC) suggests additional changes to paragraph (c)(1) in section 622.402 to allow for the removal of all derelict traps in the EEZ of Florida, instead of only unmarked traps.

Response: NMFS has determined that it is not appropriate to make the suggested changes in this final rule because they would expand the scope of paragraph (c) beyond what was contemplated in the proposed rule. Section 622.402(c) addresses "unmarked traps and buoys," stating

that these traps and buoys are illegal gear. Paragraph (c)(1) currently states that this gear, during times other than the authorized fishing season, will be considered derelict and may be disposed of consistent with 65B-55.002 and 65B-55.004 of the Florida Administrative Code. This final rule removes the phrase "during times other than the authorized fishing season," to clarify that unmarked gear are illegal gear, regardless of the time and year, and may be removed in accordance with Florida regulations. Because the definition of "derelict trap" in the Florida regulations includes more than just an unmarked trap, authorizing the removal of all derelict traps would expand the gear currently identified as illegal under section 622.402, as amended by this final rule. Therefore, NMFS is not changing the proposed rule in response to this comment. However, we note that Amendment 13 reestablishes a procedure to allow Florida to propose rules directly to NMFS. If appropriate, FWC could consider using this new procedure to propose changes to section 622.402(c) to make the illegal gear identified in this provision consistent with the Florida regulations.

Comment 2: The regulations for spiny lobster that apply in the EEZ off Florida should also apply in the EEZ off the coasts of North Carolina, South Carolina, and Georgia.

Response: NMFS disagrees. As noted above, the majority of spiny lobster in the Gulf and South Atlantic occurs off the coast of Florida. The purpose of Amendment 13 is to align Florida and Federal regulations to both enhance enforcement in this area and reduce potential confusion by fishers. The Councils did not consider expanding the regulations for spiny lobster that apply off the coast of Florida throughout the entire South Atlantic EEZ.

Comment 3: The procedure to allow Florida to propose regulations directly to NMFS could allow Florida to implement measures that are not sufficiently protective of the spiny lobster stock.

Response: NMFS disagrees. The procedure that allows Florida to submit proposed regulations for spiny lobster management directly to NMFS requires that the proposed regulations be consistent with the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law. In addition, the Councils must approve the proposed regulations and NMFS must implement these regulations consistent with Administrative Procedure Act. This includes publishing a proposed rule and soliciting public comment. After

reviewing the public comments, NMFS may, in consultation with the Councils, make appropriate revisions to the proposed regulations prior to publishing a final rule.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 13, the FMP, the Magnuson-Stevens Act, and other applicable laws.

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

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record keeping, or other compliance requirements are introduced by this final rule. Accordingly, the Paperwork Reduction Act does not apply to this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. None of the public comments that were received specifically addressed the certification and NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the 30-day delay in the date of effectiveness for the incorporation by reference of Florida Administrative Code (F.A.C.) provisions (F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.005: Seasons) as referenced in 50 CFR 622.413(b)(3), because such a delay would be contrary to the public interest. The F.A.C. provisions referenced in 50 CFR 622.413(b)(3) include a provision to allow spiny lobster harvesters to bait and place their traps in the water beginning on the Saturday immediately following the recreational sport season; this year, the Saturday immediately following the recreational sport season is July 27, 2019. Once this section is effective, it will allow the commercial harvesters to place their traps to soak in the water on July 27, instead of requiring them to

wait until August 1. Because the state of Florida will allow the spiny lobster harvesters to place their traps in state waters on July 27, 2019, having a different date to place their traps in Federal waters off Florida may create significant confusion and unnecessarily complicate law enforcement efforts, which is contrary to the public interest. If this part of the final rule were delayed by 30 days, the spiny lobster trap harvesters in Federal waters off Florida would miss the earliest possible date they could set their traps, which may result in a reduced harvest opportunity and lower economic benefits.

In addition, because this measure allows traps to be placed in the water on July 27 instead of August 1, it relieves a restriction, and therefore it also falls within the 5 U.S.C. 553(d)(1) exception to the 30-day delay in the date of effectiveness requirement. The commercial spiny lobster season begins on August 6, 2019, and NMFS wants to allow all spiny lobster harvesters the earliest opportunity to place their traps in Federal waters off Florida beginning in 2019, as intended by the Councils in Amendment 13. Waiving the 30-day delay in the date of effectiveness for § 622.413(b)(3) will allow this final rule to more fully benefit the fishery through increased fishing opportunities as described in Amendment 13 and as intended by the Councils.

Only the provisions of § 622.413(b)(3) are effective on the date of filing for inspection with the Office of the Federal Register. All other management measures contained in this final rule are effective 30 days after publication in the **Federal Register**.

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

List of Subjects in 50 CFR Part 622

Bully nets, Fisheries, Fishing, Florida, Gear, Gulf, Incorporation by reference, South Atlantic, Spiny lobster.

Dated: July 25, 2019.

Samuel D. Rauch, III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.400, revise paragraph (a)(1)(i) to read as follows:

§ 622.400 Permits and fees.

(a) * * *

(1) * * *

(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 622.408(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a “commercial harvester,” as defined in Rule 68B–24.002(4), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

* * * * *

■ 3. In § 622.402, revise paragraphs (a) and (c)(1) to read as follows:

§ 622.402 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobster by traps in the EEZ off Florida must comply with the vessel and gear identification requirements specified in Rule 68B–24.006(3), (4), and (5), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

(2) An owner or operator of a vessel that is used to harvest spiny lobster by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida’s waters in Rule 68B–24.006(6), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

(3) An owner or operator of a vessel that is used to harvest spiny lobster by bully net in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by bully net in Florida’s waters in Rule 68B–24.006(7), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

* * * * *

(c) * * *

(1) *EEZ off Florida.* Such trap or buoy, and any connecting lines will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap or buoy remains subject to appropriate civil penalties.

* * * * *

- 4. In § 622.403, revise paragraph (b)(3)(i) to read as follows:

§ 622.403 Seasons.

* * * * *

- (b) * * *
(3) * * *

(i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 68B–24.005(3), (4), and (5), Florida Administrative Code, in effect as of November 1, 2018 (incorporated by reference, see § 622.413), apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. A spiny lobster trap, buoy, or rope in the EEZ off Florida, during periods not authorized will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

* * * * *

- 5. In § 622.404, add paragraphs (e) and (f) to read as follows:

§ 622.404 Prohibited gear and methods.

* * * * *

(e) In the EEZ off Florida, simultaneous possession of a bully net and any underwater breathing apparatus, not including dive masks or snorkels, onboard a vessel used to harvest or transport spiny lobster for commercial purposes is prohibited in accordance with Rule 68B–24.007(5), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413). For the purpose of this paragraph, an “underwater breathing apparatus” is any apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is able to obtain or reuse air or any other gas or gasses for breathing without returning to the surface of the water.

(f) In the EEZ off Florida, vessels that are or are required to be marked with or have identification associated with a bully net permit for the harvest of spiny lobster are prohibited from having trap pullers aboard, in accordance with Rule 68B–24.006(8), the Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

- 6. In § 622.405, revise paragraph (b)(2)(i) to read as follows:

§ 622.405 Trap construction specifications and tending restrictions.

* * * * *

- (b) * * *
(2) * * *

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B–24.006(9), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

* * * * *

- 7. In § 622.408, revise paragraph (b) to read as follows:

§ 622.408 Bag/possession limits.

* * * * *

(b) *EEZ off Florida and off the Gulf states, other than Florida—(1) Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (4) of this section, during the commercial and recreational fishing season specified in § 622.403(b)(1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 622.403(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 622.403(b)(1), a person is exempt from the bag and possession limit specified in paragraph (b)(1) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 622.400(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 622.403(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 622.400(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in

possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term “net or trawl” does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Harvest by diving.* (i) The commercial daily harvest and possession limit of spiny lobster harvested by diving in or from the EEZ off Broward, Miami-Dade, Monroe, Collier, and Lee Counties, Florida, is 250 spiny lobster per vessel.

(ii) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 622.400(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(6) *Harvest by bully nets in the EEZ off Florida.* The commercial daily harvest and possession limit of spiny lobster harvested by bully net in the EEZ off Florida is 250 spiny lobsters per vessel.

* * * * *

- 8. In § 622.412, revise the introductory text to read as follows:

§ 622.412 Adjustment of management measures.

In accordance with the framework procedures of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RA may establish or modify the following items:

* * * * *

- 9. In § 622.413:

■ a. Revise paragraphs (b) introductory text and (b)(2) through (4);

■ b. Redesignate paragraphs (b)(5) through (7) as (b)(6) through (8);

■ d. Add new paragraph (b)(5); and

■ e. Revise paragraph (c) introductory text.

The revisions and addition read as follows:

§ 622.413 Incorporation by reference (IBR).

* * * * *

(b) Florida Administrative Code (F.A.C.): Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399;

telephone: 850-487-0554; <http://www.flrules.org>.

* * * * *

(2) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.002: Definitions, amended May 1, 2017, IBR approved for § 622.400(a).

(3) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.005: Seasons, amended November 1, 2018, IBR approved for § 622.403(b).

(4) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.006: Gear: Traps, Buoys, Identification Requirements, Prohibited

Devices, amended May 1, 2017, IBR approved for § 622.402(a), § 622.404(f), and § 622.405(b).

(5) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.007: Other Prohibitions, amended May 1, 2017, IBR approved for § 622.404(e).

* * * * *

(c) Florida Statute: Florida Fish and Wildlife Commission, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850-487-0554; <http://www.leg.state.fl.us/statutes/>.

* * * * *

■ 10. Revise § 622.415 to read as follows:

§ 622.415 Limited exemption regarding harvest in waters of a foreign nation.

(a) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobster, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this subpart, except for § 622.409 with which such an owner or operator must comply, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

(b) [Reserved]

[FR Doc. 2019-16265 Filed 7-26-19; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 84, No. 147

Wednesday, July 31, 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.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2019–11]

Rulemaking Petition: Amending the Definition of Contribution To Include “Valuable Information”

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: notification of availability.

SUMMARY: On April 29, 2019, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend the existing regulation defining “contribution.” The Commission seeks comments on the Petition.

DATES: Comments must be submitted on or before September 30, 2019.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission’s website at <http://sers.fec.gov/fosers/>, reference REG 2019–01. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Esther Gyory, Acting Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission’s website and in the Commission’s Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver’s license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Esther Gyory, Acting Assistant General Counsel, or Mr. Tony Buckley, Attorney, Office of the General Counsel, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On April 29, 2019, the Commission received a Petition for Rulemaking (“Petition”) from Sai, Fiat Fiendum, Inc., Make Your Laws PAC, Inc., and Make Your Laws Advocacy, Inc. (collectively “Petitioners”). The Petitioners ask the Commission to amend 11 CFR part 100, subpart B, by adding a new section 100.57 to include within the definition of contribution certain “valuable information.” Petition at 3.

Commission regulations define a “contribution” as “any gift, subscription, loan . . . advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 11 CFR 100.52(a). “Anything of value” includes all in-kind contributions, such as the provision of goods and services without charge or at a charge that is less than the usual and normal charge. 11 CFR 100.52(d)(1). Commission regulations further identify the following as contributions: Payment for attendance at a fundraiser, political event, or the purchase price of a fundraising item sold by a political committee (11 CFR 100.53); compensation by a third party for personal services an individual provides unpaid to a political committee (11 CFR 100.54); an extension of credit, unless the extension is extended in the ordinary course of a person’s business and under terms and conditions that are substantially similar to credits extended to nonpolitical entities (11 CFR 100.55); and anything of value given to a national party committee for the purchase or construction of an office building or facility (11 CFR 100.56).

The Petition proposes to define “Valuable Information” as information that: (1) Is not freely available to the public; (2) is provided to a person regulated by the Federal Election Campaign Act, 52 U.S.C. 30101–45 (the “Act”), at a cost less than the market rate or by a person not hired by the recipient to generate such information; (3) would cost a non-trivial amount for the recipient to obtain at their own expense; and (4) is information that would likely have the effect of

influencing any election for federal office or that parties or candidate committees have traditionally expended money to obtain. Petition at 3.

The proposal sets out two types of “Valuable Information” that would require special treatment: “Foreign Information” and “Compromising Information.” *Id.* “Foreign Information” would include any information that comes from a source that is prohibited from making contributions under the Act. *Id.* “Compromising Information” would include “any information that could be used to blackmail or otherwise compromise any candidate for Federal office (including indirect coercion, such as of a candidate’s family), regardless of source.” *Id.*

The Petition would require any person who receives “Foreign” or “Compromising Information,” or is offered any “Foreign” or “Compromising Information,” to notify the Commission in writing within three days. Petition at 3–4. Any “Compromising Information” the Commission received would have to be maintained under seal unless the information was otherwise available to the public, or all persons against whom the information could be used had consented to the information being made public. *Id.*

Under the Petitioners’ proposal, upon learning of any “Foreign” or “Compromising Information,” the Commission would be required, automatically and without a vote of the Commission, to: (1) Initiate investigations pursuant to 11 CFR 111.3 and 111.10; (2) provide a report to the Federal Bureau of Investigation; and (3) in the case of “Compromising Information,” provide a report to every reasonably identifiable person against whom such information could be used, or whose private information is disclosed by such information. *Id.* The Petitioners’ proposal would also require the Commission, upon learning of any “Foreign” or “Compromising Information,” to: (1) Immediately provide a report to any other law enforcement entity with likely jurisdiction over the matter; (2) within 14 days, publicly issue a report on the matter, redacting any material under seal and any material the disclosure of which could compromise an ongoing law enforcement investigation; and (3) within 30 days after the conclusion of

any law enforcement investigation, issue a public report on the matter, redacting any material under seal. *Id.*

The Commission seeks comments on the Petition. The public may inspect the Petition on the Commission's website at <http://sers.fec.gov/fosers/>, or in the Commission's Public Records Office, 1050 First Street NE, 12th Floor, Washington, DC 20463, Monday through Friday, from 9 a.m. to 5 p.m.

The Commission will not consider the Petition's merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

On behalf of the Commission.

Dated: July 25, 2019.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2019-16240 Filed 7-30-19; 8:45 am]

BILLING CODE 6715-01-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2019-0039]

RIN 3170-AA98

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for "qualified mortgages" obtain certain protections from liability. One category of qualified mortgages (QMs) is loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). Under Regulation Z, this category of QMs (Temporary GSE QM loans) is scheduled to expire no later than January 10, 2021. The Bureau currently plans to allow the Temporary GSE QM loan category to expire in January 2021 or after a short extension, if necessary, to facilitate a smooth and orderly transition away from the Temporary GSE QM loan category. The Bureau is considering whether to propose

revisions to Regulation Z's general qualified mortgage definition in light of that planned expiration and is issuing this ANPR to request information about possible revisions.

DATES: Comments must be received on or before September 16, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2019-0039 or RIN 3170-AA98, by any of the following methods:

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

- **Email:** 2019-ANPR-ATRQM@cfpb.gov. Include Docket No. CFPB-2019-0039 or RIN 3170-AA98 in the subject line of the email.

- **Mail:** Comment Intake—ATR/QM ANPR, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

- **Hand Delivery/Courier:** Comment Intake—ATR/QM ANPR, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Joseph Devlin, or Courtney Jean, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is issuing this ANPR to request information regarding Regulation Z's

definition of qualified mortgage loans.¹ The Bureau invites comment on all aspects of this ANPR from all interested parties, including consumers, consumer advocacy groups, industry members and trade groups, and other members of the public.

I. Background

A. Dodd-Frank Amendments to the Truth in Lending Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.² The amendments were intended "to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive."³ As amended, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.⁴

TILA identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, debt-to-income ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.⁵ A creditor, however, may not be certain whether its ATR determination is reasonable in a particular case, and it risks liability if a court or a regulator, including the Bureau, later concludes

¹ See 12 CFR 1026.43.

² Public Law 111-203, sec. 1411-12, 1414, 124 Stat. 1376 (2010); 15 U.S.C. 1639c.

³ 15 U.S.C. 1639b(a)(2).

⁴ 15 U.S.C. 1639c(a)(1). TILA section 103 defines "residential mortgage loan" to mean, with some exceptions including open-end credit plans, "any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling." 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ability-to-repay requirements. See, e.g., 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

⁵ 15 U.S.C. 1639c(a)(3).

that the determination was not reasonable.

TILA addresses this uncertainty by defining a category of loans—called qualified mortgages (QMs)—for which a creditor “may presume that the loan has met” the ATR requirements.⁶ The statute generally defines qualified mortgage to mean any residential mortgage loan for which:

- There is no negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.⁷

B. The Ability-to-Repay/Qualified Mortgage Rule

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA’s ATR requirements (January 2013 Final Rule).⁸ The January 2013 Final Rule became effective on January 14, 2014, and the Bureau amended it several times through 2016.⁹ This ANPR refers to the January 2013 Final Rule and later amendments to it collectively as the Ability-to-Repay/Qualified Mortgage Rule, the ATR/QM Rule, or the Rule.

The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QM loans.¹⁰ Under the Rule, a creditor that makes a QM loan is protected from liability presumptively or conclusively, depending on whether the loan is “higher priced.”¹¹

One category of QM loans defined by the Rule consists of “General QM loans.” A loan is a General QM loan if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits;¹²
- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years;¹³
- The creditor considers and verifies the consumer’s income and debt obligations in accordance with Appendix Q of the Rule;¹⁴ and
- The ratio of the consumer’s total monthly debt to total monthly income (DTI ratio) is no more than 43 percent, determined in accordance with Appendix Q of the Rule.¹⁵

Appendix Q contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. The standards in Appendix Q were adapted from guidelines maintained by the Department of Housing and Urban Development’s Federal Housing Administration (FHA) when the January 2013 Final Rule was issued.¹⁶ Appendix Q addresses how to determine a consumer’s employment-related income (e.g., income from wages, commissions, and retirement plans); non-employment related income (e.g., income from alimony and child support payments, investments, and property rentals); and liabilities, including recurring and contingent liabilities and projected obligations.¹⁷

A second, temporary category of QM loans defined by the Rule consists of mortgages that: (1) Comply with the Rule’s prohibitions on certain loan features, its underwriting requirements,

prime offer rate (APOR) for a comparable transaction as of the date the interest rate was set by 1.5 or more percentage points; or a subordinate-lien mortgage with an APR that exceeded the APOR for a comparable transaction as of the date the interest rate was set by 3.5 or more percentage points. 12 CFR 1026.43(b)(4). A creditor that makes a QM loan that is not “higher priced” is entitled to a conclusive presumption that it has complied with the Rule—i.e., the creditor receives a safe harbor. 12 CFR 1026.43(e)(1)(i). A creditor that makes a QM loan that is “higher priced” is entitled to a rebuttable presumption that it has complied with the Rule. 12 CFR 1026.43(e)(1)(ii).

¹² 12 CFR 1026.43(e)(2)(i)–(iii).

¹³ 12 CFR 1026.43(e)(2)(iv).

¹⁴ 12 CFR 1026.43(e)(v).

¹⁵ 12 CFR 1026.43(e)(vi).

¹⁶ 78 FR 6408, 6527–28 (Jan. 30, 2013) (noting that Appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

¹⁷ 12 CFR 1026, Appendix Q.

and its limitations on points and fees;¹⁸ and (2) are eligible to be purchased or guaranteed by either Fannie Mae or Freddie Mac (collectively, the GSEs) while under the conservatorship of the Federal Housing Finance Agency (FHFA) (Temporary GSE QM loans).¹⁹ Unlike for General QM loans, Regulation Z does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the DTI ratio exceeds 43 percent, as long as the DTI ratio meets the GSEs’ DTI requirements and other underwriting criteria. In addition, income and debt for such loans, and DTI ratios, generally are verified and calculated using GSE standards, rather than Appendix Q. The Temporary GSE QM loan category—also known as the GSE Patch—is scheduled to expire when the GSEs exit conservatorship or on January 10, 2021, whichever comes first.²⁰

In the January 2013 Final Rule, the Bureau explained why it created the Temporary GSE QM loan category. The Bureau observed that it did not believe that a 43 percent DTI ratio “represents the outer boundary of responsible lending” and acknowledged that historically, and even after the financial crisis, over 20 percent of mortgages exceeded that threshold.²¹ The Bureau believed, however, that, as DTI ratios increase, “the general ability-to-repay procedures, rather than the qualified mortgage framework, is better suited for consideration of all relevant factors that go to a consumer’s ability to repay a mortgage loan” and that “[o]ver the long term . . . there will be a robust and sizable market for prudent loans beyond the 43 percent threshold even without the benefit of the presumption of compliance that applies to qualified mortgages.”²²

At the same time, the Bureau noted that the mortgage market was especially

¹⁸ 12 CFR 1026.43(e)(2)(i)–(iii).

¹⁹ 12 CFR 1026.43(e)(4).

²⁰ 12 CFR 1026.43(e)(4)(iii)(B). The ATR/QM Rule created several additional categories of QM loans. The first additional category consisted of mortgages eligible to be insured or guaranteed (as applicable) by the U.S. Department of Housing and Urban Development (FHA loans), the U.S. Department of Veterans Affairs (VA loans), the U.S. Department of Agriculture (USDA loans), and the Rural Housing Service (RHS loans). 12 CFR 1026.43(e)(4)(ii)(B)–(E). This temporary category of QM loans no longer exists because the relevant Federal agencies have since issued their own qualified mortgage rules. See, e.g., 24 CFR 203.19 (HUD rule). Other categories of QM loans provide more flexible standards for certain loans originated by certain small creditors. 12 CFR 1026.43(e)(5), (f); cf. 12 CFR 1026.43(e)(6) (applicable only to covered transactions for which the application was received before April 1, 2016).

²¹ 78 FR 6408, 6527 (Jan. 30, 2013).

²² *Id.* at 6527–28.

⁶ 15 U.S.C. 1639c(b)(1).

⁷ 15 U.S.C. 1639c(b)(2)(A).

⁸ 78 FR 6408 (Jan. 30, 2013).

⁹ See 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016).

¹⁰ 12 CFR 1026.43(c), (e).

¹¹ The Rule generally defines a “higher priced” loan to mean a first-lien mortgage with an annual percentage rate (APR) that exceeded the average

fragile following the mortgage crisis, and GSE-eligible loans and other federally insured or guaranteed loans made up a significant majority of the market.²³ In light of the FHFA's focus on ensuring affordability of GSE-eligible loans following the mortgage crisis, the Bureau believed that it was appropriate to consider for a period of time that GSE-eligible loans were originated with an appropriate assessment of the consumer's ability to repay and therefore warranted being treated as QMs.²⁴ The Bureau believed in 2013 that this temporary category of QM loans would, in the near term, help to ensure access to responsible, affordable credit for consumers with DTI ratios above 43 percent, as well as facilitate compliance by creditors by promoting the use of widely recognized, federally related underwriting standards.²⁵

In making the Temporary GSE QM loan provision temporary, the Bureau sought to "provide an adequate period for economic, market, and regulatory conditions to stabilize" and "a reasonable transition period to the general qualified mortgage definition."²⁶ The Bureau believed that the Temporary GSE QM loan provision would benefit consumers by preserving access to credit while the mortgage industry adjusted to the ATR/QM Rule.²⁷ The Bureau also explained that it structured the Temporary GSE QM loan provision to cover loans eligible to be purchased or guaranteed by the GSEs—regardless of whether the loans are actually purchased or guaranteed—to leave room for private investors to return to the market and secure the same legal protections as the GSEs.²⁸ The Bureau believed that, as the market recovered, the GSEs and the Federal agencies would be able to reduce their market presence, the percentage of Temporary GSE QM loans would decrease, and the market would shift toward General QM loans and non-QM loans above a 43 percent DTI ratio.²⁹ The Bureau's view was that a shift towards non-QM loans could be supported by the private market—i.e., by institutions holding such loans in portfolio, selling them in whole, or securitizing them in a rejuvenated private label securities (PLS) market. The Bureau noted that, pursuant to its statutory obligations under the Dodd-Frank Act, it would assess the impact of

the ATR/QM Rule five years after the Rule's effective date, and the assessment would provide an opportunity to analyze the Temporary GSE QM loan provision.³⁰

C. The Bureau's Assessment of the Ability-to-Repay/Qualified Mortgage Rule

Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.³¹ In June 2017, the Bureau published a request for information in connection with its assessment of the ATR/QM Rule (Assessment RFI).³² In response to the Assessment RFI, the Bureau received approximately 480 comments from creditors, industry groups, consumer advocacy groups, and individuals.³³

*Summary of Select Assessment RFI Comments*³⁴

Commenters addressed a variety of topics, including the General QM loan definition and the 43 percent DTI limit. One industry group stated that, if there is no significant change in mortgage performance if the DTI ratio exceeds 43 percent, the DTI limit should be eliminated or alternative ways to satisfy the General QM loan definition should be considered. Several industry groups, creditors, and individual commenters advocated raising the DTI limit from 43 percent to 45 percent or higher.³⁵ Two individual commenters argued against increasing the DTI limit, while one individual commenter argued that investors should be permitted to establish their own DTI limits. Several industry groups, a creditor, and individual commenters stated that the DTI limit should be eliminated because it has disadvantaged consumers who have income that is difficult to document, and because other measurements, such as cash flow, better indicate a consumer's ability to repay a loan.

Many commenters discussed perceived problems with Appendix Q of

Regulation Z. An industry group stated that Appendix Q was borrowed from static, vague, and outdated guidelines that do not reflect today's employment and income trends and documentation standards. Several industry groups and creditors stated that calculating and verifying debt and income in accordance with Appendix Q is particularly burdensome for applications from consumers who receive income from self- or part-time employment, have irregular income, or wish to use asset depletion as income. A coalition of consumer advocacy groups stated that the documentation standards for self-employment income can discourage creditors and borrowers from pursuing loans when such income is present.

Multiple industry groups and creditors advocated for specific changes to discrete elements of Appendix Q, such as the provisions addressing employment verification, work-history gaps, Social Security income, and the use of tax information. Two industry groups and two individual commenters stated that the Bureau should approve alternatives to Appendix Q, such as the standards used by the GSEs, FHA, the U.S. Department of Veterans Affairs, and the Rural Housing Service. Several industry groups, a creditor, and a consumer advocacy group stated that Appendix Q should be eliminated altogether.

Commenters also specifically addressed the Temporary GSE QM loan provision. While commenters generally agreed that the provision has been beneficial, they disagreed about how the Bureau should address its expiration. Regarding beneficial effects, multiple commenters stated that the Temporary GSE QM loan provision has prevented significant disruption in the mortgage market and has enabled creditors to lend efficiently and to more consumers. Several industry groups stated that the Temporary GSE QM loan provision has combined a regulatory bright line with flexibility, allowing creditors to reach deeper into the population of creditworthy consumers.

Commenters expressed a range of ideas for addressing the Temporary GSE QM loan provision's expiration, from making the provision permanent, to extending it for a period of time or to other products, to eliminating it. For example, two consumer advocacy groups and two industry groups stated that the Temporary GSE QM loan provision should be maintained, citing the negative effect that expiration could have on the availability of credit, the need to encourage responsible lending above a 43 percent DTI ratio, and the

²³ *Id.* at 6533–34.

²⁴ *Id.* at 6534.

²⁵ *Id.* at 6533.

²⁶ *Id.* at 6534.

²⁷ *Id.* at 6536.

²⁸ *Id.* at 6534.

²⁹ *Id.*

³⁰ *Id.*

³¹ 12 U.S.C. 5512(d).

³² 82 FR 25246 (June 1, 2017).

³³ See Bureau of Consumer Fin. Prot., *Ability-to-Repay and Qualified Mortgage Rule Assessment Report*, at 243 (Jan. 2019), https://www.consumerfinance.gov/documents/7165/cfbp_ability-to-repay-qualified-mortgage_assessment-report.pdf (Assessment Report or Report).

³⁴ See *id.* at Appendix B (summarizing comments received in response to the Assessment RFI).

³⁵ The Bureau's analysis of GSE loan data suggests that the GSEs have used a DTI threshold of 45 percent on loans eligible for purchase or guarantee. See *id.* at 97–98.

benefits of maintaining the flexibility that the GSE standards incorporate. Three industry groups, two creditors, and a consumer advocacy group also argued for making the Temporary GSE QM loan provision permanent. Three other industry groups and a consumer advocacy group suggested an indefinite extension until an alternative is in place, an individual commenter suggested extending the provision for seven years, and a creditor and two industry groups supported extending it to jumbo mortgages.³⁶ One industry group stated that, although it believes the Temporary GSE QM loan provision is essential for mortgage market support at present, the provision must eventually expire. Finally, two industry groups and an individual commenter argued that the Temporary GSE QM loan provision should be eliminated and the Bureau should rely only on TILA's statutory requirements to define a qualified mortgage.

The Bureau's 2018 Call for Evidence

Beginning in January 2018, the Bureau issued a general call for evidence seeking comment on its enforcement, supervision, rulemaking, market monitoring, and financial education activities.³⁷ As part of the call for evidence, the Bureau published requests for information relating to, among other things, the Bureau's rulemaking process,³⁸ the Bureau's adopted regulations and new rulemaking authorities,³⁹ and the Bureau's inherited regulations and inherited rulemaking authorities.⁴⁰

In response to the call for evidence and requests for information, the Bureau received comments on the ATR/QM Rule from stakeholders, including consumer advocacy groups and industry groups. Commenters addressed a variety of topics, including the General QM loan definition, Appendix Q, and the Temporary GSE QM loan provision. Commenters raised concerns about, among other things, the inflexibility of the General QM loan definition's 43 percent DTI limit, the difficulty of

applying Appendix Q in certain circumstances, and the risks of allowing the Temporary GSE QM loan provision to expire without any changes to the General QM loan definition or Appendix Q. The concerns raised in these comments were similar to those raised in response to the Assessment RFI, discussed above.

Assessment Report Findings Regarding Temporary GSE QM Loans

In January 2019, the Bureau published its ATR/QM Rule Assessment Report.⁴¹ The Report included a number of findings about the effects of the ATR/QM Rule on the mortgage market generally, as well as specific findings about Temporary GSE QM loan originations.

The Report found that loans with higher DTI levels are historically associated with higher levels of "early delinquency" (*i.e.*, delinquency within two years of origination), which can serve as a proxy for measuring whether a consumer had the ability to repay at the time the mortgage loan was consummated.⁴² The Report also found that, for high-DTI borrowers—*i.e.*, borrowers with DTI ratios above 43 percent—who qualify for loans eligible for purchase or guarantee by the GSEs, the Rule has not decreased access to credit.⁴³ However, based on application-level data obtained from nine large lenders, the Report found that the Rule eliminated between 63 and 70 percent of non-GSE eligible, high-DTI home purchase loans.⁴⁴

One main finding about Temporary GSE QM loans was that such loans represent a "large and persistent" share of originations in the conforming segment of the mortgage market.⁴⁵ As discussed, the GSEs' share of the conventional, conforming purchase-mortgage market was large before the ATR/QM Rule, and the assessment found a small increase in that share since the Rule's effective date, reaching 71 percent in 2017.⁴⁶ The Assessment Report noted that, at least for loans intended for sale in the secondary market, creditors generally offer a Temporary GSE QM loan even when a General QM loan could be originated.⁴⁷

The continued prevalence of Temporary GSE QM loan originations is contrary to the Bureau's expectation at the time of the ATR/QM Rule.⁴⁸ The Assessment Report discussed several possible reasons for this outcome. The first is Appendix Q. The Report highlighted commenters' concerns with the perceived lack of clarity in Appendix Q and found that such concerns "may have contributed to investors'—and at least derivatively, creditors'—preference" for Temporary GSE QM loans.⁴⁹ Appendix Q, unlike other standards for calculating and verifying debt and income, has not been revised since the January 2013 Final Rule.⁵⁰

A second possible reason for the continued prevalence of Temporary GSE QM loans is that the GSEs were able to accommodate demand for mortgages above the General QM loan DTI limit of 43 percent as the DTI distribution in the market shifted upward. According to the Report, in the years since the ATR/QM Rule took effect, house prices have increased, and consumers hold more mortgage and other debt (including student loan debt), all of which have caused the DTI distribution to shift up.⁵¹ Mortgages with DTI ratios greater than 43 percent recently have been an increasing share of Temporary GSE QM loan originations.⁵²

The Assessment Report found that a third possible reason for the persistence of Temporary GSE QM loans is the structure of the secondary market. If lenders adhere to the GSEs' guidelines, they gain access to a robust, highly liquid secondary market.⁵³ In contrast, while private market securitizations have grown somewhat in recent years, their volume is still a fraction of their pre-crisis levels.⁵⁴ According to the Assessment Report, recently there appears to have been some momentum toward a long-term structure with a greater role for private market securitization.⁵⁵

D. Possible Market Impact of Expiration of Temporary GSE QM Loan Provision

Based on National Mortgage Database (NMDb) data,⁵⁶ the Bureau estimates

³⁶ Jumbo mortgages are mortgages for amounts greater than the maximum conforming loan limits set by the FHFA. *See, e.g.*, Fed. Hous. Fin. Agency, *FHFA Announces Maximum Conforming Loan Limits for 2019* (Nov. 27, 2018), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Maximum-Conforming-Loan-Limits-for-2019.aspx>.

³⁷ *See* Bureau of Consumer Fin. Prot., *Call for Evidence*, <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence> (last updated Apr. 17, 2018).

³⁸ 83 FR 10437 (Mar. 9, 2018).

³⁹ 83 FR 12286 (Mar. 21, 2018).

⁴⁰ 83 FR 12881 (Mar. 26, 2018).

⁴¹ *See generally* Assessment Report, *supra* note 33.

⁴² *See, e.g., id.* at 83–84, 100–05.

⁴³ *See, e.g., id.* at 10, 194–96.

⁴⁴ *See, e.g., id.* at 10–11, 117, 131–47.

⁴⁵ *Id.* at 188. Because the Temporary GSE QM loan provision generally affects only loans that conform to the GSEs' guidelines, the Assessment Report's discussion of the Temporary GSE QM loan provision focused on the conforming segment of the market, not on non-conforming (*e.g.*, jumbo) loans.

⁴⁶ *Id.* at 191.

⁴⁷ *Id.* at 192.

⁴⁸ *Id.* at 13, 190, 238.

⁴⁹ *Id.* at 193.

⁵⁰ *Id.* at 193–94.

⁵¹ *Id.* at 194.

⁵² *Id.* at 194–95.

⁵³ *Id.* at 196.

⁵⁴ *Id.*

⁵⁵ *Id.* at 198.

⁵⁶ The NMDb, jointly developed by the FHFA and the Bureau, provides de-identified loan characteristics and performance information for a 5 percent sample of all mortgage originations from 1998 to the present, supplemented by de-identified

that there were approximately 6.01 million closed-end first-lien residential mortgage originations in the United States in 2018. Based on supplemental data provided by the FHFA, the Bureau estimates that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—of those loans. Of those 3.12 million loans, the Bureau estimates that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.⁵⁷ Thus, the Bureau estimates that, as a result of the General QM loan definition's 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—fell within the Temporary GSE QM loan definition but not the General QM loan definition.⁵⁸ Throughout this ANPR, the Bureau refers to loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition as High-DTI GSE loans. The Bureau expects that High-DTI GSE loans will continue to comprise a significant proportion of mortgage originations through January 2021, when the Temporary GSE QM loan definition is scheduled to expire.

The Bureau has identified several ways that the market for loans that would have been High-DTI GSE loans may respond to the expiration of the Temporary GSE QM loan definition. The Bureau recognizes the inherent challenges of identifying possible market responses that may be contingent on future economic, legal, and policy developments; nevertheless, the Bureau believes that possible market responses need to be considered in determining the best possible response

to the expiration of the Temporary GSE QM loan definition. In identifying these possible market responses, the Bureau makes several assumptions about the future behavior of market participants. The GSEs currently are not permitted to purchase non-QM loans, and the Bureau assumes no change in this policy. The Bureau also assumes that lenders' preference for making Temporary GSE QM loans, and investors' preference for purchasing such loans, is driven in part by the safe harbor provided to such loans, and that these preferences will continue at least for some lenders and investors.

Given these assumptions, it seems likely, first, that many borrowers who would have obtained High-DTI GSE loans will instead obtain FHA-guaranteed loans since FHA currently guarantees loans with DTI ratios up to 57 percent.⁵⁹ The number of loans that move to FHA would depend in the first instance on FHA's willingness and ability to guarantee such loans, whether FHA continues to treat all loans that it guarantees as QMs under its own QM rule, and on how many High-DTI GSE loans exceed FHA's loan-amount limit. For example, the Bureau estimates that, in 2018, 11 percent of High-DTI GSE loans exceeded FHA's loan-amount limit.⁶⁰ This creates an outer limit on the share of High-DTI GSE loans that could move to FHA.

Second, it is possible that some borrowers who would have sought High-DTI GSE loans will be able to obtain loans in the private market. The number of loans would likely depend, in part, on whether actors in the private market are willing to assume the credit risk associated with funding High-DTI GSE loans as non-QM loans or small-creditor portfolio QM loans⁶¹ and, if so, whether actors in the private market would offer more competitive pricing or terms. For example, the Bureau estimates that 55 percent of High-DTI GSE loans in 2018 had credit scores at

or above 680 and loan-to-value (LTV) ratios at or below 80 percent—credit characteristics traditionally considered attractive to actors in the private market. The Bureau also notes that there are certain built-in costs to FHA loans—namely, mortgage insurance premiums—which could be a basis for competition, and that depository institutions in recent years have shied away from originating and servicing FHA loans due to the obligations and risks associated with such loans. At the same time, as the Assessment Report found, there recently has been some momentum toward a greater role for private market non-QM loans, but it is uncertain how great this role will be in the future.

Third, if FHA and actors in the private market together do not guarantee or make all of the High-DTI GSE loans, some borrowers who would have sought High-DTI GSE loans might not obtain loans at all. Other borrowers who would have sought High-DTI GSE loans may simply adapt to changing options and make different choices. For example, some consumers may respond to the expiration of the Temporary GSE QM loan definition by adjusting their borrowing to result in a lower DTI ratio.

II. Topics on Which the Bureau Seeks Comment

As discussed above, the Temporary GSE QM loan provision is scheduled to expire no later than January 10, 2021. The Bureau does not intend to make the Temporary GSE QM loan provision permanent. The Bureau continues to believe, as it did in issuing the ATR/QM Rule, that consumers would be disserved if “the qualified mortgage rule [were to] define the limit of credit availability.”⁶² The Bureau also is concerned about presuming indefinitely that loans eligible to be purchased or guaranteed by the GSEs—whether or not the GSEs are under conservatorship—have been originated with appropriate consideration of consumers' ability to repay. Indeed, one GSE loosened its underwriting standards in ways that proved unsustainable.⁶³ In addition, the Bureau is concerned that making the Temporary GSE QM loan provision permanent could stifle innovation and the development of competitive private-sector approaches to underwriting. The Bureau also is concerned that, as long as the Temporary GSE QM loan provision continues, the private market is less likely to rebound. Indeed, the existence of the Temporary GSE QM loan provision may be contributing to the

loan and borrower characteristics from Federal administrative sources and credit reporting data. See Bureau of Consumer Fin. Prot., *Sources and Uses of Data at the Bureau of Consumer Financial Protection*, at 55–56 (Sept. 2018), <https://www.consumerfinance.gov/documents/6850/bcftp-sources-uses-of-data.pdf>. Differences in total market size estimates between NMDB data and Home Mortgage Disclosure Act (HMDA) data are attributable to differences in coverage and data construction methodology.

⁵⁷ The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinancing loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

⁵⁸ This estimate only includes GSE-purchased Temporary GSE QM loans that do not fall within the General QM loan definition because they have a DTI ratio over 43 percent. An additional, smaller number of Temporary GSE QM loans purchased by the GSEs may not fall within the General QM loan definition because of documentation or other underwriting differences. The estimate also does not include Temporary GSE QM loans that were eligible for purchase by the GSEs but were not sold to the GSEs.

⁵⁹ In fiscal year 2018, approximately 55 percent of FHA-insured purchase mortgages had a DTI ratio above 43 percent. U.S. Dep't of Hous. & Urban Dev., *Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2018*, at 30 (Nov. 15, 2018), <https://www.hud.gov/sites/dfiles/Housing/documents/2018fhaannualreportMMIFund.pdf>.

⁶⁰ In 2018, FHA's county-level maximum loan limits ranged from \$271,050 to \$721,050. See U.S. Dep't of Hous. & Urban Dev., *FHA Mortgage Limits*, <https://entp.hud.gov/idapp/html/hicostlook.cfm> (last visited July 24, 2019).

⁶¹ See 12 CFR 1026.43(e)(5) (extending QM status to certain portfolio loans originated by certain small creditors). In addition, Section 101 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 101, 132 Stat. 1296 (2018), amended TILA to add a safe-harbor for small-creditor portfolio loans. See 15 U.S.C. 1639c(b)(2)(F).

⁶² 78 FR 6408, 6528 (Jan. 30, 2013).

⁶³ Assessment Report, *supra* note 33, at 194–95.

continuing anemic state of the private mortgage-backed securities market. For all these reasons, the Bureau believes that making the Temporary GSE QM loan provision permanent appears to be inconsistent with the purposes of TILA's ATR provision, and with the Bureau's mandate. The Bureau therefore seeks comment on the topics and questions listed below in light of the Bureau's intent not to make the GSE Patch permanent.

A. Assessing Ability To Repay Under the General QM Loan Definition

The Bureau is considering whether to propose to revise Regulation Z's General QM Loan definition in light of the planned expiration of the Temporary GSE QM loan provision in January 2021. The Bureau is considering whether the definition should retain a direct measure of a consumer's personal finances, such as DTI ratio or residual income, and how that measure should be structured. The Bureau is also seeking comment on whether the definition should instead include an alternative method for assessing financial capacity or should be limited to the express statutory criteria.

To assist the Bureau in developing any such proposals, the Bureau requests public comment on the questions below. The Bureau requests that commenters provide data and analysis to support their views. Commenters need not resubmit data provided to the Bureau in connection with the Assessment RFI or the 2018 call for evidence initiative.

1. Direct Measures of a Consumer's Personal Finances

The Dodd-Frank Act amended TILA to authorize the Bureau to adopt a DTI limit as part of the General QM loan definition.⁶⁴ In the preamble to the January 2013 Final Rule, the Bureau provided several reasons for using DTI ratio and for setting the limit at 43 percent. First, the Bureau stated that the QM criteria should include a standard for evaluating whether consumers have the ability to repay their mortgage loans, in addition to the statute's product feature and general underwriting requirements.⁶⁵ Second, the Bureau noted that DTI ratios are a common and useful tool for evaluating a consumer's ability to repay a loan over time because, as the available data showed, DTI ratio correlates with loan performance as measured by delinquency rate.⁶⁶ With respect to the

particular threshold chosen, the Bureau noted that, for many years, FHA used a 43 percent DTI limit as its general boundary for defining affordability.⁶⁷ Third, the Bureau predicted that, in incorporating a well-understood bright-line threshold, the 43 percent DTI limit would provide certainty for creditors and help to minimize the potential for disputes and costly litigation over whether a mortgage is a QM.⁶⁸ Finally, the Bureau recognized that there would be many instances in which individual consumers could afford a higher DTI ratio based on their particular circumstances, but stated that the general ATR framework, rather than the QM framework, would be better suited for such cases.⁶⁹ The Bureau predicted that the 43 percent DTI limit over time would allow room for a robust and sizable market for non-QMs.⁷⁰ The Bureau also suggested that a higher DTI threshold might require a corresponding weakening of the strength of the presumption of compliance, which would largely defeat the point of adopting a higher DTI threshold.⁷¹

The Bureau's Assessment Report found that, both before and after the financial crisis, loans with higher DTI ratios are historically associated with higher levels of early delinquency, which, in turn, is indicative of the lack of ability to repay at origination.⁷² The Report also found that, overall, inclusion of a DTI limit in the General QM loan definition appears to have reduced the number of loan originations with DTI ratios above 43 percent and increased the number with DTI ratios at or just below the limit.⁷³ In addition, the Report found that a robust market for non-QM loans above the 43 percent DTI limit has not materialized as the Bureau had predicted when it promulgated the Rule.⁷⁴ The Report also noted recent academic research indicating that DTI limits can have broader housing market effects, potentially decreasing house price fluctuations and the resulting borrower responses to pricing corrections.⁷⁵

⁶⁷ *Id.* at 6505.

⁶⁸ *Id.* at 6505–06.

⁶⁹ *Id.* at 6527–28.

⁷⁰ *Id.* at 6506.

⁷¹ *Id.* at 6528.

⁷² Assessment Report, *supra* note 33, at 83–84, 100–05.

⁷³ *Id.* at 115–47.

⁷⁴ *Id.* at 198.

⁷⁵ *Id.* at 99–100. Respondents to the Bureau's Assessment RFI noted that high-DTI lending can lead to house price booms. Respondents also observed that the General QM loan DTI limit of 43 percent may help constrain such house price growth, but such effects likely have been diluted by the Temporary GSE QM loan provision's allowance of DTIs above 43 percent. See Lynn Fisher, Norbert

In adopting a DTI limit in the January 2013 Final Rule, the Bureau acknowledged arguments that residual income—generally defined as the monthly income that remains after a consumer pays all personal debts and obligations, including the prospective mortgage—may be a better measure of repayment ability in the long run. The Bureau concluded, however, that it lacked sufficient evidence to prescribe a bright-line rule based on residual income.⁷⁶ Some stakeholders have continued to suggest that residual income, rather than DTI ratio, should be used in the General QM loan definition. Other stakeholders have suggested combining a higher DTI ratio with a requirement that creditors also consider residual income.⁷⁷ The Bureau has authority under TILA to prescribe regulations requiring creditors to consider such alternative measures of ability to repay as part of the General QM loan definition.⁷⁸

a. Assuming without deciding that, in addition to the statutory factors, the Bureau retains as part of the General QM loan definition a criterion that directly measures a consumer's personal finances, should the Bureau continue to include only a DTI limit, or should the Bureau replace or supplement the DTI limit with another method (e.g., residual income or another method)? If so, which method and why? The Bureau requests that commenters provide data and analysis to support their views about the use of DTI, residual income, or any suggested alternatives that directly measure a consumer's personal finances.

b. Assuming without deciding that the Bureau retains a DTI limit as part of the General QM loan definition, should the limit remain 43 percent? Should the Bureau increase or decrease the DTI limit to some other percentage? Should the Bureau grant QM status to loans

Michel, Tobias Peter & Edward J. Pinto, *Analysis of the BCFP's (CFPB's) temporary Qualified Mortgage category announced in January 2013, commonly known as the "Patch"* (Mar. 1, 2019), <http://www.aei.org/publication/analysis-of-the-bcfps-cfpbs-temporary-qualified-mortgage-category-announced-in-january-2013-commonly-known-as-the-patch>.

⁷⁶ 78 FR 6408, 6528.

⁷⁷ See Eric Kaplan, Michael Stegman, Phillip Swagel & Theodore Tozer, Milken Institute, *A Blueprint for Administrative Reform of the Housing Finance System*, at 17 (Jan. 2019), <https://assets1b.milkeninstitute.org/assets/Publication/Viewpoint/PDF/Blueprint-Admin-Reform-HF-System-1.7.2019-v2.pdf> (suggesting that the Bureau both (1) expand the 43 percent DTI limit to 45 percent to move market share of higher-DTI loans from the GSEs and FHA to the non-agency market, and (2) establish a residual income test to protect against the risk of higher-DTI loans).

⁷⁸ 15 U.S.C. 1639c(b)(3); 15 U.S.C. 1639c(b)(2)(A)(vi).

⁶⁴ 15 U.S.C. 1639c(b)(3); 15 U.S.C. 1639c(b)(2)(A)(vi).

⁶⁵ 78 FR 6408, 6526.

⁶⁶ *Id.* at 6505, 6526–27.

with DTI ratios above a prescribed limit if certain compensating factors are present?⁷⁹ The Bureau requests that commenters provide data and analysis to support their views about the optimal DTI limit if the Bureau were to retain a DTI limit as part of the General QM loan definition.

c. Assuming without deciding that the Bureau retains a criterion that directly measures a consumer's personal finances—DTI ratio, residual income, or some other measure—the Bureau is considering what standards creditors should be permitted or required to use to calculate and verify debt and income. Currently, Appendix Q provides these standards. Appendix Q incorporates FHA's guidelines as they existed when the January 2013 Final Rule was developed (*i.e.*, FHA's 2011 Guidelines). The Bureau intended for Appendix Q to provide creditors with certainty about whether they had calculated a loan's DTI ratio in a way that the Bureau or a court would accept, so that the loan's compliance with the General QM loan definition's DTI limit could be ensured. Based on extensive public feedback and its own experience, the Bureau recognizes that Appendix Q's methods for documenting debt and income can be rigid, that its provisions for determining what debt and income can be included in DTI calculations can be difficult to apply, and that it does not provide the level of compliance certainty that the Bureau anticipated. Stakeholders have reported that these documentation and determination concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams.

i. Assuming without deciding that the Bureau retains a criterion that directly measures a consumer's personal finances—DTI ratio, residual income, or some other measure—should creditors be required to continue using Appendix Q to calculate and verify debt and income? Should the Bureau replace Appendix Q? If the Bureau retains Appendix Q, how should it be changed or supplemented? The Bureau requests that commenters provide data and

analysis to support their views about any suggested changes to Appendix Q.

ii. If the Bureau does not retain Appendix Q or permits use of an alternative, what standard should the Bureau require or permit creditors to use to calculate and verify debt and income? Should the Bureau specify in Regulation Z an existing version of a widely used method of calculating and verifying debt and income that creditors would be required to use? Or, to provide flexibility to creditors, should the Bureau combine a general requirement to use a "reasonable method" with the option to use, as a safe harbor, a specified, existing version of a widely used method for calculating and verifying debt and income? If the Bureau were to specify an existing version of a widely used method for calculating and verifying debt and income under either of the approaches described in this paragraph, which method (or methods) should be allowed? Should Appendix Q be one of them? The Bureau requests that commenters provide data and analysis to support their views about the appropriate approach to calculating and verifying debt and income.

2. Alternatives to Direct Measures of a Consumer's Personal Finances

The purpose of TILA's ATR requirement is to ensure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.⁸⁰ The ATR/QM Rule sought to achieve this purpose, in part, by including a DTI limit in the General QM loan definition. Some stakeholders have suggested that the Bureau rely on the statutory QM loan restrictions only (*i.e.*, prohibitions on certain loan features, requirements for underwriting, and a limitation on points and fees) to define a General QM loan.⁸¹ Others have argued that the General QM loan definition should incorporate counter-cyclical limits, such as LTV ratio, that become more restrictive as housing prices increase.⁸²

Still other stakeholders have suggested that the Bureau rely on factors that do not directly measure a consumer's personal finances because such factors may be more predictive of default than DTI or other direct measurements. For example, one

stakeholder has suggested that the Bureau eliminate the DTI criterion and provide a QM safe harbor to a loan if the difference between the loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable first-lien transaction—*i.e.*, the rate spread—is less than 150 basis points, as long as the loan also meets the statutory QM criteria.⁸³ This stakeholder states that mortgage rates reflect credit risk more holistically than DTI ratios and that a rate-spread approach would encourage innovation in the high-DTI loan market.

Similarly, another stakeholder has suggested eliminating the DTI criterion for certain loans, depending on their pricing.⁸⁴ Under such an approach, for example, a loan with a rate spread of: (1) Less than 150 basis points over APOR would receive a QM safe harbor regardless of DTI ratio, as long as the loan met the statutory QM criteria; (2) between 150 and 300 basis points over APOR would receive a QM rebuttable presumption regardless of DTI ratio, as long as the loan met the statutory QM criteria;⁸⁵ and (3) 300 basis points or more over APOR would receive a QM rebuttable presumption only if the DTI ratio did not exceed 43 percent and the loan met the statutory QM criteria. This stakeholder suggests that near-prime loans with high DTI ratios can still perform well, rendering it unnecessary to impose a DTI limit on these loans. By contrast, according to this stakeholder, because higher-rate loans pose greater risks to consumers, it is critical to include a DTI threshold for such loans. Loans with improperly calculated DTI ratios would lose their QM status, thus exposing lenders to liability; to minimize that risk, lenders would be careful when originating such loans.

Others have suggested that the Bureau amend the Rule so that any performing loan that has been on a financial institution's books for at least two years (or some slightly longer time frame) would automatically convert to a QM

⁷⁹ For example, typical required compensating factors for GSE loans with DTIs above 45 percent include twelve months of cash reserves for the borrower and a maximum LTV ratio of 80 percent. See Assessment Report, *supra* note 33, at 98 n.233. See also U.S. Dep't of the Treasury, *A Financial System that Creates Economic Opportunities: Banks and Credit Unions*, at 99 (June 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf> (revised QM loan requirements should permit higher DTI loans with compensating factors).

⁸⁰ 15 U.S.C. 1639b(a)(2).

⁸¹ See Edward DeMarco, *Three Ways to Draw Private Capital Back into Mortgages*, Am. Banker (June 14, 2019), <https://www.americanbanker.com/opinion/three-ways-to-draw-private-capital-back-into-mortgages>.

⁸² See Fisher et al., *supra* note 75, at 34.

⁸³ See Karan Kaul & Laurie Goodman, Urban Inst. Hous. Fin. Pol'y Ctr., *Updated: What, If Anything, Should Replace the QM GSE Patch*, at 6–7 (Oct. 2018), <https://www.urban.org/research/publication/updated-what-if-anything-should-replace-qm-gse-patch>.

⁸⁴ See generally Eric Stein & Michael Calhoun, Ctr. for Responsible Lending, *A Smarter Qualified Mortgage Can Benefit Borrowers, Taxpayers, and the Economy* (July 2019), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-a-smarter-qualified-mortgage-july2019.pdf>.

⁸⁵ A slight variation would require a lender originating a loan in this category to use a validated underwriting model with statistically-predictive compensating factors, including DTI or residual income, in order for the loan to obtain QM status. See *id.* at 12.

loan.⁸⁶ These stakeholders argue that, when a loan defaults after performing for two or three years, it is not reasonable to conclude that the default was caused by the creditor's failure to consider the consumer's ability to repay.

Another possibility would be to require creditors to consider other credit risk factors, such as credit score or LTV ratio, in lieu of DTI ratio. The rationale for such an approach would be similar to the rationale for the pricing-based approaches already discussed. That is, because credit risk factors such as credit score and LTV ratio are predictive of default, they arguably are more useful criteria than DTI for determining whether a loan will be repaid.⁸⁷

a. The Bureau requests comment on whether standards that do not directly measure a consumer's personal finances are consistent with, and further TILA's purpose of, ensuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans. The Bureau requests that commenters provide data and analysis to support their views.

b. The Bureau requests comment on the advantages and disadvantages of such standards relative to standards that directly measure a consumer's personal finances, including DTI ratio and residual income. The Bureau requests that commenters provide data and analysis to support their views.

c. Assuming without deciding that the Bureau were to adopt standards that do not directly measure a consumer's personal finances, should the Bureau retain the current line separating safe-harbor and rebuttable-presumption QMs or modify it and, if so, how? The Bureau requests that commenters provide data and analysis to support their views.

d. The Rule currently provides that a consumer may rebut the presumption of compliance only by proving that, based on the information available to the creditor at the time of consummation, the consumer lacked sufficient residual income to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware.⁸⁸ Assuming without deciding that the Bureau were to adopt standards that do not directly measure a consumer's personal finances, should the Bureau further specify or clarify the

grounds on which the presumption of compliance can be rebutted? The Bureau requests that commenters provide data and analysis to support their views.

B. Other Temporary GSE QM Loan Issues

1. The Temporary GSE QM loan provision will remain in effect until the earlier of January 10, 2021, or the date that the GSEs exit conservatorship.⁸⁹ To minimize disruption to the mortgage market when the Temporary GSE QM loan provision expires, should the Bureau consider any other changes to Regulation Z's ability-to-repay and qualified mortgage provisions (*i.e.*, other than changes discussed in response to prior questions)? The Bureau requests that commenters provide data and analysis to support their views.

2. The Bureau recognizes that industry will need time to change its practices to respond to the expiration of the Temporary GSE QM loan provision and any changes the Bureau makes to the General QM loan definition. To conduct an orderly rulemaking process and to smooth the transition to any new General QM loan definition, the Bureau requests comment, with supporting data, on how much time industry would need to change its practices following the issuance of a final rule with such a new definition. If the answer depends on how the Bureau revises the definition, the Bureau requests answers based on alternative possible definitions.

Dated: July 25, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

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BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0580; Product Identifier 2019-NM-019-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330-243, -243F, -341, -342, and -343 airplanes. This proposed AD was prompted by a determination that cracks can develop on the ripple damper weld of the hydraulic pressure tube assembly and reports of failure of the ripple damper of the hydraulic pressure tube assembly. This proposed AD would require replacement of the affected hydraulic pressure tube assembly or modification of both engines, as specified in a European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 16, 2019.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material 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 in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0580.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0580; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the

⁸⁶ See, e.g., Norbert Michel, *The Best Housing Finance Reform Options for the Trump Administration*, *Forbes* (July 15, 2019), <https://www.forbes.com/sites/norbertmichel/2019/07/15/the-best-housing-finance-reform-options-for-the-trump-administration/#4f5640de7d3f>.

⁸⁷ See, e.g., Assessment Report, *supra* note 33, at 100 n.239.

⁸⁸ 12 CFR 1026.43(e)(1)(ii)(B).

⁸⁹ 12 CFR 1026.43(e)(4)(iii)(B).

regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3229.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2019-0580; Product Identifier 2019-NM-019-AD” at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments received, without change, to <http://www.regulations.gov>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019-0031, dated February 13, 2019 (“EASA AD 2019-0031”) (also referred to as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus SAS Model A330-243, -243F, -341, -342, and -343 airplanes. The MCAI states:

Following introduction in-service of Airbus mod 205242, a new hydraulic pressure tube assembly P/N [part number] AE711121-18 was installed, one on each engine, with an integral ripple damper. It was determined that, at a relatively low number of cycles, cracks could develop on the ripple damper weld of this new hydraulic pressure tube, which could lead to hydraulic leakage and consequent loss of the green hydraulic system. Further to the installation on both engines of this new hydraulic pressure tube assembly, a high failure rate of the affected dampers has been reported that, if continued, may exceed the overall safety objective of this certified design.

This condition, if not corrected, could, in combination with other system failures, result in reduced control of the aeroplane.

Prompted by these findings, Airbus published AOT [Alert Operators Transmission] A71L012-16 Rev 01, to provide instructions to replace the hydraulic pressure tube assembly P/N AE711121-18 with an improved assembly P/N AE711121-18 Rev A (introduced by Airbus mod 206979), equipped with a double-welded ripple damper. Consequently, EASA issued AD 2017-0041 [which corresponds to FAA AD 2017-07-03, Amendment 39-18841 (82 FR 15985, March 31, 2017); corrected April 13, 2017 (82 FR 17749)] (“AD 2017-07-03”) to require replacement of each affected hydraulic pressure tube assembly with a tube assembly having the double-welded ripple damper installed. That [EASA] AD also required implementation of a life limit of the improved part.

Since issuance of EASA AD 2017-0041, a new design hydraulic pressure tube assembly has been developed, defined as serviceable part in this [EASA] AD, which has no life limitation. Consequently, Airbus published the AOT to provide modification instructions for installation of the serviceable part.

For the reasons described above, this [EASA] AD requires the replacement of all affected parts with serviceable parts [or modification of both engines].

Relationship Between This Proposed AD and AD 2017-07-03

This NPRM would not supersede AD 2017-07-03. Rather, the FAA has determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require replacement of the affected hydraulic pressure tube assembly or modification of both engines. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2017-07-03 for that airplane only.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019-0031 describes procedures for replacement of the affected hydraulic pressure tube assembly with a serviceable hydraulic pressure tube assembly or modification of both engines. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a

bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019-0031 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019-0031 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019-0031, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in the EASA AD. Service information specified in EASA AD 2019-0031 that is required for compliance with EASA AD 2019-0031 will be available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0580 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 53 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × \$85 per hour = \$340	\$20,000	\$20,340	\$1,078,020

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.

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Will not affect intrastate aviation in Alaska; and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA-2019-0580; Product Identifier 2019-NM-019-AD.

(a) Comments Due Date

The FAA must receive comments by September 16, 2019.

(b) Affected ADs

This AD affects AD 2017-07-03, Amendment 39-18841 (82 FR 15985, March 31, 2017); corrected April 13, 2017 (82 FR 17749) ("AD 2017-07-03").

(c) Applicability

This AD applies to all Airbus SAS Model A330-243, -243F, -341, -342, and -343 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by a determination that cracks can develop on the ripple damper weld of the hydraulic pressure tube assembly and reports of failure of the ripple damper of the hydraulic pressure tube assembly. The FAA is issuing this AD to address cracking of the ripple damper weld of the hydraulic pressure tube assembly, which could lead to hydraulic fluid leakage and consequent loss of the green hydraulic system. This condition, if combined with other system failures, could result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (EASA) AD 2019-0031, dated February 13, 2019 ("EASA AD 2019-0031").

(h) Exceptions to EASA AD 2019-0031

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019-0031 refers to its effective date, this AD requires using the effective date of this AD.

(2) The "Remarks" section of EASA AD 2019-0031 does not apply to this AD.

(i) Terminating Action for AD 2017-07-03

Accomplishing the actions required by this AD terminates all requirements of AD 2017-07-03 for that airplane only.

(j) No Reporting Requirement

Although the service information referenced in EASA AD 2019-0031 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019-0031 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are

recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(I) Related Information

(1) For information about EASA AD 2019-0031, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email ADS@easa.europa.eu; Internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this EASA AD 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. EASA AD 2019-0031 may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0580.

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

Issued in Des Moines, Washington, on July 23, 2019.

Dionne Palermo,

*Acting Director, System Oversight Division,
Airframe Certification Service.*

[FR Doc. 2019-16132 Filed 7-30-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0581; Product Identifier 2019-NM-067-AD]

RIN 2120-AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, 382G, C-130A, C-130B, C-130BL, C130E, C-130H, C130H 30, C130J, C130J-30, EC130Q, HC130H, KC 130H, NC-130B, NC130, and WC-130H airplanes. This proposed AD was prompted by a report indicating

that two elevator booster assemblies experienced significant hydraulic fluid leaks, caused by fatigue cracks in the actuator cylinder. This proposed AD would require an inspection to determine the part number of the elevator booster actuator, repetitive ultrasonic inspections of the actuator to detect cracking, and replacement of cracked elevator booster assemblies. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 16, 2019.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Customer Support Center, Dept. 3E1M, Zone 0591, 86 S. Cobb Drive, Marietta, GA 30063; telephone 770-494-9131; email hercules.support@lmco.com; internet <http://www.lockheedmartin.com/en-us/who-we-are/business-areas/aeronautics/mmro/customer-support-center.html>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0581; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Hector Hernandez, Aerospace Engineer, Systems and Equipment Section, FAA,

Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5587; fax: 404-474-5606; email: hector.hernandez@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2019-0581; Product Identifier 2019-NM-067-AD" at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to <http://www.regulations.gov>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The FAA has received a report indicating that two elevator booster assemblies experienced significant hydraulic fluid leaks, caused by fatigue cracks in the actuator cylinder. Laboratory analysis of the cracked elevator booster actuators revealed an internal area in the cylinder body that is prone to fatigue crack initiation. The fatigue crack propagates unseen within the cylinder under normal operational loading until either a minor fluid leak becomes evident or the cylinder ruptures, creating a major leak. This condition, if not addressed, could result in a dual failure of the left and right actuator cylinders in the elevator booster assembly, which could lead to a significant reduction in controllability of the airplane.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Lockheed Martin Aeronautics Company Service Bulletin 382-27-51, Revision 1, dated January 17, 2018; and Lockheed Martin Aeronautics Company Service Bulletin 82-833, Revision 1, dated January 17, 2018. This service information describes procedures for an inspection to determine the part number of the elevator booster actuator, repetitive ultrasonic inspections of the elevator booster actuator at the forward-most end to detect cracking along the fluid transfer bore, left and right cylinders, and replacement of cracked elevator

booster assemblies. These documents are distinct since they apply to different airplane models.

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

FAA’s Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under

“Differences Between this Proposed AD and the Service Information.”

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, the FAA fully considered the effects of this proposed AD (including costs to be borne by affected operators) from the earliest possible stages of AD development. This proposed AD is based on those considerations, and was developed with regard to minimizing the economic impact on operators to the extent possible, consistent with the safety objectives of this proposed AD. In any event, the Federal Aviation Regulations require operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined in this case that

the proposed requirements are necessary and the indirect costs would be outweighed by the safety benefits of the proposed AD.

Differences Between This Proposed AD and the Service Information

Lockheed Martin Aeronautics Company Service Bulletin 382–27–51, Revision 1, dated January 17, 2018; and Lockheed Martin Aeronautics Company Service Bulletin 82–833, Revision 1, dated January 17, 2018; specify to return parts to the manufacturer. This proposed AD would not include that requirement.

Costs of Compliance

The FAA estimates that this proposed AD affects 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Part number inspection	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$595.
Ultrasonic inspections	5 work-hours × \$85 per hour = \$425 per inspection cycle.	0	425 per inspection cycle ...	2,975 per inspection cycle.

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspections. The FAA has no way of determining the

number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	10 work-hours × \$85 per hour = \$850	\$43,000	\$43,850

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.

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Docket No. FAA–2019–0581; Product Identifier 2019–NM–067–AD.

(a) Comments Due Date

The FAA must receive comments by September 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, 382G, C–130A, C–130B, C–130BL, C130E, C–130H, C 130H 30, C130J, C130J–30, EC130Q, HC130H, KC 130H, NC–130B, NC130, and WC–130H airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report indicating that two elevator booster assemblies experienced significant hydraulic fluid leaks, caused by fatigue cracks in the actuator cylinder. The FAA is issuing this AD to address the possibility of a dual failure of the left and right actuator cylinders in the elevator booster assembly, which could lead to a significant reduction in controllability of the airplane.

(f) Compliance

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

(g) Part Number Inspection, Repetitive Ultrasonic Inspections, and Replacement

(1) On any elevator booster assembly having a part number 374461–5, 374461–7, or 374461–11, before the accumulation of 4,000 total flight hours on the elevator booster assembly, or within 180 days after the effective date of this AD, whichever occurs later, except as required by paragraph (h) of this AD: Do an inspection of the elevator booster assembly to determine the part number of the elevator booster actuator. If the elevator booster actuator has a part number other than 5C5803, no further action is required by this AD.

(2) If, during the inspection required by paragraph (g)(1) of this AD, any elevator booster actuator having part number 5C5803 is found, before the accumulation of 4,000 total flight hours on the elevator booster assembly, or within 180 days after the

effective date of this AD, whichever occurs later, except as required by paragraph (h) of this AD: Do an ultrasonic inspection of the elevator booster actuator at the forward-most end to detect cracking along the fluid transfer bore, left and right cylinders, in accordance with the Accomplishment Instructions of Lockheed Martin Aeronautics Company Service Bulletin 382–27–51, Revision 1, dated January 17, 2018; or Lockheed Martin Aeronautics Company Service Bulletin 82–833, Revision 1, dated January 17, 2018; as applicable. Repeat the inspection thereafter at intervals not to exceed 1,400 flight hours.

(3) If, during any inspection required by paragraph (g)(2) of this AD, any cracking is found, before further flight: Replace the elevator booster assembly, in accordance with the Accomplishment Instructions of Lockheed Martin Aeronautics Company Service Bulletin 382–27–51, Revision 1, dated January 17, 2018; or Lockheed Martin Aeronautics Company Service Bulletin 82–833, Revision 1, dated January 17, 2018; as applicable.

(h) Compliance Time Exception

For any elevator booster assembly having part number 374461–5, 374461–7, or 374461–11 on which the total flight cycles are unknown, do the inspections required by paragraphs (g)(1) and (g)(2) of this AD, as applicable, within 180 days after the effective date of this AD.

(i) No Reporting and No Return of Parts

(1) Although Lockheed Martin Aeronautics Company Service Bulletin 382–27–51, Revision 1, dated January 17, 2018; and Lockheed Martin Aeronautics Company Service Bulletin 82–833, Revision 1, dated January 17, 2018; specify to report submit certain information to the manufacturer, this AD does not include that requirement.

(2) Although Lockheed Martin Aeronautics Company Service Bulletin 382–27–51, Revision 1, dated January 17, 2018; and Lockheed Martin Aeronautics Company Service Bulletin 82–833, Revision 1, dated January 17, 2018; specify to return parts to the manufacturer, this AD does not require the return of the parts to the manufacturer.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Lockheed Martin Aeronautics Company Service Bulletin 382–27–51, dated July 17, 2017; or Lockheed Martin Aeronautics Company Service Bulletin 82–833, dated April 28, 2017; as applicable.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by a Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Designated Engineering Representative (DER) that has been authorized by the Manager, Atlanta ACO Branch, FAA, to make those findings. To be approved, the repair, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Hector Hernandez, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5587; fax: 404–474–5606; email: hector.hernandez@faa.gov.

(2) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Customer Support Center, Dept. 3E1M, Zone 0591, 86 S Cobb Drive, Marietta, GA 30063; telephone 770–494–9131; email hercules.support@lmco.com; internet <http://www.lockheedmartin.com/en-us/who-we-are/business-areas/aeronautics/mmro/customer-support-center.html>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on July 24, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–16130 Filed 7–30–19; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0290; FRL–9997–69–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards; Part 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve

multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for 26 major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rulemaking action, EPA is only proposing to approve source-specific (also referred to as "case-by-case") RACT determinations for 21 of the 26 major sources submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0290 at <https://www.regulations.gov>, or via email to gordon.mike@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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Bertram, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The

telephone number is (215) 814-5273. Ms. Bertram can also be reached via electronic mail at bertram.emily@epa.gov.

SUPPLEMENTARY INFORMATION: On multiple dates, PADEP submitted multiple revisions to its SIP to address case-by-case NO_x and/or VOC RACT for 26 major facilities. These SIP revisions are intended to address the NO_x and/or VOC RACT requirements under sections 182 and 184 of the CAA for the 1997 and 2008 ozone NAAQS. Table 1 below lists each SIP submittal date and the facilities included in its submittals. Although submitted in multiple packages by PADEP, EPA views each facility as a separable SIP revision and may take separate final action on one or more facilities. In this rulemaking action, EPA is only proposing to approve case-by-case RACT determinations for 21 of the 26 sources submitted to EPA by PADEP. The remaining five major sources are either now exempt from the source-specific RACT requirements or will be acted on in a future rulemaking action, once resubmitted to EPA by PADEP.

For additional background information on Pennsylvania's "presumptive" RACT II SIP see 84 FR 20274 (May 9, 2019) and on Pennsylvania's source-specific or "case-by-case" RACT determinations see the appropriate technical support document (TSD) which is available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2017-0290.

TABLE 1—PADEP SIP SUBMITTALS FOR MAJOR NO_x AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO SOURCE-SPECIFIC RACT UNDER THE 1997 AND 2008 8-HOUR OZONE STANDARD

SIP submittal date	Major source (county)
8/14/2017	Exelon Generation—Fairless Hills (Bucks).
11/21/2017	The Boeing Co. (Delaware). Cherokee Pharmaceuticals, LLC (Northumberland). Dominion Transmission—Finnefrock Station (Clinton). ^a First Quality Tissue, LLC (Clinton). JW Aluminum Company (Lycoming). Transco—Salladasburg Station 520 (Lycoming). Ward Manufacturing, LLC (Tioga). Wood-Mode Inc. (Snyder).
4/26/2018	Foam Fabricators Inc. (Columbia). Novipax (Berks). ^b Resilite Sports Products Inc. (Northumberland). Sunoco Partners Marketing & Terminals (Delaware). Texas Eastern—Bernville (Berks).

TABLE 1—PADEP SIP SUBMITTALS FOR MAJOR NO_x AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO SOURCE-SPECIFIC RACT UNDER THE 1997 AND 2008 8-HOUR OZONE STANDARD—Continued

SIP submittal date	Major source (county)
6/26/2018	Truck Accessories Group (Northumberland). ^c Texas Eastern—Shermans Dale (Perry). Texas Eastern—Perulack (Juniata). Texas Eastern—Grantville (Dauphin). NRG Energy Center Paxton, LLC (Dauphin). Texas Eastern—Bechtelsville (Berks). Merck, Sharp & Dohme Corporation (Montgomery). ^d
10/29/2018	Containment Solutions/Mt. Union Plant (Huntingdon). Armstrong World Ind./Marietta Ceiling Plant (Lancaster). Jeraco Enterprises Inc. (Northumberland). Global Advanced Metals USA Inc. (Montgomery). ^e Blommer Chocolate Company (Montgomery).

^a Dominion Transmission—Finnefrock Station was withdrawn from EPA consideration on August 27, 2018. PADEP determined this source was no longer subject to source-specific RACT requirements for the 1997 and 2008 8-hour ozone NAAQS.

^b Novipax will be acted on in a future rulemaking action.

^c Truck Accessories Group was withdrawn from EPA consideration on July 11, 2019. EPA will be taking action on this source in a future rulemaking action, once resubmitted by PADEP for approval into the PA SIP.

^d Merck, Sharp & Dohme Corporation was withdrawn from EPA consideration on July 11, 2019. EPA will be taking action on this source in a future rulemaking action, once resubmitted by PADEP for approval into the PA SIP.

^e Global Advanced Metals USA Inc. will be acted on in a future rulemaking action.

I. Background

A. 1997 and 2008 Ozone NAAQS

Ground level ozone is not emitted directly into the air but is created by chemical reaction between NO_x and VOC in the presence of sunlight. Emissions from industrial facilities, electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC. Breathing ozone can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground level ozone can also have harmful effects on sensitive vegetation and ecosystems.

On July 18, 1997, EPA promulgated a standard for ground level ozone based on 8-hour average concentrations. 62 FR 38856. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million

(ppm) to 0.08 ppm. On April 30, 2004, EPA designated two nonattainment areas in Pennsylvania under the 1997 8-hour ozone NAAQS, namely Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (the Philadelphia Area) and Pittsburgh-Beaver Valley (the Pittsburgh Area). The remaining 14 areas in Pennsylvania were designated marginal nonattainment areas. See 69 FR 23858 and 23931; see also 40 CFR 81.339.

On March 12, 2008, EPA strengthened the 8-hour ozone standards, by revising its level to 0.075 ppm averaged over an 8-hour period (2008 8-hour ozone NAAQS). On May 21, 2012, EPA designated five marginal nonattainment areas in Pennsylvania for the 2008 8-hour ozone NAAQS: Allentown-Bethlehem-Easton, Lancaster, Reading, the Philadelphia Area, and the Pittsburgh Area. 77 FR 30088; see also 40 CFR 81.339.

On March 6, 2015, EPA announced its revocation of the 1997 8-hour ozone NAAQS for all purposes and for all areas in the country, effective on April 6, 2015. 80 FR 12264. EPA has determined that certain nonattainment planning requirements continue to be in effect under the revoked standard for nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT.

B. RACT Requirements for Ozone

The CAA regulates emissions of NO_x and VOC to prevent photochemical reactions that result in ozone formation. RACT is an important strategy for reducing NO_x and VOC emissions from major stationary sources within areas not meeting the ozone NAAQS.

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment planning requirements of CAA section 172. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for demonstrating attainment of all NAAQS, including emissions reductions from existing sources through the adoption of RACT. Further, section 182(b)(2) of the CAA sets forth additional RACT requirements for ozone nonattainment areas classified as moderate or higher.

Section 182(b)(2) of the CAA sets forth requirements regarding RACT for the ozone NAAQS for VOC sources. Section 182(f) subjects major stationary sources of NO_x to the same RACT requirements applicable to major stationary sources of VOC.¹

Section 184(b)(1)(B) of the CAA applies the RACT requirements in section 182(b)(2) to nonattainment areas classified as marginal and to attainment areas located within ozone transport regions established pursuant to section 184 of the CAA. Section 184(a) of the CAA established by law the current Ozone Transport Region (OTR) comprised of 12 eastern states, including Pennsylvania. This requirement is referred to as OTR RACT. As noted previously, a “major source” is defined based on the source’s PTE of NO_x, VOC, or both pollutants, and the applicable thresholds differ based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

Since the 1970’s, EPA has consistently defined “RACT” as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.²

EPA has provided more substantive RACT requirements through implementation rules for each ozone NAAQS as well as through guidance. In 2004 and 2005, EPA promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases (“Phase 1 of the 1997 Ozone Implementation Rule” and “Phase 2 of the 1997 Ozone Implementation Rule”). 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005), respectively. Particularly, the Phase 2 Ozone Implementation Rule addressed RACT statutory requirements under the 1997 8-hour ozone NAAQS. See 70 FR 71652.

On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (“the 2008 Ozone SIP Requirements Rule”). 80 FR 12264. At the same time, EPA revoked the 1997 8-hour ozone NAAQS, effective on April 6, 2015.³ The 2008 Ozone SIP Requirements Rule provided

the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

² 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,” and also 44 FR 53762 (September 17, 1979).

³ On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court) issued an opinion on the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15–1115 (D.C. Cir. Feb. 16, 2018). The D.C. Cir. Court found certain parts reasonable and denied the petition for appeal on those. In particular, the D.C. Cir. Court upheld the use of NO_x averaging to meet RACT requirements for 2008 ozone NAAQS. However, the Court also found certain other provisions unreasonable. The D.C. Cir. Court vacated the provisions it found unreasonable.

comprehensive requirements to transition from the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, as codified in 40 CFR part 51, subpart AA, following revocation. Consistent with previous policy, EPA determined that areas designated nonattainment for both the 1997 and 2008 8-hour ozone NAAQS at the time of revocation, must retain implementation of certain nonattainment area requirements (*i.e.*, anti-backsliding requirements) for the 1997 8-hour ozone NAAQS as specified under section 182 of the CAA, including RACT. See 40 CFR 51.1100(o). An area remains subject to the anti-backsliding requirements for a revoked NAAQS until EPA approves a redesignation to attainment for the area for the 2008 8-hour ozone NAAQS. There are no effects on applicable requirements for areas within the OTR, as a result of the revocation of the 1997 8-hour ozone NAAQS. Thus, Pennsylvania, as a state within the OTR, remains subject to RACT requirements for both the 1997 ozone NAAQS and the 2008 ozone NAAQS.

In addressing RACT, the 2008 Ozone SIP Requirements Rule is consistent with existing policy and Phase 2 of the 1997 Ozone Implementation Rule. In the 2008 Ozone SIP Requirements Rule, EPA requires RACT measures to be implemented by January 1, 2017 for areas classified as moderate nonattainment or above and all areas of the OTR. EPA also provided in the 2008 Ozone SIP Requirements Rule that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations stating that there are no sources in the nonattainment area covered by a specific control technique guidelines (CTG) source category. In the preamble to the 2008 Ozone SIP Requirements Rule, EPA clarified that states must provide notice and opportunity for public comment on their RACT SIP submissions, even when submitting a certification that the existing provisions remain RACT or a negative declaration. States must submit appropriate supporting information for their RACT submissions, in accordance with the Phase 2 of the 1997 Ozone Implementation Rule. Adequate documentation must support that states have considered control technology that is economically and technologically feasible in determining RACT, based on information that is current as of the time of development of the RACT SIP.

In addition, in the 2008 Ozone SIP Requirements Rule, EPA clarified that states can use weighted average NO_x

¹ A “major source” is defined based on the source’s potential to emit (PTE) of NO_x or VOC, and the applicable thresholds for RACT differs based on

emissions rates from sources in the nonattainment area for meeting the major NO_x RACT requirement under the CAA, as consistent with existing policy.⁴ EPA also recognized that states may conclude in some cases that sources already addressed by RACT determinations for the 1-hour and/or 1997 8-hour ozone NAAQS may not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. See 80 FR 12278–12279.

C. Applicability of RACT Requirements in Pennsylvania

As indicated earlier, RACT requirements apply to any ozone nonattainment areas classified as moderate or higher (serious, severe or extreme) under CAA sections 182(b)(2) and 182(f). Pennsylvania has outstanding ozone RACT requirements for both the 1997 and 2008 8-hour ozone NAAQS. The entire Commonwealth of Pennsylvania is part of the OTR established under section 184 of the CAA and thus is subject statewide to the RACT requirements of CAA sections 182(b)(2) and 182(f), pursuant to section 184(b).

At the time of revocation of the 1997 8-hour ozone NAAQS (effective April 6, 2015), only two moderate nonattainment areas remained in the Commonwealth of Pennsylvania for this standard, the Philadelphia and the Pittsburgh Areas. As required under EPA's anti-backsliding provisions, these two moderate nonattainment areas continue to be subject to RACT under the 1997 8-hour ozone NAAQS. Given its location in the OTR, the remainder of the Commonwealth is also treated as moderate nonattainment area under the 1997 8-hour ozone NAAQS for any planning requirements under the revoked standard, including RACT. The OTR RACT requirement is also in effect under the 2008 8-hour ozone NAAQS throughout the Commonwealth, since EPA did not designate any nonattainment areas above marginal for this standard in Pennsylvania. Thus, in practice, the same RACT requirements continue to be applicable in Pennsylvania for both the 1997 and

2008 8-hour ozone NAAQS. RACT must be evaluated and satisfied as separate requirements under each applicable standard.

RACT applies to major sources of NO_x and VOC under each ozone NAAQS or any VOC sources subject to CTG RACT. Which NO_x and VOC sources in Pennsylvania are considered "major" and are therefore subject to RACT is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the "major source" definitions established under the CAA. In the case of Pennsylvania, sources located in any areas outside of moderate or above nonattainment areas, as part of the OTR, shall be treated as if these areas were moderate.

In Pennsylvania, the SIP program is implemented primarily by the PADEP, but also by local air agencies in Philadelphia County (the City of Philadelphia's Air Management Services [AMS]) and Allegheny County, (the Allegheny County Health Department [ACHD]). These agencies have implemented numerous RACT regulations and source-specific measures in Pennsylvania to meet the applicable ozone RACT requirements. Historically, statewide RACT controls have been promulgated by PADEP in Pennsylvania Code Title 25—Environmental Resources, Part I—Department of Environmental Protection, Subpart C—Protection of Natural Resources, Article III—Air Resources, (25 Pa. Code) Chapter 129. AMS and ACHD have incorporated by reference Pennsylvania regulations, but have also promulgated regulations adopting RACT controls for their own jurisdictions. In addition, AMS and ACHD have submitted separate source-specific RACT determinations as SIP revisions for sources within their respective jurisdictions, which have been approved by EPA. See 40 CFR 52.2020(d)(1).

States were required to make RACT SIP submissions for the 1997 8-hour ozone NAAQS by September 15, 2006. PADEP submitted a SIP revision on September 25, 2006, certifying that a number of previously approved VOC RACT rules continued to satisfy RACT under the 1997 8-hour ozone NAAQS for the remainder of Pennsylvania.⁵ PADEP has met its obligations under the 1997 8-hour ozone NAAQS for its CTG and non-CTG VOC sources. See 82 FR 31464 (July 7, 2017). RACT control

measures addressing all applicable CAA RACT requirements under the 1997 8-hour ozone NAAQS have been implemented and fully approved in the jurisdictions of ACHD and AMS. See 78 FR 34584 (June 10, 2013) and 81 FR 69687 (October 7, 2016). For the 2008 8-hour ozone NAAQS, states were required to submit RACT SIP revisions by July 20, 2014. On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. Specifically, the May 16, 2016 SIP submittal intends to satisfy sections 182(b)(2)(C), 182(f), and 184 of the CAA for both the 1997 and 2008 8-hour ozone NAAQS for Pennsylvania's major NO_x and VOC non-CTG sources, except ethylene production plants, surface active agents manufacturing, and mobile equipment repair and refinishing.⁶

D. EPA's Conditional Approval for Pennsylvania's RACT Requirements Under the 1997 and 2008 8-Hour Ozone NAAQS

On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major NO_x RACT requirements under the CAA for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_x and VOCs* (the "presumptive" RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_x and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_x and VOCs*, (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_x sources. The requirements of the RACT I rule remain in effect and continue to be implemented as RACT.⁷ On September 26, 2017, PADEP submitted a supplemental SIP revision which committed to address various deficiencies identified by EPA in their May 16, 2016 "presumptive" RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on PADEP's September 26, 2017 commitment letter. See 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP

⁴ EPA's NO_x RACT guidance "Nitrogen Oxides Supplement to the General Preamble" (57 FR 55625; November 25, 1992) encouraged states to develop RACT programs that are based on "area wide average emission rates." Additional guidance on area-wide RACT provisions is provided by EPA's January 2001 economic incentive program guidance titled "Improving Air Quality with Economic Incentive Programs," available at <http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf>. In addition, as mentioned previously, the D.C. Cir. Court recently upheld the use of NO_x averaging to meet RACT requirements for 2008 ozone NAAQS. *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15-1115 (D.C. Cir. Feb. 16, 2018).

⁵ The September 15, 2006 SIP submittal initially included Pennsylvania's certification of NO_x RACT regulations; however, NO_x RACT portions were withdrawn by PADEP on June 27, 2016.

⁷ These requirements were initially approved as RACT for Pennsylvania under the 1-hour ozone NAAQS.

revisions to address any facility-wide or system-wide averaging plan approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020.

Therefore, as authorized in CAA section 110(k)(3) and (k)(4), Pennsylvania shall submit the following as case-by-case SIP revisions, by May 9, 2020, for EPA's approval as a condition of approval of 25 Pa. Code 128 and 129 in the May 16, 2016 SIP revision: (1) All facility-wide or system-wide averaging plans approved by PADEP under 25 Pa. Code 129.98 including, but not limited to, any terms and conditions that ensure the enforceability of the averaging plan as a practical matter (*i.e.*, any monitoring, reporting, recordkeeping, or testing requirements); and (2) all source-specific RACT determinations approved by PADEP under 25 Pa. Code 129.99, including any alternative compliance schedules approved under 25 Pa. Code

129.97(k) and 129.99(i); the case-by-case RACT determinations submitted to EPA for approval into the SIP should include any terms and conditions that ensure the enforceability of the case-by-case or source-specific RACT emission limitation as a practical matter (*i.e.*, any monitoring, reporting, recordkeeping, or testing requirements). See May 9, 2019 (84 FR 20274).

II. Summary of SIP Revisions

In order to satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP has submitted to EPA, SIP revisions addressing case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.99. As noted in Table 1, on multiple dates PADEP submitted to EPA, five separate SIP revisions pertaining to Pennsylvania's case-by-case NO_x and/or VOC RACT determinations for 26 major sources located in the Commonwealth. PADEP provided documentation in its SIP revisions to support its case-by-case RACT determinations for affected emission units at each major source

subject to 25 Pa. Code 129.99. Specifically, in these SIP submittals, PADEP evaluated a total of 26 major NO_x and/or VOC source in Pennsylvania for case-by-case RACT.⁸

In the Pennsylvania RACT SIP revisions, PADEP included a case-by-case RACT determination for each of the existing emissions units at each of these major sources of NO_x and/or VOC. In PADEP's RACT determinations an evaluation was completed to determine if previously SIP-approved, case-by-case RACT requirements (herein referred to as RACT I) were more stringent and required to be retained in the sources Title V air quality permit and subsequently, the Federally-approved SIP, or if the new case-by-case RACT requirements are more stringent and replace the previous Federally-approved provisions.

In its five SIP submittals, PADEP identified, and EPA is taking action on 21 major sources of NO_x and/or VOC in Pennsylvania, subject to Pennsylvania's case-by-case RACT requirements, as summarized in Table 2.

TABLE 2—TWENTY-ONE MAJOR NO_x AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major source (county)	1-Hour ozone RACT source? (RACT I)	Major source pollutant (NO _x and/or VOC)	RACT II permit (effective date)
Exelon Generation—Fairless Hills (Bucks)	Yes	NO _x	09–00066 (01/27/17)
The Boeing Co. (Delaware)	Yes	NO _x and VOC	23–00009 (01/03/17)
Cherokee Pharmaceuticals, LLC (Northumberland)	Yes	VOC	49–00007 (04/24/17)
First Quality Tissue, LLC (Clinton)	No	VOC	18–00030 (09/18/17)
JW Aluminum Company (Lycoming)	No	VOC	41–00013 (03/01/17)
Transco—Salladasburg Station 520 (Lycoming)	Yes	NO _x and VOC	41–00001 (06/06/17)
Ward Manufacturing, LLC (Tioga)	No	VOC	59–00004 (01/10/17)
Wood-Mode Inc. (Snyder)	Yes	VOC	55–00005 (07/12/17)
Foam Fabricators Inc. (Columbia)	No	VOC	19–00002 (12/20/17)
Resilite Sports Products Inc. (Northumberland)	Yes	VOC	49–00004 (08/25/17)
Sunoco Partners Marketing & Terminals (Delaware)	Yes	NO _x and VOC	23–00119 (01/20/17)
Texas Eastern—Bernville (Berks)	Yes	VOC	06–05033 (03/16/18)
Texas Eastern—Shermans Dale (Perry)	Yes	NO _x	50–05001 (03/26/18)
Texas Eastern—Perulack (Juniata)	Yes	NO _x and VOC	34–05002 (03/27/18)
Texas Eastern—Grantville (Dauphin)	Yes	NO _x	22–05010 (03/16/18)
NRG Energy Center Paxton, LLC (Dauphin)	Yes	NO _x	22–05005 (03/16/18)
Texas Eastern—Bechtelsville (Berks)	Yes	NO _x	06–05034 (04/19/18)
Containment Solutions/Mt. Union Plant (Huntingdon)	Yes	VOC	31–05005 (07/10/18)
Armstrong World Ind./Marietta Ceiling Plant (Lancaster)	Yes	VOC	36–05001 (06/28/18)
Jeraco Enterprises Inc. (Northumberland)	Yes	VOC	49–00014 (01/26/18)
Blommer Chocolate Company (Montgomery)	No	VOC	46–00198 (01/26/17)

⁸ As noted previously, EPA will only be proposing approval for 21 of the 26 case-by-case

RACT determinations submitted by PADEP in the

applicable five SIP revisions. See Table 1 for information specific to each SIP revision.

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific control requirements, if any, satisfy RACT for that particular unit. The adoption of new or additional controls or the revisions to existing controls as RACT were specified as requirements in new or revised Federally enforceable permits (hereafter RACT permits) issued by PADEP to the source. The new or revised RACT permits have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1) for which PADEP is revising or adopting additional source-specific controls, the revised RACT permits, once approved by EPA, will supersede those permits currently approved into the SIP. All new or revised RACT permits submitted by PADEP are listed in the last column of Table 2, along with the permit effective date.

As part of the case-by-case RACT determinations, PADEP is also certifying for certain emissions units at major sources subject to case-by-case RACT determinations under the 1-hour ozone NAAQS, which are part of the Pennsylvania SIP at 40 CFR 52.2020(d)(1).

III. EPA's Evaluation of SIP Revisions

After thorough review and evaluation of the information provided by PADEP in its five SIP revisions for 21 major sources of NO_x and/or VOC in Pennsylvania, EPA finds that PADEP's case-by-case RACT determinations and conclusions provided are reasonable and appropriately considered technically and economically feasible controls while setting lowest achievable limits. EPA finds that the proposed source-specific RACT controls for the sources subject to this rulemaking action adequately meet the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS for the major sources of NO_x and/or VOC in Pennsylvania, as they are not covered by Pennsylvania's presumptive RACT regulation.

EPA also finds that all the proposed revisions to previously SIP approved RACT requirements, under the 1-hour ozone standard (RACT I), as discussed in PADEP's SIP revisions will result in equivalent or additional reductions of NO_x and/or VOC emissions and should not interfere with any applicable requirement concerning attainment or reasonable further progress with the

NAAQS or interfered with other applicable CAA requirement in section 110(l) of the CAA.

In the case of PADEP's removal of RACT I requirements from the SIP that are no longer applicable, as the sources have been permanently removed, EPA finds these SIP revisions to also be adequate and will not have any adverse impact on air quality. EPA's complete analysis of PADEP's case-by-case RACT SIP revisions is included in the TSD available in the docket for this rulemaking action and available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2017-0290.

IV. Proposed Action

Based on EPA's review, EPA is proposing to approve the Pennsylvania SIP revisions for the 21 case-by-case RACT facilities listed in Table 2. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. As EPA views each facility as a separable SIP revision, should EPA receive comment on one facility but not others, EPA may take separate, final action on the remaining facilities.

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 the permits described in Section II—Summary of SIP Revisions and EPA Analysis. 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, addressing the NO_x and VOC RACT requirements for 21 case-by-case facilities for the 1997 and 2008 ozone NAAQS (Part 1), 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.

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: July 23, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2019–16330 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2018–0552; FRL–9997–32–Region 4]

Air Plan Approval and Designation of Areas; FL; Redesignation of the Hillsborough County 2010 1-Hour Sulfur Dioxide Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In a letter dated June 7, 2018, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Hillsborough County sulfur dioxide (SO₂) nonattainment area (hereinafter referred to as the “Hillsborough County Area” or “Area”) to attainment for the 2010 1-hour SO₂ primary national ambient air quality standard (NAAQS or standard) and to approve an accompanying State Implementation Plan (SIP) revision containing a maintenance plan for the Area. The submittal was received by EPA on June 12, 2018. Through a letter dated April 16, 2019, FDEP submitted a revision to the June 7, 2018, redesignation request and SIP revision asking EPA to incorporate certain conditions into the SIP from a recent permit revision applicable to the Tampa Electric Company—Big Bend Station (Big Bend) power plant. The submission was received by EPA on April 25, 2019. EPA is proposing to determine that the Hillsborough County Area attained the 2010 1-hour SO₂ NAAQS by its applicable attainment date of October 4, 2018; to approve the SIP revision containing the State’s plan for maintaining attainment of the 2010 1-hour SO₂ standard and to incorporate the maintenance plan into the SIP; to redesignate the Hillsborough County Area to attainment for the 2010 1-hour SO₂ NAAQS; and to incorporate into the SIP certain permitting conditions applicable to Big Bend, including a condition that lowers the SO₂ emissions cap and a condition that restricts fuel use at two electric generating units to natural gas.

DATES: Comments must be received on or before August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0552 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:

Madolyn Sanchez, 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. Ms. Sanchez may be reached by phone at (404) 562–9644 or via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What are the actions EPA is proposing to take?

EPA is proposing to take the following four separate but related actions: (1) To determine that the Hillsborough County Area attained the 2010 1-hour SO₂ NAAQS by its applicable attainment date of October 4, 2018; (2) to approve Florida’s maintenance plan for maintaining the 2010 1-hour SO₂ NAAQS in the Area and incorporate it into the SIP; (3) to redesignate the Hillsborough County Area to attainment for the 2010 1-hour SO₂ NAAQS; and (4) incorporate certain revised permitting conditions applicable to Big Bend into the SIP, including a condition that lowers the SO₂ emissions cap and a condition that limits fuel use to natural gas at two electric generating units. The Hillsborough County Area is comprised of the portion of Hillsborough County encompassed by the polygon with the vertices using Universal Traverse

Mercator (UTM) coordinates in UTM zone 17 with datum NAD83 as follows: (1) Vertices-UTM Easting (m) 358581, UTM Northing 3076066; (2) vertices-UTM Easting (m) 355673, UTM Northing 3079275; (3) UTM Easting (m) 360300, UTM Northing 3086380; (4) vertices-UTM Easting (m) 366850, UTM Northing 3086692; (5) vertices-UTM Easting (m) 368364, UTM Northing 3083760; and (6) vertices-UTM Easting (m) 365708, UTM Northing 3079121. There is one major point source of SO₂ emissions within the Hillsborough County Area—Mosaic Fertilizer, LLC Riverview facility (Mosaic).¹ Big Bend is located just outside of the Area and is the largest source of SO₂ within 25 km outside of the Area.

EPA is proposing to determine that the Hillsborough County Area attained the 2010 1-hour SO₂ NAAQS by its applicable attainment date of October 4, 2018. EPA is also proposing to approve Florida’s SIP revision containing the maintenance plan for the Hillsborough County Area in accordance with the requirements of section 175A of the Clean Air Act (CAA or Act). The maintenance plan submitted with Florida’s request for redesignation is intended to help keep the Hillsborough County Area in attainment of the 2010 1-hour SO₂ NAAQS through the year 2032.

EPA is also proposing to determine that the Hillsborough County Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, EPA is proposing to approve a request to change the designation of the portion of Hillsborough County that is designated nonattainment to attainment for the 2010 1-hour SO₂ NAAQS.

Finally, EPA is proposing to incorporate certain revised permitting conditions applicable to Big Bend into the Florida SIP.

II. Background

On June 2, 2010, EPA revised the primary SO₂ NAAQS, establishing a new 1-hour SO₂ standard of 75 parts per billion (ppb). See 75 FR 35520 (June 22, 2010). Under EPA’s regulations at 40 CFR part 50, the 2010 1-hour SO₂ NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than

¹ There are two smaller point sources within the Area—Ajax Paving Industries, Inc. Plant No. 6 (Ajax) and Harsco Minerals (Harsco). Cumulative SO₂ emissions for these sources were less than 6 tons and 1 ton according to Florida’s annual operating report for 2011 and 2015, respectively. See Table 5 below and Appendix D in the June 7, 2018, submittal.

or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T). *See* 40 CFR 50.17. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.²

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS. EPA designated the Area as nonattainment for the 2010 1-hour SO₂ NAAQS, effective October 4, 2013, using 2009–2011 complete, quality assured, and certified ambient air quality data. *See* 78 FR 47191 (August 5, 2013). Under the CAA, nonattainment areas must attain this NAAQS as expeditiously as practicable but not later than five years after the October 4, 2013, effective date of the designation. *See* CAA section 192(a). Therefore, the Hillsborough County Area's applicable attainment date was no later than October 4, 2018.

EPA's 2010 SO₂ nonattainment designation for the Area triggered an obligation for Florida to develop a nonattainment SIP revision addressing certain requirements under CAA title I, part D, subpart 1 (hereinafter "Subpart 1") and to submit that SIP revision to EPA in accordance with the deadlines in title I, part D, subpart 5 (hereinafter "Subpart 5"). Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that provides for the implementation of reasonably available control measures (RACM), requires reasonable further progress (RFP), includes base-year and attainment-year emissions inventories, a SIP-approved nonattainment new source review (NSR) permitting program that accounts for growth in the area, enforceable emissions limitations and other such control measures, and provides for the implementation of contingency measures. This SIP revision was due within 18 months following the October 4, 2013, effective date of designation (*i.e.*, April 4, 2015). *See* CAA section 191(a). Florida submitted a

nonattainment SIP revision to EPA on April 3, 2015.

On July 3, 2017 (82 FR 30749), EPA approved Florida's April 3, 2015, SO₂ nonattainment SIP revision. This SIP revision provided a modeled attainment demonstration and satisfied the required nonattainment planning requirements mentioned above for the Hillsborough County Area. The revision included a base year emissions inventory, a modeling demonstration of attainment for the 2010 SO₂ NAAQS, RACM/Reasonably Available Control Technology (RACT), an RFP plan, NSR permitting program, and contingency measures for the Hillsborough County Area. As discussed in Sections V and VI, below, the nonattainment SIP revision included permit conditions to reduce SO₂ emissions at Mosaic and Big Bend.

As part of that action, EPA incorporated into the Florida SIP specified SO₂ emissions caps, compliance monitoring, and recordkeeping and reporting requirements for emission units at Mosaic (Permit No. 0570008–080–AC, issued on January 15, 2015) and Big Bend (Permit No. 0570039–074–AC, issued on February 26, 2015). Florida based its modeled attainment demonstration, submitted with its April 3, 2015, nonattainment SIP revision, on these conditions. Big Bend has four emission units (EUs 1 through 4), and Big Bend's permit placed an SO₂ emissions cap on all four units at 3,162 lb/hr on a 30-day boiler operating day average. On December 14, 2018, Florida issued a final air construction permit to Big Bend (Permit No. 0570039–120–AC) that, among other things, restricts two units to the use of natural gas; lowers the four-unit emissions cap from 3,162 lb/hr to 2,156 lb/hr; and modifies monitoring and recordkeeping requirements for EUs 1 and 2.³ Florida's April 19, 2019, submittal requests that EPA incorporate into the Florida SIP certain permit conditions established in Permit No. 0570039–120–AC. Some of the identified conditions replace specific conditions from Permit No. 0570039–074–AC that EPA approved into the SIP for purposes demonstrating attainment of the SO₂ standard pursuant to the nonattainment requirements of sections 172, 191, and 192 of the CAA.

³ Florida incorporated the conditions applicable to Big Bend from Permit No. 0570039–120–AC into the facility's Title V operating permit on February 8, 2019.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations, and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992 (57 FR 13498), EPA provided guidance on redesignations in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the "Calcagni Memorandum");
2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
3. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
4. "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," Memorandum from Stephen D. Page, April 23, 2014 (hereinafter referred to as the "SO₂ Nonattainment Area Guidance").

EPA's SO₂ Nonattainment Area Guidance discusses the CAA requirements that air agencies need to address when implementing the 2010

² *See* 40 CFR part 50, Appendix T, section 3(b).

SO₂ NAAQS in areas designated as nonattainment for the standard. The guidance includes recommendations for air agencies to consider as they develop SIPs to satisfy the requirements of sections 110, 172, 175A, 191, and 192 of the CAA to show future attainment and maintenance of the 2010 SO₂ NAAQS. Additionally, the SO₂ nonattainment guidance provides recommendations for air agencies to consider as they develop redesignation requests and maintenance plans to satisfy the requirements of sections 107(d)(3)(E) and 175A. If there are no air quality monitors located in the affected area, or there are air quality monitors located in the area but analyses show that none of the monitors are located in the area of maximum concentration,⁴ then air quality dispersion modeling will generally be needed to estimate SO₂ concentrations in the area.

IV. Why is EPA proposing these actions?

Through a letter dated June 7, 2018, FDEP submitted a request for EPA to redesignate the Hillsborough County Area to attainment for the 2010 1-hour SO₂ NAAQS and an associated SIP revision containing a maintenance plan. Through a letter dated April 16, 2019, FDEP submitted a revision to the June 7, 2018, redesignation request and SIP revision asking EPA to incorporate certain conditions into the SIP from a recent permit revision applicable to Big Bend. EPA's evaluation indicates that the Hillsborough County Area meets the requirements for redesignation as set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result of this evaluation, EPA is proposing to determine that the Area has attained the 2010 1-hour SO₂ NAAQS by its attainment date of October 4, 2018, in accordance with section 179(c)(1) of the CAA, based upon air quality dispersion modeling analyses.⁵ EPA is also proposing to approve Florida's maintenance plan for maintaining the 2010 1-hour SO₂ NAAQS in the Area and incorporate it into the SIP, to redesignate the Hillsborough County Area to attainment for the 2010 1-hour SO₂ NAAQS, and to incorporate certain conditions from the revised Big Bend permit into the SIP

because these conditions further reduce SO₂ emissions.

V. Operational Changes to Big Bend's Emission Units

Florida's June 7, 2018, redesignation request and maintenance plan for the Hillsborough County Area relies upon the State's model-based attainment demonstration from its April 3, 2015, SO₂ attainment SIP which EPA approved on July 3, 2017. EPA's approval action incorporated into the Florida SIP a four-unit emissions cap of 3,162 lb/hr on a 30-day boiler operating day average and certain compliance monitoring and recordkeeping and reporting parameters from Permit No. 0570039-074-AC. Florida modeled the Big Bend emissions cap along with the Mosaic SO₂ emissions cap (and other Mosaic permit conditions) to demonstrate attainment of the standard by the attainment date. Florida established the Big Bend emissions cap to demonstrate attainment of the SO₂ standard based on a worst-case operating scenario considering the physical design, heat input, and emissions variability of each unit at Big Bend. To demonstrate compliance with the four-unit cap, Permit No. 0570039-074-AC required each unit to monitor SO₂ emissions with a continuous emission monitoring system (CEMS). The SO₂ emissions cap specified in that permit and the Mosaic permit conditions were the basis for the model-based attainment demonstration in Florida's 2015 nonattainment SIP.

On December 14, 2018, Florida issued a revised air construction permit (Permit No. 0570039-120-AC) to Big Bend that lowers the four-unit emissions cap from 3,162 lb/hr to 2,156 lb/hr; restricts EUs 1 and 2 to only burn natural gas; and since the amount of sulfur in natural gas is negligible, authorizes the removal of the SO₂ CEMS for EUs 1 and 2 and requires monitoring for these two units in accordance with the calculation method allowed for gas-fired acid rain units in 40 CFR part 75 to demonstrate compliance with the lowered emissions cap.⁶ EUs 1 and 2 share a stack and a

flue gas desulfurization (FGD) system to control SO₂. Permit No. 0570039-074-AC required certified CEMS as the method of SO₂ emissions monitoring and compliance for EUs 1 and 2. However, with the restriction on EUs 1 and 2 to burn natural gas in the revised permit, the new method of monitoring and compliance for EUs 1 and 2 utilizes the protocol in 40 CFR part 75, Appendix D to determine the hourly SO₂ emission rate from each unit. EUs 3 and 4 continue to certify compliance with the emissions cap through use of CEMS. Therefore, Big Bend will demonstrate compliance of the lowered four-unit emissions cap through a combination of 40 CFR part 75, Appendix D (EUs 1 and 2) and SO₂ CEMS data (EUs 3 and 4). As required by 40 CFR part 75, Appendix D, section 2.1, Big Bend will measure and record the hourly flow rate of natural gas combusted by EUs 1 and 2 with an in-line fuel flowmeter. The pounds-per-hour SO₂ emission rates for each of these two units will then be calculated by using the equation provided in 40 CFR part 75, Appendix D, section 3.3.1, along with the measured hourly natural gas flow rate to each unit and the vendor certified sulfur content of the combusted natural gas.

Florida's April 16, 2019, submittal requests that EPA incorporate into the SIP certain conditions from Permit No. 0570039-120-AC. As noted below, some of these conditions replace conditions that EPA incorporated into the SIP from Permit No. 0570039-074-AC in the Agency's July 3, 2017 action approving the State's nonattainment SIP. The conditions identified for incorporation into the SIP from Permit No. 0570039-120-AC are: (1) Section 2, Condition 4 (new)—describing the 40 CFR part 75, Appendix D monitoring methodology and compliance requirements for EUs 1 and 2;⁷ (2) the "SO₂ Emissions Cap" provision from Section 3, Condition 4 (replacement)—setting a four-unit emissions cap of 2,156 lb/hr averaged over a 30-day boiler operating day, requiring that EUs

stack for EUs 1 and 2 to the common inlet duct of the flue gas desulfurization system for these two units. This permit also removes other monitoring requirements for other pollutants and removes the MATS conditions that are no longer applicable because the permit exempts EUs 1 and 2 from MATS requirements.

⁷ The permit condition states that the permittee shall keep a daily log of natural gas combusted at Units 1 and 2 and shall record the sulfur content of the natural gas as provided by the fuel supplier. The SO₂ mass emissions calculated by following procedures in Appendix D of 40 CFR 75 shall be averaged on a 30-boiler operating day basis to demonstrate the contribution of Units 1 and 2 to the 4-unit SO₂ cap. [Rule 62-4.070(3), F.A.C. and Application No. 0570039-120-AC].

⁴ See section VIII.A of the 2014 SO₂ Nonattainment Area Guidance.

⁵ Section 179(c)(1) reads as follows: "As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date."

⁶ The permit also authorizes additional changes not applicable to this proposed action, including removal of all coal and solid fuels from the list of permitted fuels for EUs 1 and 2 so that the units are no longer subject to the National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units in Subpart UUUUU in Title 40, Part 63 of the Code of Federal Regulations (40 CFR 63) (also called the Mercury and Air Toxic Standards (MATS) rule). EUs 008, 015, and 016 will be removed because the units are not necessary for natural gas firing operations. Additionally, this permit authorizes relocation of the existing monitoring points for the nitrogen oxides, carbon dioxide, and ammonia CEMS from the common

1 and 2 demonstrate compliance with the cap by monitoring natural gas fuel flow and following the procedures in Appendix D to 40 CFR 75 to determine SO₂ mass emissions, and requiring that EUs 3 and 4 demonstrate compliance with the cap through CEMS;⁸ (3) the “SO₂ CEMS” provision from Section 3, Condition 4 (replacement)—requiring EUs 3 and 4 to use CEMS to demonstrate compliance with the cap and to meet the quality assurance and quality control requirements outlined in the facility’s title V permit;⁹ and (4) the “Methods of Operation” for Units 1 and 2 provision from Section 3, Condition 6 (new)—restricting EUs 1 and 2 to burning only natural gas from a federally regulated pipeline.¹⁰ As discussed in section VI of this notice, Florida’s April 19, 2019, submittal provides even more air quality protection than the model-based attainment plan approved by EPA.

VI. What is EPA’s analysis of the redesignation request and SIP revision?

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater

detail for the Hillsborough County Area in the following paragraphs.

Criterion (1)—The Administrator determines that the area has attained the NAAQS.

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). As discussed in section VIII.A of the SO₂ Nonattainment Area Guidance, there are generally two components needed to support an attainment determination for SO₂, which should be considered interdependently.¹¹ The first component relies on air quality monitoring data. For SO₂, any available monitoring data would need to indicate that all monitors in the affected area are meeting the standard as stated in 40 CFR 50.17 using data analysis procedures specified in 40 CFR part 50, Appendix T. The second component relies on air quality modeling data. If there are no air quality monitors located in the affected area, or there are air quality monitors located in the area, but analyses show that none of the monitors are located in the area of maximum concentration,¹² then air quality dispersion modeling will generally be needed to estimate SO₂ concentrations in the area. Such dispersion modeling should be conducted to estimate SO₂ concentrations throughout the nonattainment area using actual emissions and meteorological information for the most recent three calendar years. However, EPA may also make determinations of attainment based on the modeling from the attainment demonstration for the applicable SIP for the affected area, eliminating the need for separate actuals-based modeling to support the determination that an area is currently attaining. If the air agency has previously submitted a modeled attainment demonstration using allowable emissions, no further modeling is needed as long as the source characteristics are still reasonably represented and so long as emissions are at or below allowable levels. Where both monitoring and modeling information is available, such as the case with the Hillsborough County Area, EPA will consider both types of evidence.

Florida’s pre- and post-modification attainment demonstration modeling indicates that the only ambient SO₂

monitor in the Area—the East Bay monitor (AQS ID: 12–057–0109)—is not cited in the area of maximum concentration for both Mosaic and Big Bend, and therefore, the clean monitoring data at the monitor does not on its own demonstrate that the Area is currently attaining the 1-hour SO₂ NAAQS. For that reason, EPA’s proposed approval of Florida’s redesignation and maintenance plan SIP for the Hillsborough County Area is based on the modeled attainment demonstration that includes permanent and enforceable SO₂ controls and emissions limits at Mosaic and Big Bend showing attainment of the 2010 SO₂ standard by the statutory deadline. EPA approved the attainment demonstration for the Area on July 3, 2017, and incorporated the new allowable emission rates and control measures into the SIP, making them permanent and enforceable. *See* 82 FR 30749. Florida’s redesignation request indicates that the control strategies were fully implemented at Mosaic in November 2017 and at Big Bend in early 2016 (*i.e.*, these sources are emitting SO₂ at or below the SIP-approved allowable emission levels). The revised conditions in Permit No. 0570039–120–AC applicable to Big Bend became effective on December 14, 2018. If EPA approves these revised permit conditions into the SIP, they will become permanent and enforceable measures. As discussed below, EPA proposes to find that these permit revisions continue to assure attainment because, among other things, they reduce the SO₂ emissions cap by approximately 32 percent. Details regarding the control strategies and emissions reductions are provided in the *Criterion (3)* section of this notice. Details regarding the modeling analysis are discussed in the following paragraphs.

Florida’s EPA-Approved Modeling Analysis

Florida’s modeling analysis was developed in accordance with EPA’s Guideline on Air Quality Models (Modeling Guidance)¹³ and the SO₂ Nonattainment Area Guidance and was prepared using EPA’s preferred dispersion modeling system—the American Meteorological Society/ Environmental Protection Agency Regulatory Model (AERMOD)—consisting of the AERMOD (version 14134)¹⁴ model and multiple data input

⁸ This permit condition states that the combined emissions of SO₂ from all four-fossil fuel fired steam generating units (EU 001–EU 004, combined) shall not exceed 2,156 lb/hour based on a 30-boiler operating day rolling average. Units 1 and 2 shall demonstrate compliance with the cap by monitoring the natural gas fuel flow and following procedures in Appendix D of 40 CFR part 75 to determine SO₂ mass emissions. For Units 3 and 4, compliance with this SO₂ emissions cap shall be demonstrated by data collected from the existing SO₂ CEMS. The new emissions cap applies at all times when these units are operating including periods of startup and shutdown. [Rules 62–4.070(1) and (3), and 62–4.080(1), F.A.C.; Hillsborough County SO₂ Maintenance SIP; and Application No. 0570039–120–AC]. In its April 16, 2019 submittal, Florida identifies this provision as “Section 3, Subsection B, Specific Condition 2”; however, it is contained under the heading “4. Permit Being Modified: Permit No. 0570039–096–AC” in Section 3 of Permit No. 0570039–120–AC.

⁹ This permit condition states that the permittee shall use existing SO₂ CEMS data to demonstrate continuous compliance for Units 3 and 4 with the SO₂ emissions cap specified in Condition 2. The existing SO₂ CEMS shall continue to meet and follow the quality assurance and quality control requirements outline in the facility’s Title V air operation permit. [Rules 62–4.070(1) and (3), and 62–4.080(1), F.A.C.; SO₂ Attainment SIP; and Application No. 0570039–120–AC]. In its April 16, 2019 submittal, Florida identifies this provision as “Section 3, Subsection B, Specific Condition 3; however, it is contained under the heading “4. Permit Being Modified: Permit No. 0570039–096–AC” in Section 3 of Permit No. 0570039–120–AC.

¹⁰ This permit condition states that Big Ben Units 1 and 2 shall fire only natural gas from a federally regulated pipeline. No solid fuels shall be burned in these units. In its April 16, 2019 submittal, Florida identifies this provision as “Section 3, Subsection A, Specific Condition 3a”; however, it is contained under the heading “6. Permits Being Modified: Permit Nos. 0570039–066–AC & 109–AC” in Section 3 of Permit No. 0570039–120–AC.

¹¹ SO₂ is primarily a localized, source-specific pollutant, and therefore, SO₂ control measures are, by definition, based on what is directly and quantifiably necessary to attain the NAAQS.

¹² *See* section VIII.A of the SO₂ Nonattainment Area Guidance.

¹³ *See* 40 CFR part 51 Appendix W (EPA’s Guideline on Air Quality Models) (January 17, 2017) located at https://www3.epa.gov/ttn/scramp/appendix_w/2016/AppendixW_2017.pdf.

¹⁴ Version 14134 of the AERMOD Modeling System was the current EPA-recommended

preprocessors as described below. FDEP used regulatory default options and the rural land use designation in the AERMOD modeling.

The pre-processors AERMET (version 14134) and AERMINUTE were used to process five years (*i.e.*, 2008–2012) of 1-minute meteorological data from the Tampa National Weather Service Office (NWS) at the Tampa International Airport, Tampa, Florida, surface level site, based on FDEP's land use classifications, in combination with twice daily upper-air meteorological information from the same site. The Tampa International Airport is located approximately 20 km northwest from the Hillsborough Area.

The AERMOD pre-processor AERMAP (version 11103) was used to generate terrain inputs for the receptors, based on a digital elevation mapping database from the National Elevation Dataset developed by the U.S. Geological Survey. FDEP used AERSURFACE to generate direction-specific land-use surface characteristics for the modeling.

The stack heights used in the modeling meet the Good Engineering Practice stack height criteria and the Building Profile Input Program for Plume Rise Model Enhancements was used to generate direction-specific building downwash parameters. FDEP developed a Cartesian receptor grid across the entire Area (extending up to 8.5 km from the monitor), with 100 meter spacing in ambient air to ensure that maximum concentrations are captured in the analysis.

FDEP selected a background SO₂ concentration based on local SO₂ monitoring data from the East Bay monitor for the period January 2012 to December 2013. This background concentration from the nearby ambient air monitor is used to account for SO₂ impacts from all sources that are not specifically included in the AERMOD modeling analysis. The ambient monitoring data was obtained from the Florida Air Monitoring and Assessment System. Due to its close proximity to Mosaic and Big Bend, monitored concentrations at this station are strongly influenced by emissions from both facilities. As a result, and as allowed by EPA's Modeling Guideline, the data was filtered to remove measurements where the wind direction could transport pollutants from Mosaic and Big Bend to the monitor. More

specifically, the data was filtered to remove measurements where hourly wind directions were between 275° to 4° or 153° to 241°.

EPA's SO₂ Nonattainment Area Guidance provides a procedure for establishing longer-term averaging times for SO₂ emission limits (up to a 30-day rolling averaging time).¹⁵ In approving Florida's 2015 attainment demonstration, EPA concluded that FDEP completed this analysis for both Mosaic and Big Bend to derive a SIP emission limit with a block 24-hour longer-term averaging time and a rolling 30-day longer-term averaging time, respectively, that are comparatively stringent to the 1-hour limit. For more details, see Florida's April 3, 2015, nonattainment SIP submittal and EPA's final approval. *See* 82 FR 30749 (July 3, 2017).¹⁶

The results of Florida's attainment modeling are summarized in Table 1. Table 1 presents the results from the six sets of AERMOD modeling runs that were performed. The six modeling runs were the result of using an uncontrolled, or pre-modification, scenario and five different controlled, or post-modification, scenarios to account for possible control strategies that involved two-unit and three-unit emissions caps at Mosaic, in addition to individual emissions caps. The model also included the 3,162 lbs/hr emissions cap at Big Bend. The four Big Bend units were modeled at constant emissions rates derived by distributing the emissions cap based on the relative maximum allowable heat input for each unit. Maximum allowable permitted emissions caps were used for the modeling demonstration. These emissions limits and other control measures were established in construction permits issued by FDEP. EPA incorporated the permit conditions necessary to demonstrate modeled attainment into the Florida SIP via the approved attainment plan making them permanent and enforceable. Florida incorporated the conditions applicable to Big Bend from Permit No. 0570039–074–AC into the facility's Title V operating permit¹⁷ and will incorporate the conditions for Mosaic into the next Title V revision for that facility.

As noted above, Florida's modeling presents five post-control modeling runs, summarized in Table 1, which were used by FDEP to identify the worst possible scenario of emissions

distributions between Mosaic's three sulfuric acid Emissions Units (EUs) 004–006. FDEP began by evaluating maximum sulfuric acid production rates and catalyst limitations, which resulted in a total SO₂ emissions cap of 600 pounds per hour (lb/hr) for Mosaic EUs 004–006. This overall cap was then scaled to a 24-hour limit, maintaining comparative stringency with the 1-hour limit, following the procedures in the SO₂ Nonattainment Guidance. The 24-hour emissions rate resulting from this procedure is 577.8 lb/hr. FDEP rounded down the limit for an additional buffer for the maximum modeled impact, resulting in a 24-hour limit of 575 lb/hr. FDEP then back-calculated to a 1-hour critical emission value (CEV) emissions cap of 597 lb/hr. This three-unit emissions cap was then modeled in several configurations to mimic variability in emissions possible under the scenario of all three units operating simultaneously. The different configurations were determined by apportioning the emissions cap (597 lb/hr) based on each unit emitting at its individual emissions limit with the remainder of the cap distributed to the other two units based on their relative production capacities. The highest impact is presented in Table 1 as the three-unit emissions cap scenario.

FDEP also evaluated two-unit emissions caps, which assumed that only two of the three units were operating. The six possible two-unit operating scenarios were evaluated in turn by modeling each unit operating at its individual emission limit, while the remainder of the 597 lb/hr cap was distributed to the other operating unit. The highest modeled impact is presented in Table 2 as the two-unit operating scenario. For the three remaining scenarios, each sulfuric acid plant was assumed to operate alone at its individual emissions cap. For all of the modeling scenarios, the four Big Bend units were modeled at constant emissions rates derived by distributing the 1-hour CEV emissions cap¹⁸ based on the relative maximum allowable heat input for each unit. The results for each of these scenarios are also presented in Table 1. Table 1 shows that the maximum 1-hour average across all five years of meteorological data (2008–2012) is less than or equal to the 2010 1-hour SO₂ NAAQS of 75 ppb for the five post-control AERMOD modeling

regulatory version at the time the modeling was performed in 2014–2015, and therefore was appropriate for the modeling analysis.

¹⁵ FDEP followed EPA's SO₂ Nonattainment Area Guidance on procedures for establishing emissions limits with averaging periods longer than 1 hour.

¹⁶ Florida's nonattainment SIP submittal is located in Docket No. EPA–R04–OAR–2015–0624.

¹⁷ *See* Title V Operating Permit No. 0570039–110–AV issued by FDEP on November 7, 2017.

¹⁸ The details of Florida's procedures for developing the 1-hour CEV and longer-term average emissions limits are provided in its April 3, 2015, nonattainment SIP submittal.

runs. For more details, see Florida's April 3, 2015, nonattainment SIP submittal.

April 3, 2015, nonattainment SIP submittal.

TABLE 1—MAXIMUM MODELED SO₂ IMPACTS IN THE HILLSBOROUGH AREA, MICROGRAMS PER CUBIC METER [ppb]

Model scenario	Averaging time	Maximum predicted impact		Background	Total	SO ₂ NAAQS
		Mosaic	Big Bend			
Pre-modification	1-hour	425.50 (162.4)	0.82 (0.31)	20.40 (7.8)	446.72 (170.5)	196.4 (75)
Three-unit	1-hour	118.90 (45.4)	55.90 (21.3)	21.44 (8.2)	196.24 (74.9)	
Two-unit	1-hour	123.59 (47.2)	52.22 (19.9)	18.83 (7.2)	194.65 (74.3)	
EU 004 only	1-hour	0.33 (0.12)	170.84 (65.2)	17.26 (6.6)	188.43 (71.9)	
EU 005 only	1-hour	0.25 (0.10)	170.84 (65.2)	17.26 (6.6)	188.35 (71.9)	
EU 006 only	1-hour	0.33 (0.12)	170.84 (65.2)	17.26 (6.6)	188.43 (71.9)	

The pre-control analysis resulted in a predicted impact of 170.5 ppb. The post-control analysis resulted in a worst-case predicted impact of 74.9 ppb in the three-unit operating scenario. EPA determined that the modeling results indicate sufficient reductions in air quality impact with the implementation of the post-construction control plan for Mosaic and Big Bend. The control measures that have been implemented at the Mosaic and Big Bend are outlined in the *Criterion (3)* section of this notice. The collective emission limit and related compliance parameters have been incorporated into the SIP, making them permanent and federally enforceable. More details on the pre-construction and post-construction operations at the facilities are included in Florida's nonattainment SIP submission and in EPA's rulemaking on that submittal.¹⁹

On July 3, 2017, EPA approved the modeled attainment demonstration described above and concluded that it is consistent with CAA requirements, EPA's Modeling Guideline, and EPA's guidance for SO₂ attainment demonstration modeling. Florida's redesignation request indicates that the control strategies were fully implemented at Mosaic in November 2017 and at Big Bend in early 2016, meaning that emissions are at or below the levels modeled in Florida's attainment plan. Therefore, EPA proposes to find that air quality modeling supports the conclusion that the Area has attained the 2010 1-hour SO₂ NAAQS and attained the standard by the applicable deadline.

Effect of the Big Bend Permit Revisions on Florida's EPA-Approved Modeling Analysis

As discussed above, since the time that EPA approved Florida's attainment demonstration modeling on July 3, 2017, Florida issued a revised permit to Big Bend that restricts EUs 1 and 2 to only burning natural gas; reduces the four-unit SO₂ cap from 3,162 lb/hr to 2,156 lb/hr (each on a 30-day average basis); and amends the method for demonstrating compliance with the four-unit cap. Florida's April 19, 2019, submittal revises its pending June 7, 2018, redesignation request and associated SIP revision for the Hillsborough County Area by asking EPA to incorporate the aforementioned permit conditions into the SIP. Florida's 2019 submittal states that its model-based attainment demonstration (described above) is still valid for demonstrating attainment in the Area. Florida's conclusion is based on the approximate 32 percent reduction in the four-unit cap and the change in stack parameters for the stack shared by EUs 1 and 2 due to the switch to natural gas. According to the State, the plume flowrate, exit velocity, and temperature for the stack shared by EUs 1 and 2 have all increased. Florida's submittal also asserts that a faster flowrate and velocity leaving the stack will lead to increased plume rise and that the warmer temperatures will also increase plume rise. With increased plume rise, pollutants will be able to disperse more before reaching the ground and will lead to lower pollutant concentrations at the surface. Therefore, Florida believes that the new stack parameters for the shared stack of EUs 1 and 2, along with the reduced SO₂ emissions cap, would lead to lower modeled concentrations.

Florida's submittal also notes that the stack parameters for EUs 3 and 4 have not changed from the values used in the modeling demonstration. The stack

configuration for EUs 1 through 4, which have stack heights of 150 meters, are spaced less than 120 meters apart and are over 2 kilometers (km) from the Area, which according to the State, leads to the stacks behaving as a single, distant point source for receptors within the Area. The submittal also asserts that any potential emissions scenario with the revised cap would be expected to lead to decreased modeled concentrations due to the overall decrease in emissions from the four EUs due to the revised four-unit SO₂ cap.

EPA proposes to agree with Florida's assessment and conclusion regarding the effect of the revised Big Bend permit conditions on the State's model-based attainment demonstration. EPA believes that Florida's modeling, which showed that Big Bend's maximum impact was 87% of the NAAQS at 170.84 µg/m³ (see Table 1) and demonstrated attainment of the 2010 SO₂ NAAQS using a four-unit SO₂ cap of 3,162 lb/hr, is more conservative (in relation to a demonstration relying on the lowered cap) and is still valid for demonstrating attainment in the Area.

Monitoring Data

For SO₂, a location may be considered to be attaining the 2010 1-hour SO₂ NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.17 and Appendix T of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. Specifically, to attain the NAAQS at each monitoring site, the 3-year average of the annual 99th percentile (fourth highest value) of 1-hour daily maximum concentrations measured at each monitor within an area must be less than or equal to 75 ppb. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors should have remained at the same

¹⁹ See 82 FR 30749 (July 3, 2017) (final rule), 81 FR 57522 (August 23, 2016) (proposed rule), and Florida's SIP submittal located in Docket EPA-R04-OAR-2015-0624.

location for the duration of the monitoring period required for demonstrating attainment.

As discussed above, FDEP currently operates one ambient SO₂ monitor in

the Area, the East Bay monitor. This monitor is located approximately 1 km southeast of Mosaic and 7 km north of Big Bend. The original nonattainment designation was based on the 2009–

2011 design value of 103 ppb at this monitor. As shown in Table 2, the design values at this monitor have decreased steadily since 2011.

TABLE 2—HILLSBOROUGH COUNTY AREA SO₂ MONITORED DESIGN VALUES
[ppb]

Monitoring station (AQS site ID)	2011–2013 design value	2012–2014 design value	2013–2015 design value	2014–2016 design value	2015–2017 design value ²⁰	2016–2018 design value
East Bay (12–057–0109)	93 ppb	79 ppb	66 ppb	66 ppb	60 ppb	Incomplete. ²¹

Quality-assured and certified ambient air monitoring data for the 2015–2017 period, the most recent 3-year period with complete data, are attaining the 2010 1-hour SO₂ NAAQS with a design value of 60 ppb. This design value is approximately 43 percent lower than the 2009–2011 design value and 40 percent lower than the NAAQS. Although the 2016–2018 design value is invalid due to incomplete data in 2018, EPA has no reason to believe that the 2016–2018 design value would have been above the NAAQS if the monitor had complete data for 2018 given the downward trend in emissions shown in Table 2 and a 2015–2017 design value that is 40 percent lower than the NAAQS. Furthermore, since 2013, the annual 99th percentile daily maximum 1-hour SO₂ concentration has remained below the standard, and there have been no 1-hour values recorded above the level of the standard since late 2016. EPA believes that the significant decrease in SO₂ concentrations is due to the permanent and enforceable control measures at Mosaic and Big Bend. Thus, the monitoring data also support the conclusion that the Area has attained the standard.

EPA is proposing to determine that the Area has attained the 2010 1-hour SO₂ NAAQS based on the modeling analysis discussed above which is not contradicted by monitoring data. Preliminary monitoring data for the Area for 2019 indicates that the Area continues to attain the standard and has not measured any exceedances of the 1-hour SO₂ standard.²² If, before EPA takes final action, monitoring data or other evidence causes EPA to conclude that the Area is not continuing to meet the standard, EPA will not go forward with the redesignation. As discussed in more detail below, Florida has committed to continue monitoring ambient SO₂ concentrations in this Area

in accordance with 40 CFR part 58. Any future changes to the state or local air monitoring station network in the Area will be submitted to EPA for approval in Florida's annual ambient air monitoring network plan, as required by 40 CFR 58.10.

Criterion (2)—The Administrator has fully approved the applicable implementation plan for the area under section 110(k); and Criterion (5)—Florida has met all applicable requirements under section 110 and part D of title I of the CAA.

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully-approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Florida has met all applicable SIP requirements for the Hillsborough County Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Florida SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

A. The Hillsborough County Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

1. General SIP Requirements

General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NNSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate

²⁰ The 2017 data is available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

²¹ The East Bay monitor did not collect a valid 2016–2018 design value due to incomplete data in 2018.

²² Preliminary 2019 data is available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA interprets the other section 110(a)(2) elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status not to be "applicable" requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001). Nonetheless, EPA has approved Florida's SIP revisions related to the section 110 requirements for the 2010 SO₂ NAAQS, with the exception of the interstate transport elements at section 110(a)(2)(D)(i)(I). *See* 81 FR 67179 (September 30, 2016).

2. Title I, Part D, Applicable SIP Requirements

Subpart 1 of part D, comprised of CAA sections 171–179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the SO₂ NAAQS were designated under Subpart 1 of the CAA in accordance with the deadlines in Subpart 5. For purposes of evaluating this redesignation request, the applicable Subpart 1 SIP requirements are contained in section 172(c)(1)–(9), section 176, and sections 191 and 192. A thorough discussion of the requirements contained in sections 172(c) can be found in the General Preamble for Implementation of Title I. *See* 57 FR 13498 (April 16, 1992).

a. Subpart 1 Section 172 Requirements

Section 172 requires states with nonattainment areas to submit plans providing for timely attainment and

meeting a variety of other requirements. As discussed in section V.A, above, EPA's longstanding interpretation of the attainment-related nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not "applicable" for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements "have no meaning" for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni Memo.

As discussed above, EPA previously approved Florida's nonattainment SIP for the Hillsborough County Area. *See* 82 FR 30749 (July 3, 2017). Among other things, the nonattainment SIP for the Area satisfied the section 172(c)(1) requirements for RACT/RACM; 172(c)(2) requirements related to RFP; 172(c)(3) requirements for a comprehensive and accurate emissions inventory; 172(c)(6) requirements for enforceable control measures necessary to provide attainment of the NAAQS by the attainment date; and section 172(c)(9) requirements for contingency measures.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has a longstanding interpretation that because NNSR is replaced by PSD upon redesignation, nonattainment areas seeking redesignation to attainment need not have a fully approved part D NNSR program in order to be redesignated. *See* memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Florida currently has a fully-approved PSD and part D NNSR program in place in Chapters 62–204, 62–210, and 62–212 of the Florida Administrative Code. Florida's PSD

program will become effective in the Area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that the Florida's SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Finally, Section 172(c)(8) allows a state to use equivalent modeling, emission inventory, and planning procedures if such use is requested by the state and approved by EPA. Florida has not requested the use of equivalent techniques under section 172(c)(8).

As mentioned above, EPA fully approved Florida's April 3, 2015, nonattainment SIP for the Hillsborough County Area, including the model-based attainment demonstration, and determined that the SIP submission met the applicable nonattainment planning requirements of sections 172 and 191–192 of the CAA demonstrating attainment of the SO₂ standard by the statutory deadline. This approval included the specific SO₂ emissions caps and compliance monitoring established for the two SO₂ point sources impacting the Hillsborough County Area (Mosaic and Big Bend) and included in the 2015 SIP revision.

b. Subpart 1 Section 176—Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes that it is reasonable to interpret the conformity SIP requirements²³ as not applying for purposes of evaluating the redesignation request under section 107(d) because

²³ CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (upholding this interpretation) (6th Cir. 2001); 60 FR 62748 (December 7, 1995). Furthermore, due to the relatively small, and decreasing, amounts of sulfur in gasoline and on-road diesel fuel, EPA's transportation conformity rules provide that they do not apply to SO₂ unless either the EPA Regional Administrator or the director of the state air agency has found that transportation-related emissions of SO₂ as a precursor are a significant contributor to a SO₂ or fine particulate matter (PM_{2.5}) nonattainment problem, or if the SIP has established an approved or adequate budget for such emissions as part of the RFP, attainment, or maintenance strategy. *See* 40 CFR 93.102(b)(1), (2)(v); SO₂ Nonattainment Area Guidance. Neither of these conditions have been met; therefore, EPA's transportation conformity rules do not apply to SO₂ for the Area. For these reasons, EPA proposes to find that Florida has satisfied all applicable requirements for purposes of redesignation of the Hillsborough County Area under section 110 and part D of title I of the CAA.

B. The Hillsborough County Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Florida SIP for the Hillsborough County Area under section 110(k) of the CAA for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3, *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) and citations therein. As mentioned above, EPA fully approved the State's nonattainment SIP and approved Florida's SIP revisions related to the section 110 requirements for the 2010 SO₂ NAAQS, with the exception of the interstate transport elements at section 110(a)(2)(D)(i)(I). *See* 82 FR 30749 (July

3, 2017) and 81 FR 67179 (September 30, 2016), respectively.

As discussed above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation.

Criterion (3)—The air quality improvement in the Hillsborough County Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA proposes to determine that Florida has demonstrated that the observed air quality improvement in the Hillsborough County Area is due to permanent and enforceable reductions in SO₂ emissions resulting from implementation of the SIP, including the SO₂ control measures at Mosaic and Big Bend incorporated therein.

When EPA designated the Hillsborough County Area as a nonattainment area for the 2010 1-hour SO₂ NAAQS, EPA determined that operations at Mosaic were the primary cause of the 2010 1-hour SO₂ NAAQS violations in the Area. *See* 78 FR 47191.²⁴ However, Florida included the nearby Big Bend power plant in its model-based attainment demonstration because it determined that Big Bend was also a significant contributor to elevated concentrations within the Area.²⁵ Florida's April 3, 2015, nonattainment SIP revision was based on this determination and successfully reduced ambient concentrations below the 1-hour SO₂ NAAQS by only requiring emissions reductions at Mosaic and Big Bend.

Mosaic received an air construction permit²⁶ on January 15, 2015, from FDEP requiring Mosaic to construct and implement SO₂ emission control measures and limitations, according to a specific compliance schedule, necessary to ensure attainment of the SO₂ NAAQS as expeditiously as practicable. Mosaic produces fertilizers, sulfuric acid, phosphoric acid, and fluoridation ingredients and emits SO₂ from three main emissions units—sulfuric acid plants (SAPs) Nos. 7 (EU 004), 8 (EU 005) and 9 (EU 006). *See* 82 FR 30749 (July 3, 2017). The air construction permit authorized Mosaic to: Replace the vanadium catalyst (used to convert SO₂ to sulfuric trioxide) for each SAP (Nos. 7, 8, and 9) with a more efficient catalyst for improved performance;²⁷ increase the stack height at each SAP;²⁸ eliminate the use of fuel oil at the plant except during periods of natural gas curtailment or disruption; and comply with specific SO₂ emissions caps for two-unit (550 lb/hr) and three-unit (575 lb/hr) operating scenarios based on 24-hour block averages as determined by continuous emission monitoring system (CEMS) data.²⁹ The new catalyst replacement converts more SO₂ for process purposes, allowing Mosaic to meet more stringent emissions limits for these units. Allowable SO₂ emissions (from SAPs 7–9 combined) were estimated to be reduced from 1,140 lb/hr (based on total individual unit emission limits) to a maximum of 575 lb/hr, representing at least a 50 percent allowable emissions decrease. The stack heights for all three sulfuric acid plants were increased from 45.7 to 65 meters (213.5 feet); thus, the new heights are fully creditable in accordance with EPA's stack height regulations. EPA incorporated these new emissions limits, operating parameters, compliance monitoring, and recordkeeping and reporting requirements into the Florida SIP on July 3, 2017, making them permanent and enforceable. *See* 82 FR 30749 (July 3, 2017). Florida's redesignation request indicates that the control strategies were fully implemented at the Mosaic facility in November 2017.

concentrations, primarily due to the avoidance of building downwash effects. *See* EPA's June 1985 guidance document, "Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations)," which can be found at: <http://www3.epa.gov/scram001/guidance/guide/gep.pdf>.

²⁹ SAPs 7, 8, and 9 are also subject to the existing, individual SO₂ emission limits that were previously adopted into Florida's SIP (including SAP 7—400 lbs/hr, 24-hour average; SAP 8—315 lbs/hr, 24-hour average; SAP 9—425 lbs/hr, 24-hour average).

²⁴ *See* Final Technical Support Document, July 2013, Florida First Round of Nonattainment Area Designations for the 2010 SO₂ Primary NAAQS, Prepared by EPA Region 4. This document is available at Docket ID: EPA-HQ-OAR-2012-0233-0307.

²⁵ FDEP modeled actual emissions at the time of area designations which revealed contributing impacts throughout the nonattainment area due to emissions from Big Bend. *See* 82 FR 30749 (July 3, 2017) and Docket ID: EPA-R04-OAR-2015-0623.

²⁶ *See* Air Construction Permit (No. 0570008-080-AC) issued by FDEP on January 15, 2015, located in the docket for this proposed action.

²⁷ Improvements in catalyst efficiency allow the units to meet the multi-unit caps incorporated into the Florida SIP by converting more SO₂ emissions formed during the manufacturing process to sulfuric acid, improving the efficiency of the manufacturing process, and reducing SO₂ emissions.

²⁸ A stack height increase can result in greater plume dispersion across an area, minimizing stagnation and local impacts from higher

TABLE 3—MOSAIC FACILITY SO₂ SOURCE CHANGES

Source	SO ₂ emission limit (lb/hr) *				Stack height (m)	
	Previous	Individual	2-unit	3-unit		
SAP 7	400	400	Any two units cannot exceed 550 combined.	Combined emissions cannot exceed 575.	45.7	65.0
SAP 8	315	315	.....	.....	45.7	65.0
SAP 9	425	425	.....	.....	45.7	65.0
No. 6 AP Plant	40.2	Mosaic was required to cease burning of fuel oil at all units. This essentially eliminated SO ₂ emissions from these five units.			No changes.	
No. 5 Granulation Plant.	20.1					
No. 1 AFI Plant	45.0					
No. 2 AFI plant	45.0					
Auxiliary Boiler	65.3					

* All previous and new SO₂ emission limits are 24-hour block averages.

For Big Bend, FDEP issued Permit No. 0570039–074–AC on February 26, 2015, requiring the facility to comply with a SO₂ emissions cap of 3,162 lb/hr based on a 30-day rolling average for all four units as determined by CEMS data.³⁰ This involved replacing all existing No. 2 fuel igniters and associated equipment to allow all four units to fire natural gas during startup, shutdown, and flame stabilization. These enhancements allowed Big Bend to meet the new combined unit emissions cap beginning June 1, 2016. Big Bend's combined allowable SO₂ emissions were reduced from 6,587.6 lb/hr (based on total individual unit emission limits) to 3,162 lb/hr, representing a 52 percent decrease in allowable emissions. EPA incorporated the emissions cap, operating parameters, compliance monitoring, and recordkeeping and reporting requirements into the Florida

SIP on July 3, 2017, making them permanent and enforceable. See 82 FR 30749 (July 3, 2017). Florida's redesignation request indicates that the control strategies were fully implemented at Big Bend in early 2016. FDEP incorporated the permit conditions into Big Bend's title V operating permit (No. 0570039–110–AV)³¹ on November 7, 2017.

The nonattainment SIP submittal estimated base year 2011 SO₂ emissions from Big Bend of 9,105.93 tons and from Mosaic of 3,034.06 tons. Big Bend's previous allowable limit was 29,033.79 tons per year. Mosaic's previous allowable limit was 4,993.2 tons per year. The attainment year maximum allowable emissions are 2,518.5 and 13,866 tons per year for Mosaic and Big Bend, respectively, a reduction of approximately 50 percent. Actual SO₂ emissions from Mosaic and Big Bend

decreased by 7,253 tons (approximately 54 percent) from 2014 to 2017³² which corresponds with the overall downward trend in monitored daily maximum 1-hour ambient SO₂ concentrations³³ (with no values measured above the standard in 2017). The air quality improvement in the Hillsborough County Area is due to permanent and enforceable reductions in SO₂ emissions resulting from these control measures incorporated into the SIP.

As discussed above, Florida issued a revised permit to Big Bend (Permit No. 0570039–120–AC) that restricts EUs 1 and 2 to only burning natural gas; reduces the four-unit SO₂ cap from 3,162 lb/hr to 2,156 lb/hr (each on a 30-day average); and amends the method of compliance for the revised four-unit cap. Table 4 summarizes the changes in the SO₂ emissions limits at Big Bend.

TABLE 4—BIG BEND SO₂ EMISSIONS LIMIT CHANGES

Source	SO ₂ emissions limit (lb/hr) *		
	Previous	Permit No. 0570039–074–AC (effective June 1, 2016)	Permit No. 0570039–120–AC (effective December 14, 2018)
FFSG Unit 1	1,009.25	Four-unit emissions cap of 3,162 (originally 6,587.6 total).	Four-unit emissions cap of 2,165.
FFSG Unit 2	999.00		
FFSG Unit 3	1,028.75		
FFSG Unit 4	3,550.60		

* All SO₂ emission limits are 30-day rolling averages.

The revised four-unit emissions cap of 2,165 lb/hr proposed for incorporation into the SIP represents a nearly 32 percent reduction from the SIP-approved emissions cap. This lowered

emissions cap will become permanent and enforceable if EPA incorporates it into the SIP.

Criterion (4)—The Hillsborough County Area has a fully approved

maintenance plan pursuant to section 175A of the CAA.

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a

³⁰ See Air Construction Permit 0570039–074–AC issued by FDEP on February 26, 2015, located in the docket for this proposed action.

³¹ See Title V operating permit 0570039–110–AV issued by FDEP on November 7, 2017, located in the docket for this proposed action.

³² See Figure 5 in Florida's June 7, 2018, submission.

³³ See Figure 2 in Florida's June 7, 2018, submission.

fully approved maintenance plan pursuant to section 175A of the CAA. See CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Hillsborough County Area to attainment for the 2010 1-hour SO₂ NAAQS, Florida submitted a SIP revision to provide for the maintenance of the 2010 1-hour SO₂ NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA is proposing to determine that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of

future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2010 1-hour SO₂ violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan. As is discussed more fully below, EPA is proposing to determine that Florida's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Florida SIP.

b. Attainment Emissions Inventory

An attainment inventory identifies a level of emissions in the Area that is sufficient to attain the NAAQS. In its maintenance plan, Florida used 2015 actual emissions data to represent the attainment emissions inventory. As identified above, the 2015–2017 design value at the East Bay monitor was below the NAAQS and there has not been a monitored violation of the SO₂ NAAQS at the monitor since 2014. SO₂ emissions data from the Mosaic, Big

Bend, Ajax, and Harsco facilities,³⁴ as included in Florida's required 2015 annual operating reports for all sources, are presented in Table 5. Although Big Bend is located outside of the Area, Florida included it in its model-based attainment demonstration because it determined that it was a significant contributor to elevated concentrations within the Area. The complete attainment emissions inventory for the Area and relevant nearby stationary sources (*i.e.*, Big Bend) is presented in Table 6. Florida based area and non-road emissions for the Area on 2014 National Emissions Inventory (NEI) data for Hillsborough County because the State is only required to develop these inventories on a triennial period in accordance with the NEI and subpart A to 40 CFR part 51. The 2014 emissions for each category were projected to 2015 based on the increase in the Hillsborough County population from 2014 to 2015, and then allocated to the Area based on the Area's fraction of land area within the county. The State estimated on-road emissions for the Area with MOVES2014a, and similarly allocated to the Area based on the Area's fraction of land area within the county.

TABLE 5—2015 SO₂ EMISSIONS INVENTORY FOR BIG BEND, MOSAIC, AJAX, AND HARSCO FACILITIES

EU ID	Unit description	2015 SO ₂ emissions (tons)
Big Bend Facility SO₂ Emissions		
1	Fossil Fuel Fired Steam Generator Unit No. 1	1804.89
2	Fossil Fuel Fired Steam Generator Unit No. 2	1324.81
3	Fossil Fuel Fired Steam Generator Unit No. 3	1819.60
4	Fossil Fuel Fired Steam Generator Unit No. 4	2366.10
41	SCCT 4A: PWPS FT8–3 SwiftPac CT/Gen Peaking Unit	0.01
42	SCCT 4B: PWPS FT8–3 SwiftPac CT/Gen Peaking Unit	0.01
43	SCCT Black Start Emergency Engine (1,495 HP)	0.0004
44	Emergency Diesel Generator (1,046 HP)	0.0003
45	Emergency Diesel Generator and Fire Pump Diesel Engine	0.0003
51	Process Heaters (2–6 MMBtu/hour)	0.0007
53	Units 1 & 2 Emergency Diesel Generator (197 HP)	0.00005
Total .....	.....	7315.42
Mosaic Facility SO₂ Emissions		
4	No. 7 Sulfuric Acid Plant	668.33
5	No. 8 Sulfuric Acid Plant	532.19
6	No. 9 Sulfuric Acid Plant	529.11
7	No. 6 AP Plant	0.02
55	No. 5 AP Plant	0.04
63	Tank Nos. 1, 2, and 3 for molten sulfur storage w/scrubber	0
66	Sulfur Pit #7, Molten Storage/Handling System	0.02
67	Sulfur Pit #8, Molten Storage/Handling System	0.02
68	Sulfur Pit #9, Molten Storage/Handling System	0.02
74	Truck Loading Station for Molten Sulfur w/common scrubber	0
111	Existing Emergency Stationary RICE < or equal to 500 HP	0.13

³⁴ Ajax and Harsco are two smaller point sources within the Area. See footnote 1 for additional information.

TABLE 5—2015 SO₂ EMISSIONS INVENTORY FOR BIG BEND, MOSAIC, AJAX, AND HARSCO FACILITIES—Continued

EU ID	Unit description	2015 SO ₂ emissions (tons)
112	Auxiliary Boiler	0.002
113	Non-Emergency CI ICE	3.44
Total .....	.....	1733.32
Ajax Facility SO₂ Emissions		
5	Diesel Engine and Power Generator for RAP Crusher	0.05
6	Drum Mix Asphalt Plant (400TPH)	0.25
Total .....	.....	0.30
Harsco Facility SO₂ Emissions		
1	Fluid Bed Slag Dryer	0.004
Total .....	.....	0.004
Total All Point Sources.	.....	9,049.05

TABLE 6—2015 ATTAINMENT EMISSIONS INVENTORY FOR THE HILLSBOROUGH COUNTY AREA

Source Type	Point	Area	Non-Road	On-Road	Total
2015 SO ₂ Emissions (tons)	9,049.05	8.80	0.16	1.86	9,059.87

For additional information regarding the development of the attainment year inventory, please see Appendix D to Florida's June 7, 2018, submittal.

c. Maintenance Demonstration

Maintenance of the SO₂ standard is demonstrated either by showing that future emissions will not exceed the level of the attainment emissions inventory year or by modeling to show that the future mix of sources and

emission rates will not cause a violation of the NAAQS.

To evaluate maintenance through 2032 and satisfy the 10-year interval required in CAA section 175A, Florida prepared projected emissions inventories for 2020–2032. The emissions inventories are composed of the following general source categories: point, area, non-road mobile, and on-road mobile. The emissions inventories were developed consistent with EPA guidance and are summarized in Table

7. Florida compared the projected emissions for the final year of the maintenance plan (2032) to the attainment emissions inventory year (2015) and compared interim years to the attainment emissions inventory year to demonstrate continued maintenance of the 2010 1-hour SO₂ standard. For additional information regarding the development of the projected inventories, please see Appendix D to Florida's June 7, 2018, SIP submittal.

TABLE 7—PROJECTED FUTURE EMISSIONS INVENTORIES FOR THE AREA

Source type	Projected 2020 SO ₂ emissions (tons)	Projected 2023 SO ₂ emissions (tons)	Projected 2026 SO ₂ emissions (tons)	Projected 2029 SO ₂ emissions (tons)	Projected 2032 SO ₂ emissions (tons)
Point	9,049.05	9,049.05	9,049.05	9,049.05	9,049.05
Area	9.53	10.01	10.47	10.91	11.31
Non-road	0.18	0.19	0.20	0.20	0.21
On-road	0.74	0.71	0.69	0.67	0.66
Total	9,059.49	9,059.95	9,060.40	9,060.83	9,061.23

In situations where local emissions are the primary contributor to nonattainment, such as the Hillsborough County Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standards should not be exceeded in the future. Florida has projected emissions

as described previously, and these projections indicate that emissions in the Hillsborough County Area will remain at nearly the same levels as those in the attainment year inventory for the duration of the maintenance plan. While these projections include a small increase in area source and non-road emissions from 2020 to 2032 (1.81 tons), the increase is negligible when

compared to the total emissions inventory, and EPA does not believe that this projected increase should cause an exceedance of the SO₂ NAAQS through 2032. This belief is supported by the fact that Florida does not anticipate any future development within the Area that could potentially increase SO₂ emissions and the fact that any increases in actual emissions from

Mosaic or Big Bend are required to remain below the modeled emissions that demonstrate attainment for the 1-hour SO₂ NAAQS. Furthermore, any potential future SO₂ emissions sources that may locate in or near the Area would be required to comply with the FDEP's approved NSR permitting programs to ensure that the Area will continue to meet the NAAQS. EPA also notes that the natural gas fuel requirement for EUs 1 and 2 at Big Bend and the reduced four-unit SO₂ cap proposed for incorporation into the SIP are expected to further reduce SO₂ emissions beyond the levels projected in Table 7.

As discussed in the SO₂ Nonattainment Area Guidance, an approved attainment plan that relies on air quality dispersion modeling using maximum allowable emissions, such as Florida's attainment plan for the Area, can generally be expected to demonstrate that the standard will be maintained for the requisite 10 years and beyond without regard to any changes in operation rate of the pertinent sources that do not involve increases in maximum allowable emissions.³⁵ EPA believes that the Area will continue to maintain the standard at least through the year 2032 because the air quality modeling in the approved attainment plan showed that the Area would attain the standard based on the maximum allowable emissions limits at Mosaic and Big Bend that are incorporated into the SIP, these sources have fully implemented these permanent and enforceable measures, and the emissions reductions from these measures are reflected in the attaining design values for the Area. As discussed above, EPA believes that the modeling in the attainment plan using the four-unit SO₂ cap of 3,162 lb/hr at Big Bend is more conservative (in relation to a demonstration relying on the lowered cap) and is still valid for demonstrating attainment in the Area.

d. Monitoring Network

The East Bay monitor (12-057-0109) is the only SO₂ monitor located within the Hillsborough County Area, and the 2010 1-hour SO₂ nonattainment designation was based on data collected from 2009–2011 at this monitor. In its maintenance plan, Florida has committed to continue operating an appropriate SO₂ monitoring network, consult with EPA prior to making any changes to the existing network, and continue to quality assure the monitoring data in accordance with 40 CFR part 58. Therefore, Florida has

addressed the requirement for monitoring. FDEP's monitoring network plan was submitted on June 28, 2018, and approved by EPA on October 22, 2018.

e. Verification of Continued Attainment

The State of Florida, through FDEP, has the legal authority to enforce and implement all measures necessary to attain and maintain the NAAQS. Section 403.061(35), Florida Statutes, authorizes the Department to "exercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act. This includes implementing and enforcing all measures necessary to attain and maintain the NAAQS. In addition, FDEP will use emissions data submitted by Mosaic and Big Bend through annual operating reports to verify continued compliance with the permitted emissions rates that were shown through the modeling demonstration in the attainment plan to be sufficient to provide for maintenance of the 2010 1-hour SO₂ NAAQS throughout the Area. Any increases in actual emissions from Mosaic or Big Bend must remain below their permitted levels. Furthermore, any potential future SO₂ emissions sources that may locate in or near the Area would be required to comply with FDEP's approved NSR permitting programs to ensure that the Area will continue to meet the NAAQS. In addition to assuring continued attainment in this manner, FDEP will verify continued attainment through operation of the monitoring network.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. In cases where attainment revolves around compliance of a single source or a small set of sources with emissions limits shown to provide for attainment, EPA interprets "contingency measures" to mean that the state agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreement pending the

adoption of revised SIPs.³⁶ A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in the maintenance plan contains triggers to determine when contingency measures are needed and what kind of measures should be used. Upon notification by the FDEP Office of Air Monitoring that the East Bay monitor has registered SO₂ levels in excess of the standard for a fourth time during a calendar year, FDEP will notify Mosaic and Big Bend of the occurrence of the fourth high exceedance. Upon notification by FDEP of a confirmed fourth high exceedance,³⁷ Mosaic and Big Bend will, without any further action by FDEP or EPA, undertake a full system audit of all emissions units subject to control under the attainment plan. Within 10 days of notification of the confirmed fourth high exceedance, each source will independently submit a written system audit report to FDEP summarizing all operating parameters of all emissions units for four 10-day periods up to and including the dates of the exceedances together with recommended provisional SO₂ emission control strategies for each affected unit and evidence that these control strategies have been deployed, as appropriate. Upon receipt of the above-mentioned reports, FDEP will then begin a 30-day evaluation of these reports to determine the cause of the exceedances, followed by a 30-day consultation period with the sources to develop and implement appropriate operational changes. At the end of the consultation period, FDEP will mandate operational changes identified by the written system audit to prevent any future violation of the NAAQS. Any necessary changes would be implemented as soon as practicable, with at least one implemented within 18–24 months of the monitored violation, in order to bring the Area into attainment as expeditiously as possible. These changes could include, but would not be limited to:

³⁶ See SO₂ Nonattainment Area Guidance at p.69.

³⁷ Confirmation of a fourth high exceedance over the SO₂ NAAQS would be made after quality assurance activities are completed, but not necessarily with FDEP-certified data.

³⁵ See SO₂ Nonattainment Area Guidance at p.67.

- Fuel switching to reduce or eliminate the use of sulfur-containing fuels; and

- physical or operational reduction of production capacity, as appropriate.

If a permit modification is necessary, the State would issue a final permit in accordance to Sections 120 and 403 of the Florida Statutes. Subsequently, Florida would submit any relevant permit change to EPA as a source-specific SIP revision to make the change permanent and enforceable. In addition to including these contingency measures in the maintenance plan, Florida also stated that all existing control measures will remain in effect after redesignation.

EPA has preliminarily concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan. Therefore, EPA proposes to determine that the maintenance plan for the Area meets the requirements of section 175A of the CAA and proposes to incorporate the maintenance plan into the Florida SIP.

VII. What is the effect of EPA's proposed actions?

Approval of Florida's redesignation request would change the designation of the portion of Hillsborough County that is within the Hillsborough County Area, as found at 40 CFR part 81, section 81.310, from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. Approval of Florida's associated SIP revision would also incorporate a plan for maintaining the 2010 1-hour SO₂ NAAQS in the Hillsborough County Area through 2032 into the SIP. Incorporation of the Big Bend permit conditions discussed above from Permit No. 0570039-120-AC into the SIP would make them permanent and federally enforceable.

VIII. Incorporation by Reference

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 into Florida's SIP the following conditions from Permit No. 0570039-120-AC issued by FDEP to Big Bend with an effective date of December 14, 2018: (1) Section 2, Condition 4; (2) the "SO₂ Emissions Cap" provision from Section 3, Condition 4;³⁸ (3) the

"SO₂ CEMS" provision from Section 3, Condition 4;³⁹ and (4) the "Methods of Operation" for Units 1 and 2 provision from Section 3, Condition 6.⁴⁰

EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. Proposed Actions

EPA is proposing to take four separate but related actions regarding the redesignation request and associated SIP revision for the Hillsborough County Area.

First, EPA is proposing to determine that the Area attained the 2010 1-hour SO₂ NAAQS by its attainment date of October 4, 2018. This determination is being proposed in accordance with section 179(c)(1) of the CAA.

Second, EPA is proposing to approve the maintenance plan for the Area and to incorporate it into the SIP. As described above, the maintenance plan demonstrates that the Area will continue to maintain the 2010 1-hour SO₂ NAAQS through 2032.

Third, EPA is proposing to approve Florida's request for redesignation of the Area from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS.

Fourth, EPA is proposing to incorporate into the SIP the aforementioned permitting conditions applicable to Big Bend, including a condition that lowers the SO₂ emissions cap by approximately 32 percent and a condition that restricts the fuel use at two electric generating units to natural gas.

If finalized, approval of the redesignation request for the Hillsborough County Area would change the official designation of the portion of Hillsborough County, Florida, encompassed by the polygon with the vertices using UTM coordinates in UTM zone 17 with datum NAD83 as follows: (1) Vertices-UTM Easting (m) 358581,

under the heading "4. Permit Being Modified: Permit No. 0570039-096-AC" in Section 3 of Permit No. 0570039-120-AC. See Section V of this notice for additional information.

³⁹In its April 16, 2019 submittal, Florida identifies this provision as "Section 3, Subsection B, Specific Condition 3; however, it is contained under the heading "4. Permit Being Modified: Permit No. 0570039-096-AC" in Section 3 of Permit No. 0570039-120-AC. See Section V of this notice for additional information.

⁴⁰In its April 16, 2019 submittal, Florida identifies this provision as "Section 3, Subsection A, Specific Condition 3a; however, it is contained under the heading "6. Permits Being Modified: Permit Nos. 0570039-066-AC & 109-AC" in Section 3 of Permit No. 0570039-120-AC. See Section V of this notice for additional information.

UTM Northing 3076066; (2) vertices-UTM Easting (m) 355673, UTM Northing 3079275; (3) UTM Easting (m) 360300, UTM Northing 3086380; (4) vertices-UTM Easting (m) 366850, UTM Northing 3086692; (5) vertices-UTM Easting (m) 368364, UTM Northing 3083760; and (6) vertices-UTM Easting (m) 365708, UTM Northing 3079121, as found at 40 CFR part 81, from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS.

X. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- Are not significant regulatory actions 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);

- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because these actions are not significant regulatory actions under Executive Order 12866;

- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are 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.*);

- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

³⁸In its April 16, 2019 submittal, Florida identifies this provision as "Section 3, Subsection B, Specific Condition 2"; however, it is contained

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

These proposed actions do not 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, these proposed actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Sulfur dioxide.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: July 18, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019-16070 Filed 7-30-19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R01-OAR-2019-0352; FRL-9997-35-Region 1]

Air Plan Approval and Air Quality Designation; New Hampshire; Redesignation of the Central New Hampshire Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the maintenance plan and redesignation request submitted by the State of New Hampshire for the Central New Hampshire nonattainment area for the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). This nonattainment area consists of portions of Hillsborough County, Merrimack County, and Rockingham County, New Hampshire. The primary emission source in the nonattainment area is now subject to federally-enforceable emission control standards, and air quality in the area now meets the 2010 SO₂ NAAQS. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2019-0352 at <https://www.regulations.gov>, or via email to biton.leiran@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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 <http://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT:

Leiran Biton, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1267, email biton.leiran@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA promulgated a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. On August 5, 2013 (78 FR 47191), EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO₂ NAAQS, including the Central New Hampshire nonattainment area within the State of New Hampshire. These “round one” area designations were effective October 4, 2013. In that action, the Central New Hampshire area was designated nonattainment for the SO₂ NAAQS based on data collected at the Pembroke, New Hampshire ambient air quality monitoring station in calendar years 2009 through 2011. The Central New Hampshire nonattainment area is comprised of 14 municipalities in portions of three different counties in New Hampshire. These cities and towns, and the counties in which they are located, are listed in Table 1. All other areas in the State were designated as attainment/unclassifiable for the 2010 SO₂ NAAQS in the “round 3” area designations on January 9, 2018. The Central New Hampshire nonattainment area contains the electric generating source Merrimack Station, currently owned and operated by GSP Merrimack

LLC and formerly by Public Service of New Hampshire (PSNH) d/b/a Eversource Energy, in Bow, New

Hampshire, to which the State attributed about 90% of SO₂ emissions

contributing to the nonattainment designation.

TABLE 1—LIST OF COUNTIES AND MUNICIPALITIES INCLUDED WITHIN THE CENTRAL NEW HAMPSHIRE NONATTAINMENT AREA

County	Municipality
Hillsborough County (part)	Goffstown Town.
Merrimack County (part)	Allenstown Town, Bow Town, Chichester Town, Dunbarton Town, Epsom Town, Hooksett Town, Loudon Town, Pembroke Town, Pittsfield Town, City of Concord.
Rockingham County (part)	Candia Town, Deerfield Town, Northwood Town.

By April 4, 2015, New Hampshire was required to submit a nonattainment plan State Implementation Plan (SIP) that meets the requirements of sections 172(c) and 191–192 of the CAA, and that would provide for attainment of the NAAQS as expeditiously as practicable, but no later than October 4, 2018. On March 18, 2016 (81 FR 14736), EPA found for a number of areas, including the Central New Hampshire area, that the states in which those areas are located had failed to submit the required SO₂ nonattainment plan by the submittal deadline. In response to the requirement for SO₂ nonattainment plan submittals, New Hampshire submitted a nonattainment area plan and attainment demonstration for the Central New Hampshire nonattainment area on January 31, 2017.

New Hampshire's submittal included new SO₂ emissions limits and associated control technology efficiency requirements for Merrimack Station. In 2011, Merrimack Station installed and began operation of a flue gas desulfurization (FGD) scrubber system that is efficient in removing SO₂ from the exhaust gas stream. On September 1, 2016, the State established permit conditions that include stringent emissions limits and prohibit operation of either of Merrimack Station's two coal-fired boilers when the FGD scrubber system is not operating except as necessary to prevent severe damage to equipment or potential injury to facility personnel.

On June 5, 2018, EPA found that the emissions limits established by New Hampshire for Merrimack Station and submitted to EPA on January 31, 2017 provide for attainment of the NAAQS, and EPA approved the limits and associated conditions into the New Hampshire SIP (83 FR 25922).

Emissions from Merrimack Station have declined considerably in recent years. In 2010, Merrimack Station emitted 33,248 tons of SO₂. Based on data the State presented from the 2014 National Emissions Inventory (NEI), the total point, area, and mobile source SO₂

emissions in the entire Central New Hampshire nonattainment area in 2014 were 1,481 tons per year (tpy), with 1,044 tons (70.5%) emitted from Merrimack Station. In 2016, SO₂ emissions reported for Merrimack Station were 228 tons. Because of the significant, permanent, and enforceable reduction in SO₂ emissions affecting the nonattainment area, the (then) proposed approval of the State's nonattainment area plan and attainment demonstration, and the fact that the Pembroke SO₂ monitor's three-year SO₂ design value (DV)¹ was below the SO₂ NAAQS for 2012–2014 and 2014–2016, New Hampshire submitted a redesignation request in 2018.

On March 16, 2018, the New Hampshire Department of Environmental Services (NHDES) submitted its request to EPA to redesignate the Central New Hampshire nonattainment area to attainment. The title of the submittal is “1-Hour Sulfur Dioxide (2010 Standard) Redesignation Request and Maintenance Plan for the Central New Hampshire Nonattainment Area” (New Hampshire's March 16, 2018 submittal). For the reasons set forth in this document, EPA is proposing to approve New Hampshire's request to redesignate the area to attainment.

II. Redesignation Requirements

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment.

1. EPA has determined that the relevant NAAQS has been attained in the area.
2. The applicable implementation plan has been fully approved by EPA under section 110(k).
3. EPA has determined that improvement in air quality is due to

¹ The DV is a statistic computed according to the data handling procedures of the NAAQS (in 40 CFR part 50 appendix T) that, by comparison to the level of the NAAQS, indicates whether the area is violating the NAAQS. For SO₂, the DV is the three-year average of the annual 99th percentile of one-hour daily maximum concentrations.

permanent and enforceable reductions in emissions resulting from the SIP, Federal regulations, and other permanent and enforceable reductions.

4. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

5. The State has met all applicable requirements for the area under section 110 and part D.

Sections III (Determination of Attainment), IV (New Hampshire's Approved State Implementation Plan), V (Permanent and Enforceable Emission Reductions), VI (Requirements for the Area Under Section 110 and Part D) and VII (Maintenance Plan) of this notice describe how New Hampshire meets each of these criteria for the Central New Hampshire nonattainment area.

III. Determination of Attainment

As stated in the April 23, 2014 “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions,” (EPA's April 23, 2014 Guidance) for SO₂, there are two components needed to support an attainment determination: (1) A review of representative air quality monitoring data, and (2) a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the applicable standard, based on current actual emissions or the fully implemented control strategy. New Hampshire has addressed both components, as described in the two following sections III.A and III.B.

A. Air Quality Monitoring Data

The first requirement for redesignation is to demonstrate that the standard has been attained in the area. Under EPA regulations at 40 CFR 50.17, the SO₂ standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of one-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50 at all relevant monitoring sites in the subject area. EPA has reviewed the

ambient air monitoring data for the Central New Hampshire nonattainment area. The Central New Hampshire nonattainment area has two SO₂ monitoring sites: One located in Concord at Hazen Drive (Site ID #33–013–1007)² and one in Pembroke (Site ID #33–013–1006). The annual 99th percentile daily maximum SO₂ concentrations were higher at the Pembroke monitor than the Concord monitor for all years reviewed by EPA (2012 through 2017). In New Hampshire's March 16, 2018 submittal, the State demonstrated that the vast majority of monitored exceedances at the Pembroke monitor during the 2009–2011 period occurred when wind directions were from Merrimack Station and toward the monitor. EPA's review of monitored air quality includes ambient data collected in the 2012–2014 period through the 2014–2016 period, as

well as data collected in the 2015–2017 period, which were the most recent quality-assured data available at the time of EPA's review. All data considered are complete, quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database.

Table 2 shows the three-year DVs for the periods between 2012 and 2017 for the Central New Hampshire nonattainment area. For 2012, the last year during which emissions from Merrimack Station bypassed the FGD system (a practice that is no longer permitted except as necessary to prevent severe damage to equipment or potential injury to facility personnel under the State's September 1, 2016 permit), the 99th percentile monitored daily maximum value at the Pembroke monitor was 26.9 ppb. For 2017, the first full year during which Merrimack Station was no longer permitted to

operate unless its FGD system was operating, the 99th percentile daily maximum value at the Pembroke monitor was 16.4 ppb. Within the Central New Hampshire nonattainment area, the maximum monitored three-year average DV for 2012–2014 was 23 ppb (31.7% of the NAAQS), and the three-year average DV for 2015–2017 was 15 ppb (20.0% of the NAAQS). Both values are low and show attainment with the SO₂ standard. Therefore, the SO₂ monitors in the Central New Hampshire area clearly show attainment. New Hampshire plans to continue monitoring for SO₂ at the Pembroke location. Preliminary data for 2018 (January 1 through September 30) indicate a 99th percentile monitored daily maximum value of 11.9 ppb at the Pembroke monitor, indicating that the area is continuing to attain the SO₂ standard.

TABLE 2—MONITORING DATA FOR THE CENTRAL NEW HAMPSHIRE NONATTAINMENT AREA FOR 2012 THROUGH 2017

Site Name/ID No.	Annual 99th percentile value (ppb)						Design value (ppb)			
	2012	2013	2014	2015	2016	2017 ^a	2012–2014	2013–2015	2014–2016	2015–2017 ^a
Concord/33–013–1007	7.7	8.6	9.5	7.2	4.9	N/A ^b	9	8	7	N/A ^b
Pembroke/33–013–1006	26.9	17.0	26.0	16.9	16.4	12.1	23	20	20	15

^a Data from EPA's "Air Quality Design Values" website at <https://www.epa.gov/air-trends/air-quality-design-values>, accessed on July 18, 2019.

^b The Concord monitor ceased collection of SO₂ monitoring data at the end of 2016.

B. Air Quality Modeling Data

Regarding the second component of the attainment determination, *i.e.*, air quality modeling, EPA stated in its April 23, 2014 Guidance that a previously submitted modeled attainment demonstration would suffice, along with evidence that the control strategy in the SIP has been fully implemented, to show attainment for a nonattainment area. In New Hampshire's March 16, 2018 submittal, the State provides details about the SO₂ modeled attainment demonstration that the State submitted to EPA on January 31, 2017 with its SO₂ nonattainment area plan. As previously stated, EPA approved the State's nonattainment area plan and attainment demonstration on June 5, 2018 (83 FR 25922). The control strategy for the nonattainment area consists of emission limits on Merrimack Station's SO₂ emission units. Specifically, the emission limits for Merrimack Station are 7-boiler operating day rolling averages that New Hampshire established as being

comparably stringent, using a method described in EPA's April 23, 2014 Guidance, to a 1-hour emission limit for which the attainment demonstration was performed. Therefore, since the emission limits have been fully implemented at Merrimack Station and are being complied with, as discussed in section V of this notice, then New Hampshire's attainment demonstration is a sufficient basis to show attainment for the Central New Hampshire nonattainment area.

In its approved attainment demonstration, New Hampshire conducted air dispersion modeling using EPA's AERMOD modeling system in a manner consistent with the requirements and recommendations specified in appendix W to 40 CFR part 55, known as the *Guideline on Air Quality Models* (the *Guideline*). This modeling established the 1-hour "critical emission value" of 0.54 lb/million British thermal units (mmBtu) for emissions from Merrimack Station to attain the 1-hour SO₂ NAAQS. The State

established for Merrimack Station a 7-boiler operating day emissions limit of 0.39 lb/MMBtu, determined to be comparably stringent to the critical emissions value using a method consistent with recommendations contained in appendix C to EPA's April 23, 2014 Guidance. Details of New Hampshire's attainment demonstration are provided in EPA's proposal (82 FR 45242, September 28, 2017) and final action (83 FR 25922, June 5, 2018) for the approval of New Hampshire's nonattainment area plan and attainment demonstration.

In summary, the monitored data show attainment in the Central New Hampshire nonattainment area for all three-year periods between 2012 and 2017, inclusive. New Hampshire has demonstrated, through an analysis of hourly wind directions correlated with the monitored exceedances at the Pembroke monitor for the 2009–2011 period, that Merrimack Station was responsible for the violation in the area. New Hampshire established through its

² The Concord monitor ceased collection of SO₂ monitoring data at the end of 2016 due to low concentrations measured at that location.

attainment demonstration, air dispersion modeling that Merrimack Station will not cause a violation of the NAAQS in the area in the future. Therefore, EPA agrees that the Central New Hampshire nonattainment area is currently attaining the SO₂ NAAQS.

IV. New Hampshire's Approved State Implementation Plan

As described in EPA's April 23, 2014 Guidance, for EPA to redesignate a nonattainment area to attainment, there must be a fully approved SIP under section 110(k) of the CAA for the area with respect to the NAAQS, without any current disapproval, finding of failure to submit or failure to implement the SIP, or partial, conditional, or limited approval.

EPA has determined that New Hampshire has a fully approved SIP with respect to section 110(k). On July 8, 2016, EPA approved New Hampshire's infrastructure SIP for the 2010 1-hour SO₂ NAAQS (81 FR 44542), except for an aspect of the SIP related to notification of neighboring states, which EPA conditionally approved, and the interstate transport provisions, which were not included in New Hampshire's SIP submittal. On May 25, 2017, EPA converted the conditional approval to a full approval based on a proposed amendment to the New Hampshire SIP (82 FR 24057). On December 17, 2018, EPA approved the State's interstate transport provisions (83 FR 64470). As stated previously, New Hampshire's nonattainment area plan for the area was approved on June 5, 2018 (83 FR 25922). There are no elements of the State's SIP that are subject to disapproval, finding of failure to submit, or partial, conditional, or limited approval, with respect to the 2010 1-hour SO₂ NAAQS. Therefore, the State has a fully approved SIP under section 110(k) of the CAA and satisfies all applicable requirements for the 2010 1-hour SO₂ NAAQS.

V. Permanent and Enforceable Emission Reductions

New Hampshire established stringent emissions limits and associated requirements for Merrimack Station on September 1, 2016 in its permit, TP-0189, for Merrimack Station. These emission limits were achieved through optimized operation of Merrimack Station's FGD system to more efficiently control SO₂ emissions. EPA incorporated those permit conditions from TP-0189 into the SIP in the approval of New Hampshire's nonattainment area plan. SO₂ emissions from Merrimack Station decreased by 21,388 tons (greater than 95%) in 2012,

the first full year of FGD operation at the facility, from the previous year. In 2016, the facility emitted 228 tons of SO₂, about 1% of its emissions in 2011.

According to EPA's review of more recent annual emissions information from the Air Markets Program Data (AMPD) tool website for the facility, Merrimack Station emitted 431.2 tons of SO₂ in 2018,³ which is about 2% of its emissions in 2011.

In addition, EPA has reviewed emissions data from Merrimack Station to assess whether the State's federally-enforceable permit conditions are effective in controlling emissions from the facility. Specifically, EPA reviewed AMPD emissions data using EPA's Field Audit Checklist Tool (FACT)⁴ for the period between September 1, 2016, when the State's 7-day emissions limit became effective, and March 31, 2019, which is the most recent date for which emissions data are currently available. EPA's review indicates that Merrimack Station's emissions have not exceeded the SIP-approved SO₂ emissions limit. Furthermore, hourly emissions from Merrimack Station have been generally well below both the 1-hour critical emissions limit, which the State demonstrated to be comparably stringent to the permitted 7-day limit. Emissions from Merrimack Station were only above the critical emissions value for four individual hours since September 1, 2016, specifically: Twice in 2016, once in 2017, and once in 2018. A spreadsheet of these data and EPA's analysis is provided in the public docket. This operating pattern is consistent with EPA's expectation, as stated in EPA's approval of the State's nonattainment area plan, that "the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value" (83 FR 25922, June 5, 2018). In summary, EPA's review of emissions information for Merrimack Station indicates that the facility has not exceeded its 7-day SO₂ emissions limit contained in the TP-0189 permit, and the facility has rarely exceeded the 1-hour critical emissions value, as anticipated by EPA. EPA therefore concludes that the emissions limits incorporated into the New Hampshire SIP for Merrimack Station are being complied with.

³ Annual emissions data from EPA's AMPD tool, available at <https://ampd.epa.gov/ampd/>.

⁴ Field Audit Checklist Tool (FACT) version 1.2.0.1, available for download at: www.epa.gov/airmarkets/field-audit-checklist-tool-fact. FACT provides users with metadata beyond the information available using the AMPD website.

VI. Requirements for the Area Under Section 110 and Part D

New Hampshire has submitted information demonstrating that it meets the requirements for the area under section 110 and part D of the CAA. In demonstrating that it has met all requirements for section 110 and part D of the CAA for the 2010 SO₂ NAAQS, New Hampshire cited its Air Pollution Control statutes at Chapter 125-C of the New Hampshire Revised Statutes Annotated (RSA), and its Rules Governing the Control of Air Pollution in the New Hampshire Code of Administrative Rules at Env-A 100 through 4800, of which some (but not all) have been approved into the State's SIP. As stated earlier in section IV, EPA has approved New Hampshire's entire infrastructure SIP for SO₂ in three separate actions. This prior infrastructure SIP approval confirms that New Hampshire's SIP meets the requirements of CAA section 110(a)(1) and 110(a)(2) to contain the basic program elements, such as an active enforcement program and permitting program.

Section 191 of the CAA required New Hampshire to submit a part D nonattainment SIP for the Central New Hampshire nonattainment area by April 4, 2015. EPA issued a finding of failure to submit the required SO₂ nonattainment plan by the submittal deadline for a number of areas, including the Central New Hampshire nonattainment area (81 FR 14736). New Hampshire submitted a plan for the Central New Hampshire nonattainment area on January 31, 2017, and EPA approved that plan on June 5, 2018 (83 FR 25922). Therefore, the State has met its obligations to establish a plan for the nonattainment area under section 191 of the CAA.

Part D includes general requirements, in subpart 1, and more specific requirements applicable to SO₂, in subpart 5, for nonattainment areas. For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Central New Hampshire area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, 13564, April 16, 1992).

Section 172(c)(1) requires nonattainment area SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA's longstanding interpretation of the

nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not applicable for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (57 FR 13498, 13564, April 16, 1992). EPA noted that the requirements for reasonable further progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements “have no meaning” for an area that has already attained the standard. EPA’s understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated for SO₂ in EPA’s April 23, 2014 Guidance and it suspends a State’s obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld EPA’s interpretation of section 172(c)(1) for “reasonably available” control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C.

Cir. 2002); *Sierra Club v. EPA*, 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).⁵ Therefore, because the Central New Hampshire nonattainment area has attained the SO₂ standard, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the “applicable implementation plan” required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). In any case, in the context of implemented measures (especially the installation of the FGD at Merrimack Station, and establishment and incorporation into the SIP of the conditions of TP–0189), EPA believes that New Hampshire has satisfied the reasonably available control measures/ reasonably available control techniques (RACM/RACT) requirement for this area.

The other section 172 requirements that are designed to help an area achieve attainment are the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS. These are also not required to be approved as part of the “applicable implementation plan” for purposes of satisfying CAA section 107(d)(3)(E)(ii).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. In New Hampshire’s March

16, 2018 submittal, as part of its maintenance plan for the area, the State submitted an attainment inventory of the SO₂ emissions from sources in the nonattainment area. New Hampshire chose 2011 for its base year emissions inventory, as comprehensive emissions data was available and updated that year. The State provided emissions inventories for 2014, the most recent year with quality assured actual emissions for the area, and the 2018 interim year and project emissions for the 2028 maintenance year.⁶ EPA considers these inventories, which are summarized in Table 3, to satisfy the requirement of section 172(c)(3). Merrimack Station, the only electric generating unit (EGU) in the Central New Hampshire nonattainment area, remains the largest source of SO₂ in the area, and emissions from Merrimack Station have declined substantially as discussed previously. For 2011 and 2014, the emissions inventories were based on the NEI for the respective years.

Note that New Hampshire’s projected inventory for the 2028 maintenance year, accounting for Merrimack Station’s continued operation under the conditions established in TP–0189, show overall emissions in the nonattainment area about 19,046 tons lower than those from 2011. This large reduction is expected to be sufficient to maintain the SO₂ standard. EPA is proposing to approve the 2014 emissions inventory, submitted by New Hampshire along with the redesignation request, as meeting the section 172(c)(3) emissions inventory requirement.

TABLE 3—SO₂ EMISSIONS INVENTORIES IN TONS PER YEAR FOR THE CENTRAL NEW HAMPSHIRE NONATTAINMENT AREA^a

Year	EGU point sources	Non-EGU point sources	Area sources	On-road mobile sources	Non-road mobile sources	Total emissions
2011	22,393	115	451	15	1	22,975
2014	1,044	63	359	14	1	1,481
2018 ^b	^c 1,927	90	425	5	1	^c 2,473
2028 ^b	3,443	127	353	5	1	3,929

^a New Hampshire’s emissions inventory provided emissions for each of the three partial counties in the nonattainment area. This table provides only the area-wide emissions totals for each inventory year.

^b New Hampshire projected emissions for 2018 and 2028.

^c According to EPA’s AMPD, actual emissions for Merrimack Station, the only EGU in the Central New Hampshire nonattainment area, were 431.2 tons in 2018.

⁵ Although the Court of Appeals for the Sixth Circuit has issued a contrary opinion in the context of redesignations for ozone and PM_{2.5}, EPA believes that these opinions, interpreting the applicability of the ozone and PM_{2.5} RACM/RACT requirements for redesignations for those pollutants, do not address the applicability of the RACM/RACT requirement for SO₂. See *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015).

⁶ At least one interim year inventory is used to demonstrate that emissions in the area are not expected to exceed the attainment year inventory in the interim between the base year and the last year of the maintenance plan. The demonstration, by means of an interim year inventory, that the area will maintain the standard throughout the maintenance period is derived from CAA section 175A, which states that maintenance in the area is

to be provided “for at least ten years after the redesignation,” and not just in the final year. Thus, a maintenance plan includes at least one interim year inventory to establish that, during the period that maintenance is projected, emissions will remain at or below the level of the attainment year inventory.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply to new and modified major stationary sources after redesignation, areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." New Hampshire has demonstrated that the Central New Hampshire nonattainment area will be able to maintain the NAAQS without part D NSR in effect, and therefore New Hampshire does not need to have a fully approved part D NSR program prior to approval of the redesignation request. After redesignation, major new or modifying stationary sources would be subject to the State's Env-A 619 Prevention of Significant Deterioration rules and would no longer be subject to the State's part D NSR rules. Furthermore, EPA notes that New Hampshire does have a fully approved part D NSR program contained in its Env-A 618 Nonattainment New Source Review rules. New Hampshire's Env-A 618 and 619 rules were approved by EPA into the State's SIP on September 25, 2015 (80 FR 57722).

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted previously, EPA has already approved a SIP for New Hampshire that meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation

conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. On December 9, 2011, New Hampshire submitted documentation establishing transportation conformity procedures in its SIP. EPA approved these procedures on November 29, 2013 (78 FR 71504). Moreover, EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like other requirements listed above, state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

Based on the preceding discussion, EPA is proposing to find that New Hampshire has satisfied all applicable requirements for purposes of redesignation of the Central New Hampshire nonattainment area under section 110 and part D of title I of the CAA.

VII. Maintenance Plan

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future one-hour SO₂ violations. Specifically, the maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

New Hampshire's March 16, 2018 redesignation request contains its maintenance plan, which New Hampshire has committed to review eight years after redesignation. New Hampshire submitted an attainment emission inventory which addresses current emissions and projections of future emissions for point, area, and

mobile sources. Total SO₂ emissions in the nonattainment area were 22,975 tons in the base year, 2011; 1,481 tons in the attainment year, 2014; 2,473 tons in the projected interim year, 2018; and 3,929 tons in the projected maintenance year, 2028. See Table 3. EPA notes that actual emissions for the interim year 2018 were considerably lower than the State's projected emissions, indicating that the State's methods for projecting an inventory may overestimate emissions in the area, which lends additional confidence in the continued future attainment of the area. Furthermore, the State indicated in its redesignation request that the projected emissions from all sources in the Central New Hampshire nonattainment area in 2028 are still lower than emissions permitted under TP-0189 for Merrimack Station alone, which have been modeled to show attainment.

New Hampshire has committed to continue to operate and maintain an appropriate air quality monitoring network to verify the area's attainment status, in accordance with the requirements of 40 CFR part 58. These data will be used to verify continued attainment.

New Hampshire has the authority to adopt, implement and enforce any subsequent emissions control measures deemed necessary to correct any future SO₂ violations. Regarding contingency measures to implement in the case of a future violation of the SO₂ standard, New Hampshire has committed to use its enforcement authority to promptly and aggressively address permit deviations from sources in the Central New Hampshire area, and in particular from Merrimack Station.

EPA proposes to find that New Hampshire's maintenance plan adequately addresses the five basic components necessary to maintain the SO₂ standard in the New Hampshire nonattainment area.

VIII. Proposed Action

In accordance with New Hampshire's March 16, 2018 request, EPA is proposing to redesignate the Central New Hampshire nonattainment area from nonattainment to attainment for the 2010 1-hour primary SO₂ NAAQS. New Hampshire has demonstrated that the area is attaining the SO₂ standard, and that the improvement in air quality is due to the permanent and enforceable permit conditions established for the main SO₂ source in the nonattainment area. EPA is also proposing to approve the maintenance plan that New Hampshire submitted to ensure that the area will continue to maintain the SO₂ standard. EPA is soliciting public

comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IX. 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 expected to be 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 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).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

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

Dated: July 25, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019-16271 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2019-0282; FRL-9997-62-OAR]

RIN 2060-AM75

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: On June 25, 2019, the Administrator of the U.S. Environmental Protection Agency (EPA) signed the proposed rulemaking "Reclassification of Major Sources as Area Sources Under Section 112 of the

Clean Air Act." The EPA also requested public comment on the proposed action. The EPA is announcing that it will hold a public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

DATES: *Public hearing:* The EPA will hold a public hearing on August 15, 2019, in Washington, DC. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: The hearing will be held at the EPA WJC East Building, 1201 Constitution Avenue NW, Room 1153, Washington, DC 20004. The hearing will convene at 9:00 a.m. (local time) and will conclude at 5:00 p.m. If there are no additional registered speakers, the EPA will end the hearing 2 hours after the last registered speaker has concluded their comments. The EPA's website for this rulemaking, which includes the proposal and information about the hearing, can be found at: <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>. Written comments on the proposed rulemaking may be submitted to the EPA electronically, by mail, facsimile, or through hand delivery/courier. Please refer to the website for this rulemaking for the addresses and detailed instructions for submitting written comments.

Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, the EPA will accept government-issued IDs, including driver's licenses from the District of Columbia and all states and territories. Acceptable alternative forms of identification include: federal employee badges, passports, enhanced driver's licenses, and military identification cards. Additional information on the REAL ID Act is available at: <https://www.dhs.gov/real-id>.

Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: The EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To

register to speak at the hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean> or contact Nancy Perry at (919) 541-5628 or at perry.nancy@epa.gov. The last day to pre-register to speak at the hearing will be August 13, 2019. On August 14, 2019, the EPA will post at <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean> a general agenda for the hearing that will list pre-registered speakers in approximate order. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

SUPPLEMENTARY INFORMATION:

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Nancy Perry if they will need specific equipment or if there are other special needs related to providing comments at the hearing. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Nancy Perry at (919) 541-5628 or perry.nancy@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

The EPA will not provide audiovisual equipment. Commenters should notify

Nancy Perry when they pre-register to speak that they will require the service of a translator or special accommodations such as audio description. The EPA may not be able to arrange accommodations without advanced notice.

Dated: July 24, 2019.

Kevin Culligan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019-16321 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R05-OAR-2018-0285; FRL-9997-34-Region 5]

Air Plan Approval; Wisconsin; Title V Operation Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve updates and revisions to the Wisconsin title V Operation Permit Program, submitted by Wisconsin pursuant to subchapter V of the Clean Air Act (Act), which requires states to develop, and to submit to EPA for approval, programs for issuing operation permits to all major stationary sources. The revision was submitted to update the title V program since the final approval of the program in 2001 and to change the permit fee schedule for subject facilities. The revision consists of amendments to Chapter Natural Resources (NR) 407 Wisconsin Administrative Code, operation permits, Chapter NR 410 Administrative code, permit fees, and Wisconsin statute 285.69, fee structure. This approval action will help ensure that Wisconsin properly implements the requirements of title V of the Act.

DATES: Comments must be received on or before August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0285 at <http://www.regulations.gov> or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Susan Kraj, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, kraj.susan@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this issue of the **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this issue of the **Federal Register**.

Dated: July 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019-16335 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 300**

[EPA-HQ-SFUND-2006-0759; FRL-9997-46-Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the South Minneapolis Residential Soil Contamination Superfund Site**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; notification of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete all but nine of approximately 3,632 properties located within the South Minneapolis Residential Soil Contamination Superfund Site (South Minn. Site) in Minneapolis, Minnesota 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 Minnesota, through the Minnesota Department of Agriculture (MDA), have determined that all appropriate response actions identified for these properties have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-2006-0759, by mail to Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (ST-6J), 77 West Jackson Boulevard, Chicago, IL 60604. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the “Rules and Regulations” section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (ST-6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-6036, or via email at cano.randolph@epa.gov.

SUPPLEMENTARY INFORMATION: This partial deletion pertains to all residential properties, parks, schools, playgrounds associated with church schools and a cemetery located within an approximate three-quarter mile radius of the CMC Heartland Lite Yard State Superfund Cleanup Site (the area known as the South Minn. Site), excluding the nine properties identified in Table 1 in the Docket that still require sampling and/or remediation. The nine properties identified in Table 1 in the Docket will remain on the NPL and are not being considered for deletion as part of this action.

In the “Rules and Regulations” Section of this issue of the **Federal Register**, we are publishing a direct final Notice of Partial Deletion of the South Minn. Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the “Rules and Regulations” section of this **Federal Register**.

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. 9601-9675; 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 19, 2019.

Cheryl Newton,*Acting Regional Administrator, Region 5.*

[FR Doc. 2019-16191 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[EPA-HQ-SFUND-1986-0005; FRL-9997-61-Region 9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Intel Corp. (Santa Clara III) Superfund Site**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 is issuing a Notice of Intent to Delete the Intel Corp. (Santa Clara III) Superfund Site (Site) located in Santa Clara, California, 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). EPA and the State of California, through the San Francisco Regional Water Quality Control Board (RWQCB), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1986-0005, by one of the following methods:

- <http://www.regulations.gov> Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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>.

- **Email:** Project Manager: Hadlock.holly@epa.gov or Community Involvement Coordinator: Lane.jackie@epa.gov.

- **Mail:** Holly Hadlock (SFD-7-3), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105.

- **Hand delivery:** Superfund Records Center, U.S. EPA, 75 Hawthorne Street, San Francisco, California. Such deliveries are accepted only during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-1986-0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://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 EPA without going through <http://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 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 <http://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 <http://www.regulations.gov> or in hard copy at the following repositories:

Superfund Records Center, 75 Hawthorne Street Room 3110, San Francisco, California, Hours: 8:00 a.m.–4:00 p.m.; (415) 947-8717

Site Repository: Santa Clara City Library, 2635 Homestead Road, Santa Clara, California. Call (408) 615-2900 for hours of operation.

FOR FURTHER INFORMATION CONTACT: Holly Hadlock, Project Manager, U.S. EPA, Region 9 (SFD-7-3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3171, email: hadlock.holly@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents:

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

I. Introduction

EPA Region 9 announces its intent to delete the Intel Corp. (Santa Clara III) Superfund Site from the National Priorities List (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 EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of 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.

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 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), 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.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete;

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today;

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of California, through the RWQCB, has concurred with deletion of the Site from the NPL;

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a local newspaper, The Santa Clara Weekly. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL; and

(6) 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 on this document are received within the 30-day public comment period, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the 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 in the Site information repositories 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 EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist 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 Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

Site Background and History

The Site (CERCLIS ID # CAT000612184) is located at 2880 Northwestern Parkway in the City of Santa Clara, Santa Clara County, California, approximately six miles south of the San Francisco Bay. The Site is approximately four acres in size. Intel Corporation (Intel) performed quality control of chemicals and electrical testing of semiconductors at the Site from 1976 to 2008. Volatile organic compounds (VOCs), primarily trichloroethene (TCE), were detected in shallow groundwater at the Site starting in 1982. Waste solvents were managed in a drum storage area and acid neutralization system located outdoors in the area of groundwater contamination and may have been the source of the groundwater VOCs; however, no evidence of a source was found in Site soil or soil gas. On October 15, 1984, the Site was proposed for NPL listing (49 FR 40320). On June 10, 1986, EPA added the Site to the NPL (51 FR 21072). Prior to the Site's listing on the NPL, the acid neutralization system and drum storage area were removed and a two-well groundwater extraction and treatment system (GWTS) was installed and put into operation.

Ongoing Development

The Site is zoned for light industrial use and is in an industrial park, dominated by the electronics industry, particularly semiconductor manufacturing. Since 2010, the Site has been owned by Vantage Data Center as part of its 18-acre Santa Clara campus, which is under redevelopment.

Remedial Investigation and Feasibility Study (RI/FS)

The Remedial Investigation (RI) was completed in 1989 and included investigation of groundwater, soil, and soil gas. Based on the RI, EPA concluded that only VOCs in shallow (less than 30 feet deep) groundwater

required cleanup. By 1990 the only contaminant above drinking water standards was TCE. Indoor air was sampled in 2010 and EPA determined that there is no unacceptable risk of TCE vapor intrusion.

EPA completed the Feasibility Study (FS) in early 1990. The FS evaluated four alternatives: (1) No further action; (2) continued operation of the existing two-well GWTS, groundwater monitoring, and implementation of a deed restriction; (3) cyclic operation of the existing two-well GWTS, groundwater monitoring, and implementation of a deed restriction; and (4) addition of a third extraction well and cyclic operation of the expanded GWTS, groundwater monitoring, and implementation of a deed restriction.

Selected Remedy

The Record of Decision (ROD) was issued on September 20, 1990, and Alternative 4 was the selected remedy. As described above, this remedy included modifications to and continued operation of the existing GWTS and implementation of a deed restriction for shallow groundwater use.

The remedial action objectives for the remedy selected in the 1990 ROD was to restore the groundwater to maximum contaminant levels (MCLs); prevent migration of contaminants in the groundwater; prevent any exposure of the public to contaminated groundwater; and restore the A-zone groundwater to drinking water quality. Although the 1990 ROD listed MCL cleanup criteria for nine different VOCs, only TCE remained above the MCL when the ROD was issued.

A ROD Amendment was signed on September 7, 2010, modifying the previously selected remedy for the Site, but leaving intact the 1990 ROD's RAO of restoring groundwater to its beneficial use as drinking water. The amended remedy included the deed restriction already recorded for the Site and monitored natural attenuation (MNA) to achieve groundwater clean-up standards.

Response Actions

The remedy selected in the 1990 ROD remedy was implemented in 1991. By 1995 the GWTS was no longer effective at reducing groundwater TCE concentrations and was shut down with RWQCB approval. In 2005, an in-situ chemical oxidation (ISCO) pilot test was implemented, but it also did not achieve the MCL in all wells. In January 2008, a new and expanded deed restriction was recorded. In addition to restricting extraction of groundwater, this new

deed restriction included specifications that no residences, hospitals, schools, or daycare centers could be built at the Site and that no excavations greater than three feet bgs were allowed without RWQCB approval. In 2016, a pilot study using injected colloidal activated carbon was implemented for in situ adsorption of the low (less than 10 micrograms per liter) and localized (two monitoring wells) TCE concentrations above the MCL that remained in shallow groundwater. Follow-up injections were conducted near one of these two monitoring wells in 2017.

Cleanup Levels

Following the 2016–2017 pilot study, groundwater monitoring was conducted periodically in the two monitoring wells that previously had groundwater TCE concentrations above the MCL. These groundwater monitoring data were evaluated using EPA statistical tools for assessing completion of groundwater restoration. EPA determined that the RAO (*i.e.*, groundwater restoration to drinking water standards) had been attained at the Site based on: (1) TCE concentrations in these two monitoring wells were below MCLs; (2) TCE concentrations in these two monitoring wells were expected to remain below MCLs; and, (3) groundwater VOCs in all other Site monitoring wells had been consistently below MCLs for at least seven years.

Operation and Maintenance

Under the MNA remedy, the operation, maintenance, and monitoring included periodic groundwater monitoring and maintenance of the deed restriction. The 2008 deed restriction was signed by Intel and the RWQCB and was recorded with Santa Clara County by Intel. Because cleanup is now complete at the Site, the deed restriction is being terminated, groundwater monitoring has been discontinued, the monitoring wells have been properly closed under Santa Clara Valley Water District (SCVWD) permit, and monitoring and maintenance have been discontinued.

Five-Year Reviews

EPA conducts reviews every five years to determine if remedies are functioning as intended and if they continue to be protective of human health and the environment. EPA issued the Fifth Five-Year Review Report on August 4, 2016, and concluded that the remedy at the Intel Santa Clara 3 Site is protective of human health and the environment. At that time, groundwater contamination had been reduced to below the MCLs in all but a very limited

area, and any potential exposures were controlled through the deed restriction. No future five-year reviews are needed because the MCL cleanup goals have been attained throughout the Site, all monitoring wells have been closed, and the deed restriction is being terminated.

Community Involvement

EPA held community meetings before and during the Site cleanup, most recently in 2009. EPA released a fact sheet shortly before publication of this Notice informing the community of the proposal to delete the surface soil portion of the Site from the NPL and how to submit comments.

Determination That the Site Meets the Criteria for Deletion in the NCP

EPA has followed all procedures required by 40 CFR 300.425(e), Deletion from the NPL. EPA consulted with the State of California prior to developing this Notice. EPA determined that the responsible party has implemented all appropriate response actions required and that no further response action for the Site is appropriate. EPA is publishing a notice in a local newspaper, The Santa Clara Weekly, of its intent to delete the Site and how to submit comments. EPA placed copies of documents supporting the proposed deletion in the Site information repositories; these documents are available for public inspection and copying.

The implemented groundwater remedy achieved the degree of cleanup and protection specified in the ROD for the Site. The selected remedial action objectives and associated cleanup levels for the groundwater are consistent with agency policy and guidance. Based on information currently available to EPA, 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 23, 2019.

Michael B. Stoker

Regional Administrator, Region 9.

[FR Doc. 2019–16320 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9997–48–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Duell & Gardner Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete the Duell & Gardner Landfill Superfund Site (Duell & Gardner Site) located in Dalton Township, Muskegon County, Michigan, 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 Michigan, through the Michigan Department of Environment, Great Lakes and Energy (MDEGLE), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by mail to Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the “Rules and Regulations” section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–6036, or via email at cano.randolph@epa.gov.

SUPPLEMENTARY INFORMATION: In the “Rules and Regulations” Section in this issue of the **Federal Register**, we are publishing a direct final Notice of Deletion of the Duell & Gardner Site without prior Notice of Intent to Delete because EPA views this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the “Rules and Regulations” section of this **Federal Register**.

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. 9601–9675; 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 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019–16200 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9997–53–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Buckeye Reclamation Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete the Buckeye Reclamation Landfill Superfund Site (Buckeye Site) located in St. Clairsville, Ohio, 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). EPA and the State of Ohio (Ohio), through the Ohio Environmental Protection Agency (OEPA), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1983-0002, by mail to Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR-6J), 77 West Jackson Boulevard, Chicago, IL 60604. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR-6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-6036, or via email at cano.randolph@epa.gov.

SUPPLEMENTARY INFORMATION: In the “Rules and Regulations” Section of this issue of the **Federal Register**, we are publishing a direct final Notice of Deletion of the Buckeye Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public

comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the “Rules and Regulations” section of this issue of the **Federal Register**.

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. 9601–9675; 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 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019-16198 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721 and 725

[EPA-HQ-OPPT-2018-0777; FRL-9994-62]
RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances (19-1.F)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 31 chemical substances, 30 of which were the subject of premanufacture notices (PMNs) and 1 (a microorganism) that was the subject of a Microbial Commercial Activity Notice (MCAN). 17 of these chemical substances are subject to Orders issued by EPA pursuant to the TSCA. This action would require persons who intend to manufacture (defined by statute to include import) or process any of these 31 chemical substances for an activity that is proposed as a significant new use to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA’s evaluation of the use, under the conditions of use for that chemical substance, within the

applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: Comments must be received on or before August 30, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0777, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-9232; email address: moss.kenneth@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to final SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after August 30, 2019 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20 or § 725.920), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Background

A. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for chemical substances that were the subject of PMNs and an MCAN. These proposed SNURs would require persons to notify

EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity proposed as a significant new use. Receipt of such notices would allow EPA to assess risks and, if appropriate, to regulate the significant new use before it may occur. Additional background regarding SNURs is more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376). Consult that preamble for further general information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)).

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A and (for microorganisms) 40 CFR part 725, subpart L. These provisions describe persons subject to the proposed rule, recordkeeping requirements, and exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to § 721.1(c), persons subject to SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A) (15 U.S.C. 2604(a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1) (15 U.S.C. 2604(b) and 2604(d)(1)), the exemptions authorized by TSCA section 5(h)(1),

(h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining significant new uses for the 31 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances and potential human exposures and environmental releases that may be associated with the conditions of use for the substances, in addition to the factors in TSCA section 5(a)(2). Note that when the Agency issues an order under TSCA section 5(e), section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the Order or publish a statement describing the reasons for not initiating the rulemaking.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for 30 chemical substances in 40 CFR part 721,

subpart E and 1 chemical substance that is a microorganism described in MCAN J-18-41 in 40 CFR part 725. In this unit, EPA provides the following information for each chemical substance:

- PMN or MCAN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR or basis for the TSCA 5(e) Order.
- Information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN/MCAN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR. This information may include testing required in a TSCA section 5(e) Order to be conducted by the PMN/MCAN submitter, as well as testing not required to be conducted but which would also help characterize the potential health and/or environmental effects of the PMN/MCAN substance. Any recommendation for information identified by EPA was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the chemical substance. Further, any such testing identified by EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models. EPA also recognizes that whether testing/further information is needed will depend on the specific exposure and use scenario in the SNUN. EPA encourages all SNUN submitters to contact EPA to discuss any potential future testing. See Unit VII. for more information.

- CFR citation assigned in the regulatory text section of the proposed rule. The regulatory text section of each proposed rule specifies the activities that would be designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.*, limits on manufacture volume) and other uses designated in this proposed rule, may be claimed as CBI.

These proposed rules include 17 PMN substances that are subject to Orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under section 5(a)(3)(B). Those Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The

proposed SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) Order usually requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELS provisions in TSCA section 5(e) Orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELS as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. EPA expects that persons whose § 721.30 requests to use the NCELS approach for SNURs that are approved by EPA will be required to comply with NCELS provisions that are comparable to those contained in the corresponding TSCA section 5(e) Order for the same chemical substance.

These proposed rules also include 13 PMN substances and 1 MCAN substance that received "not likely to present an unreasonable risk" determination in TSCA section 5(a)(3)(c). However, during the course of these reviews, EPA identified concerns for certain health and/or environmental risks if the chemicals were not used following the limitations identified by the submitters in the notices, but the section 5(a)(3)(C) determinations did not deem those uses as reasonably foreseen. The proposed SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to those same protection measures.

The chemicals subject to these proposed SNURs are as follows:

PMN Number: P-17-157

Chemical name: Silane amine carbonate (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: October 15, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be for an open, non-dispersive use. Based on the physical/chemical properties of the PMN substance and Structure Analysis Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for lung toxicity and irritation, if the chemical substance is not used following the limitations noted. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk to human health and the environment. To protect against these risks, the Order requires:

1. Use of personal protective equipment to prevent dermal exposure where there is a potential for dermal exposure;
2. Use of a National Institute of Occupational Safety and Health (NIOSH)-certified respirator with an Assigned Protection Factor (APF) of at least 1,000 where there is a potential for inhalation exposure; and
3. Establishment and use of a hazard communication program, including precautionary statements on each label and in the Safety Data Sheet (SDS).

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that the results of irritation and pulmonary effects testing would help characterize the potential health effects of the PMN substance. Although the Order does not require this test, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11267.

PMN Number: P-17-295

Chemical name:

Hydrochlorofluorolefin (generic).

CAS number: Not Available.

Effective date of TSCA section 5(e)

Order: November 7, 2018.

Basis for TSCA section 5(e) Order:

The PMN states that the generic use of the PMN substance will be as a refrigerant used in closed systems for chillers (commercial comfort air conditioners) and industrial process refrigeration. EPA identified concerns for death, suppression of food consumption, lower weights of the thymus and epididymides in males, and histological changes in the lungs, testes, liver, and kidney based on an inhalation toxicity study conducted on the PMN substance. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to the health or environment. To protect against these risks, the Order requires:

1. Use of personal protective equipment to prevent dermal exposure where there is a potential for dermal exposure;
2. Use of NIOSH certified respirators with an APF of at least 10 where there is a potential for inhalation exposure, or compliance with a NCEL of 23.6 mg/m³ as an 8-hour time-weighted average, to prevent inhalation exposure;
3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS;
4. No domestic manufacture of the PMN substance (import only);
5. No consumer use; and
6. Use only as a refrigerant used in closed systems for chillers (commercial comfort air conditioners) and industrial process refrigeration.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about potential exposure to the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that information that demonstrates adequate control of emissions using engineering controls other than those described in the PMN would be useful in determining the exposure to the PMN substance.

Although the Order does not require this information, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11268.

PMN Numbers: P-17-306 and P-17-307

Chemical names: Fatty acid modified aromatic polyester polyols (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e)

Order: December 27, 2018.

Basis for TSCA section 5(e) Order:

The PMNs state that the generic (non-confidential) use of the substances will be as components in foam insulation. Based on data on primary metabolites, EPA identified concern for ocular toxicity, bladder effects, and kidney effects. EPA also identified concern for lung effects, irritation to eyes, mucous membranes and lung, and anesthetization of the eye based on surfactant properties. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Use of personal protective equipment involving impervious gloves where there is a potential for dermal exposure;
2. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
3. Refraining from use of the PMN substances involving any application method that generates a vapor, mist, aerosol or dust to which workers may be exposed.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substances may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. A specific target organ toxicity test would help EPA determine the potential effects of the PMN substances. Although the Order does not require this test, the Order’s restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11269 (P-17-306 and P-17-307).

PMN Number: P-17-320

Chemical name: Dodecanedioic acid and 1,6-hexanediol polymer with 3-hydroxy-2,2-dimethylpropyl 2,2-dimethylhydrazylate, neopentylglycol, 1,2 ethanediol, adipic acid, Isophthalic acid, terephthalic acid, 2-Oxoxopane, BayFlex 2002H and 1,1'-methylenebis(isocyanatobenzene) (generic).

CAS number: Not available.

Effective date of TSCA section 5(e)

Order: December 28, 2018.

Basis for TSCA section 5(e) Order:

The PMN states that the generic use of the PMN substance will be as an industrial adhesive. EPA identified concerns for dermal and respiratory sensitization, lung and mucous membrane irritation and mutagenicity based on isocyanate moiety for the low molecular weight fractions. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Use of personal protective equipment to prevent dermal exposure where there is a potential for dermal exposure;
2. Use of a NIOSH-certified respirator with an APF of at least 50 where there is a potential for inhalation exposure;
3. Refraining from using the PMN substance involving any application method that generates a vapor, mist, aerosol, or dust;
4. Refraining from manufacturing the PMN substance with greater than 1% residual isocyanate by weight;
5. Refraining from using the PMN substance for consumer or commercial use; and
6. Establishment and use of a hazard communication program, including human health precautionary statements on each label and the SDS.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has also determined that sensitization and

mutagenicity effects testing of the PMN substance would be useful in determining the health effects of the PMN substance. Although the Order does not require this information, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11270.

PMN Number: P-17-329

Chemical name: Ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-.

CAS number: 1417782-28-5.

Effective date of TSCA section 5(e)

Order: August 30, 2018.

Basis for TSCA section 5(e) Order:

The PMN states that the generic (non-confidential) use of the substance will be as an intermediate used in synthesis. EPA has identified concerns for sensitization, liver, blood, spleen, reproductive, and aquatic toxicity at concentrations that exceed 7 ppb based on hazard data submitted for the PMN. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance is or will be produced in substantial quantities and that the substance either enters or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be significant (or substantial) human exposure to the substance. To protect against these risks, the Order requires:

1. Use of the PMN substance only for the confidential use specified in the Order;

2. No release of the PMN substance to surface waters exceeding 7 parts per billion (ppb);

3. Use of personal protective equipment to its workers to prevent dermal exposure where there is potential for dermal exposure;

4. Use of NIOSH-certified respirators with an APF of at least 50 where there is potential for inhalation exposure; and

5. Establishment and use of a hazard communication program, including human health precautionary statements on each label and the SDS.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the environmental effects of the

PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. A chronic aquatic toxicity test would help EPA determine the potential environmental effects of the PMN substance. Although the Order does not require this information, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11271.

PMN Numbers: P-17-367, P-17-368, P-17-369, P-17-370, P-17-371, P-17-372

Chemical names: Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic) (P-17-367); Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics (generic) (P-17-368); Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic) (P-17-369); Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol and polyol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic) (P-17-370); Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic) (P-17-371); Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic) (P-17-372).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: November 2, 2018.

Basis for TSCA section 5(e) Order:

The PMNs state that the use of the substances will be as intermediates for use in the manufacture of polymers. EPA has estimated low human health hazard of the PMN substances based on their estimated physical properties, and by comparing them to structurally analogous chemical substances. If the PMN substances are manufactured differently as polymers under the same Chemical Abstracts Service Registry Number (CAS RN) (*i.e.*, changes in the proportion of repeating units, the

average molecular weight, percentage of low molecular weight components, and/or proportion of surface active monomers), hazard concerns may result based on changes in water solubility, dispensability, absorption, etc. Concerns may also result from ester moieties if the PMN substances are not manufactured as described in the PMN submissions. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health and the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substances are or will be produced in substantial quantities and that the substances either enter or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be significant (or substantial) human exposure to the substances. To protect against these risks, the Order requires:

1. Manufacture of the PMN substances with less than or equal to the confidential percentages of low molecular weight components and not less than the confidential average molecular weight specified in the Order; and

2. Hazard communication requirements if new information identifies potential injury to human health or the environment.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the physical-chemical properties and environmental effects of the PMN substances may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. Physical-chemical property and aquatic toxicity testing would help EPA determine the potential effects of the PMN substances. Although the Order does not require this information, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citations: 40 CFR 721.11272 (P-17-367); 40 CFR 721.11273 (P-17-368); 40 CFR 721.11274 (P-17-369); 40 CFR 721.11275 (P-17-370); 40 CFR 721.11276 (P-17-371); and 40 CFR 721.11277 (P-17-372).

PMN Number: P-17-382

Chemical name: Amides, tallow, N,N-bis(2-hydroxypropyl).

CAS number: 1454803-04-3.

Basis for action: The PMN states that the use of the substance will be as a friction modifier for automotive lubricants. Based on the physical/chemical properties of the PMN substance and Structure Analysis Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for sensitization, specific organ toxicity, lung toxicity, and aquatic toxicity at concentrations that exceed 11 ppb if the chemicals are not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measures:

1. No processing resulting in an end use product containing greater than 3% by weight of the PMN substance;
2. No manufacture, processing or use that results in inhalation exposures; and
3. No release of the PMN substance to surface waters exceeding 11 ppb.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of sensitization, pulmonary effects, specific organ toxicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11278.

PMN Number: P-17-394

Chemical name: Substituted propanoic acid, polymer with alkylisocyanate-substituted carbomonocycle, dialkyl carbonate, hydroxyl alkyl substituted alkanediol, alkanediol, isocyanato substituted carbomonocycle, alkanol substituted amines-blocked, compds. with (alkylamino)alkanol, (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: April 12, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the use of the PMN substance will be as a coating to improve chemical resistance. EPA identified concerns for nasal and ocular irritation and lung toxicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a

reasoned evaluation the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Refraining from manufacture of the PMN substance in the United States (import only);
2. No use of the PMN substance other than as a coating to improve chemical resistance;
3. Import of the PMN substance with an average molecular weight greater than 1,000 daltons;
4. Import of the PMN substance to contain no more than 0.1% residual isocyanate by weight; and
5. Import of the PMN substance to contain no more than 4% of a confidential component identified in the Order by weight.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and environmental effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance, in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of reproductive/developmental and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance. Although the Order does not require this information, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11279.

PMN Numbers: P-18-23 and P-18-24

Chemical names: Propanediol phosphate (generic) (P-18-23) and substituted cashew, nutshell liquid, polymer with epichlorohydrin, phosphate (generic) (P-18-24).

CAS numbers: Not Available.

Effective date of TSCA section 5(e) Order: December 19, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the use of the PMN substances will be as epoxy hardener/curatives. EPA identified concerns for lung effects and irritation to the eyes, lungs, and mucous membranes based on surfactant activity. EPA also identified concern for corrosion to all tissues based on the low pH of the PMN substances. There are also concern for liver and systemic toxicity (P-18-23)

and sensitization due to the presence of cashew nutshell liquid (P-18-24). Based on analysis of test data on analogous chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations greater than 3 ppb for P-18-23. Based on SAR predictions for anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb for P-18-24. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. No manufacture, processing, or use of the PMN substances involving an application method that generates a vapor, mist, or aerosol;
2. No use of the PMN substances in a consumer product;
3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
4. No release of the PMN substances into the waters of the United States.

The SNUR designates as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health and environmental effects of the PMN substances may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ toxicity, skin irritation/corrosion, sensitization, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance. Although the Order does not require this information, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citations: 40 CFR 721.11280 (P-18-23) and 40 CFR 721.11281 (P-18-24).

PMN Number: P-18-41

Chemical name: 2,5-Furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate.

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate polyol for further reaction. Based on SAR analysis of test data on 2-ethylhexanoic acid, EPA identified concerns for developmental toxicity for the branched acid low molecular weight components and metabolic degradation products of the terminal ester group of the PMN substance if the chemicals are not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measures:

1. No manufacture (including import) of the PMN substance with the number average molecular weight of less than 1000 daltons; and
2. No use of the PMN substance for other than as a chemical intermediate.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substance may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of physical chemical properties, absorption, distribution, metabolism, and elimination (ADME), developmental toxicity testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11282.

PMN Number: P-18-70

Chemical name: Waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate for the polyurethane industry. Based on data for a metabolite of a component of the PMN substance EPA identified concerns for blood, bladder and developmental toxicity if the chemicals are not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measure:

1. No use the PMN substance other than the confidential uses stated in the PMN submission.

The proposed SNUR would designate as a "significant new use" the absence of this protective measure.

Potentially useful information: EPA has determined that certain information

about the health effects of the PMN substance may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ and developmental/reproductive toxicity testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11283.

PMN Number: P-18-88

Chemical name: Di(substituted-1,3-trialkylammonium) dialkylammonium salt (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: December 17, 2018.

Basis for TSCA section 5(e) Order:

The PMN states that the generic use of the PMN substance will be in oil and gas production. EPA identified concerns for lung effects based on physical-chemical properties. There are also concerns for neurotoxicity, hepatotoxicity and eye irritation based on data for analogous chemical substances. EPA has also identified concern for aquatic toxicity due to cationic (quarternary ammonium) surfactants. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance is or will be produced in substantial quantities and that the substance either enters or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be significant (or substantial) human exposure to the substance. To protect against these risks, the Order requires:

1. Refraining from using the PMN substance other than for the confidential uses identified in the Order;
2. Refraining from manufacturing, processing, or use of the PMN substance that would result in the generation of vapor, mist, particulate, or aerosol;
3. No release of the PMN substance to surface water that exceed 1000 ppb; and
4. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about health effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has also determined that specific eye irritation, specific target organ toxicity, and pulmonary effects testing of the PMN substance would be useful in determining the effects of the PMN substance. Although the Order does not require this information, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11284.

PMN Numbers: P-18-100 and P-18-102

Chemical names: Substituted alkanolic acid polymer with alkylcarbonate, alkanediols and isocyanate substituted carbomonocycles, sodium salt, alkenoic acidsubstituted polyol reaction products-blocked (generic) (P-18-100) and alkenoic acid, ester with [oxybis(alkylene)]bis[alkyl-substituted alkanediol], polymer with alkylcarbonate, alkanediols, substituted alkanolic acid and isocyanate and alkyl substituted carbomonocycle, sodium salt (generic) (P-18-102).

CAS numbers: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substances will be as UV curable coating resins. Based on analogy to structurally similar substances, EPA has identified concerns for irritation, sensitization, developmental toxicity, and liver toxicity if the chemicals are not used following the limitations noted. The intended conditions of use of the PMN substances described in the PMNs include the following protective measures:

1. No domestic manufacture in the United States (*i.e.*, import only); and
2. No use of the PMN substances other than the confidential use described in the PMNs; and
3. No use in a consumer product.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substances may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of

specific organ toxicity, reproductive/developmental toxicity, and sensitization would help characterize the potential health effects of the PMN substances.

CFR Citation: 40 CFR 721.11285 (P-18-100) and 40 CFR 721.11286 (P-18-102).

PMN Number: P-18-116

Chemical name: Castor oil, reaction products with soybean oil.

CAS number: 1186514-12-4.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate for industrial chemicals. Based on the physical/chemical properties of the PMN substance and Structure Analysis Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for sensitization, and aquatic toxicity at surface water concentrations exceeding 4 parts per billion (ppb), if the chemical substance is not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measures:

1. No manufacture (excluding import) of the PMN substance in the United States;
2. Not exceeding the confidential annual production volume stated in the PMN submission;
3. No use of the PMN substance other than for the confidential use stated in the PMN submission; and
4. No processing or use of the PMN substance resulting in inhalation exposures to aerosols or mists.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health and environmental effects of the PMN substance may be potentially useful to characterize if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11287.

PMN Number: P-18-134

Chemical name: Benzene, 1-(chloromethyl)-3-methyl-

CAS number: 620-19-9.

Effective date of TSCA section 5(e) Order: November 1, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-

confidential) use of the PMN substance will be as a chemical intermediate. EPA identified concerns for severe skin burns and eye damage, serious eye irritation, respiratory irritation, skin irritation, and oral toxicity based on structural alerts and information in the submitted SDS. Based on test data submitted with the PMN, there are also concerns for skin irritation and sensitization. Mutagenicity, carcinogenicity, neurotoxicity, developmental toxicity, and respiratory and dermal sensitization are of concern based on analysis of test data on an analog. Risks for lung toxicity and carcinogenicity via inhalation cancer via dermal exposure were identified to workers based on analysis of test data on an analogue substance. Based on QSAR predictions for analogous chemicals, EPA also predicts toxicity to aquatic organisms. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Use of personal protective equipment to prevent dermal exposure where there is a potential for dermal exposure;
2. Use of a NIOSH-certified respirator with an APF of at least 1000 to prevent inhalation exposure where there is potential for inhalation exposure;
3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS;
4. Refrain from varying the process or use methods described in the PMN such that occupational exposure is increased;
5. Refrain from using the PMN substance other than for the confidential use allowed in the Order; and
6. No release of the PMN substance into the waters of the United States.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health and environmental effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has also determined that the results or specific target organ toxicity, reproductive/developmental toxicity testing, aquatic toxicity testing, and

carcinogenicity testing would help characterize the potential human and environmental effects of the PMN substance. Although the Order does not require this information, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11288.

PMN Number: P-18-136

Chemical name: 1-

Butanaminium,N,N,N-tributyl-,2(or 5)-[[benzoyldihydrodioxo[(sulfophenyl)amino]heteropolycycle]oxy]-5(or 2)-(1,1-dimethylpropyl)benzenesulfonate (2:1) (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a coloring agent. Based on the physical/chemical properties of the PMN substance and Structure Analysis Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for systemic toxicity, and aquatic toxicity at surface water concentrations exceeding 19 parts per billion (ppb), if the chemical substance is not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measures:

1. No manufacture, processing, or use of the PMN substance if it results in inhalation exposure; and
2. No release of the PMN substance to surface water that exceed 19 ppb.

The proposed SNUR would designate as a “significant new use” the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ toxicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11289.

PMN Number: P-18-137

Chemical name: Alkylsilsesquioxane, ethoxy-terminated (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as a water repellent for fiber-reinforced cement products in construction materials, like fiber-cement board. Based on the physical/chemical

properties of the PMN substance, data on the PMN substance, and Structure Analysis Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for liver toxicity, lung toxicity by waterproofing of lung membranes, irritation, developmental toxicity, and aquatic toxicity at surface water concentrations exceeding 58 parts per billion (ppb), if the chemical substance is not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measures:

1. No release of the PMN substance to surface waters that exceed 58 ppb; and
2. No processing or use of the PMN substance in any manner that results in inhalation exposures.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of physical-chemical property testing, absorption, distribution, metabolism, elimination (ADME) testing, pulmonary effects, and specific target organ and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.11290.

PMN Number: P-18-219

Chemical name: Polythioether, short chain diol polymer terminated with aliphatic diisocyanate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate for topcoat. Based on test data on the PMN substance and on test data on analogous chemical substances, EPA has identified concerns for irritation, sensitization and lung effect if the chemical is not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measures:

1. No manufacture (including import) the PMN substance with molecular weight greater than 10,000 daltons; and
2. No manufacture (including import) the PMN substance with free isocyanate residuals greater than 0.01% by weight.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the PMN substance may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption, specific target organ toxicity, irritation and sensitization testing would help characterize the potential health effects of the PMN substance.

CFR citation: 40 CFR 721.11291.

PMN Numbers: P-18-224 and P-18-225

Chemical names: Alkenoic acid, polymer with alkenylcarbomonocycle, [alkanediylbis(substituted alkylene)] bis[heteromonocycle] and (alkylalkenyl) aromatic, salt (generic) (P-18-224) and Alkenoic acid, polymer with substituted alkylloxirane, alkenylcarbomonocycle, alkyl substituted alkyl alkanediol and (alkylalkenyl) aromatic salt (generic) (P-18-225).

CAS numbers: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as a component of ink. Based on analogy to structurally similar substances, EPA has identified concerns for carcinogenicity, neurotoxicity and developmental toxicity and lung effects if the chemicals are not used following the limitations noted. The intended conditions of use of the PMN substances described in the PMNs include the following protective measures:

1. No manufacture, processing or use of the PMN substances that results in inhalation exposures; and
2. Manufacture of the PMN substances with acid content no greater than 20% by weight.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption, neurotoxicity and pulmonary effects testing of the PMN substances may be potentially useful in characterizing the health effects of the PMN substances.

CFR citation: 40 CFR 721.11292 (P-18-224) and 40 CFR 721.11293 (P-18-225).

PMN Number: P-18-233

Chemical name: Alkyl alkenoic acid, alkyl ester, telomer with alkylthiol, substituted carbomonocycle, substituted alkyl alkyl alkenoate and hydroxyalkyl alkenoate, tertbutyl alkyl peroxyate-initiated, (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a coating agent. Based on data for analogous compounds, EPA has identified concerns for systemic, reproductive and developmental, and lung toxicity if the chemical is not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measure:

1. No manufacturing (including import) in a solid form.

The proposed SNUR would designate as a "significant new use" the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption and metabolism, systemic, reproductive, and developmental toxicity testing would help characterize the potential health effects of the PMN substance.

CFR citations: 40 CFR 721.11294.

PMN Number: P-18-279

Chemical name: Substituted heteromonocycle, polymer with substituted alkanediol and diisocyanate substituted carbomonocycle, alkylene glycol acrylate-blocked (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as a UV curable coating resin. Based on the physical/chemical properties of the PMN substance and test data on structurally similar substances, EPA has identified concerns for sensitization and irritation if the chemical is not used following the limitations noted. The intended conditions of use of the PMN substance described in the PMN include the following protective measure:

1. Use of NIOSH-certified respirator with an APF of 1000 when there is inhalation exposure from spray application.

The proposed SNUR would designate as a "significant new use" the absence of this protective measure.

Potentially useful information: EPA has determined that certain information

about the health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of corrosion/irritation and sensitization testing would help characterize the potential health effects of the PMN substance.

CFR citation: 40 CFR 721.11295.

MCAN Number: J-18-41

Chemical name: Arsenic detecting strain of *E. coli* with extra-chromosomal elements, including an intergeneric screening marker (generic).

CAS number: Not available.

Basis for action: The MCAN states that the use of the substance will be to detect arsenic in small water samples. Based on the inclusion of antibiotic resistance genes in the MCAN microorganism, conferring resistance to clinically important antibiotics, EPA has identified concerns for loss of therapeutic value of these antibiotics if the resistance gene were to be horizontally transferred to a pathogen in the environment and if infections caused by those pathogens are treated with these antibiotics. There is low potential for gene transfer, and due to the low expected releases, the risks from this MCAN microorganism are low under the intended conditions of use. The intended conditions of use of the MCAN microorganism described in the MCAN include the following protective measures:

1. No domestic manufacture within the United States (*i.e.*, import only); and
2. No use of the MCAN microorganism other than to detect arsenic in small water samples.

The proposed SNUR would designate as a "significant new use" the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the environmental fate and transfer of the antibiotic resistance gene in the MCAN microorganism may be potentially useful to characterize the health and environmental effects of the MCAN microorganism if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of a study of transformation of intergeneric DNA (*bla*_{TEM-1}) from the MCAN microorganism (either living or inactivated) into microbes in the environment would help characterize the potential health and environmental effects of the MCAN microorganism.

CFR citation: 40 CFR 725.1079.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these proposed SNURs, EPA concluded that for 17 chemical substances regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN/MCAN submitters. The SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

During review of the other 14 chemical substances that are the subject of these SNURs and as further discussed in Unit IV, EPA identified circumstances different from the intended conditions of use identified in the PMNs that raised potential risk concerns. EPA determined that deviations from the protective measures identified in the submissions could result in changes in the type or form of exposure to the chemical substances and/or increased exposures to the chemical substances and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances, and therefore warranted SNURs. The SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the protection measures in the submission.

B. Objectives

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with respect to the significant new uses that would be designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would be required to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed

chemical substance for the described significant new use.

- EPA would be required to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at <http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html>.

VI. Applicability of the Proposed Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for 17 of the 31 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which would be designated as significant new uses. The identities of 27 of the 31 chemical substances subject to this proposed rule have been claimed as confidential (per §§ 720.85 and 725.85) for a chemical substance covered by this action. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates July 31, 2019 as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.*, generating test data) before submission of a SNUN. There is an exception: Development of test data is required where the chemical substance subject to the SNUR is also subject to a rule, order or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)).

In the absence of a TSCA section 4 test rule covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50 and 725.155). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information identified by EPA that would help characterize the potential health and/or environmental effects of the PMN/SNUN substance for all of the listed SNUNs. EPA recognizes that the 2016 Lautenberg Amendments have led to modifications in our approach to testing requirements, including an increased consideration of alternatives to vertebrate testing. Descriptions of tests/information needs are provided for informational purposes only and EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the potentially useful information. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). To access the OCSPP test guidelines referenced in this document

electronically, please go to <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development test guidelines are available from the OECD Bookshop at <http://www.oecdbookshop.org> or SourceOECD at <http://www.sourceoecd.org>.

The potentially useful information listed in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN or MCAN, including submission of test data on health and environmental effects as described in 40 CFR 720.50 or § 725.160. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25 (or 40 CFR 725.25 and § 725.27). E-PMN software is available electronically at <http://www.epa.gov/opptintr/newchems>.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2018–0777.

X. Statutory and Executive Order Reviews

A. Executive Order 12866

This proposed rule would establish SNURs for several new chemical substances that were the subject of PMNs, an MCAN, and TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this proposed rule have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this proposed SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a

significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNURs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about \$10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 11632

This proposed rule would not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not

expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because this proposed rule is not expected to affect energy supply, distribution, or use and because this proposed rule is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this proposed rule would not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This proposed rule does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

List of Subjects

40 CFR Parts 721 and 725

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 24, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625(c).

■ 2. Add §§ 721.11267 through 721.11295 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

* * * * *

Sec.

- 721.11267 Silane amine carbonate (generic).
- 721.11268 Hydrochlorofluorolefin (generic).
- 721.11269 Fatty acid modified aromatic polyester polyols (generic).
- 721.11270 Dodecanedioic acid and 1,6-hexanediol polymer with 3-hydroxy-2,2-dimethylpropyl 2,2-dimethylhydracrylate, neopentylglycol, 1,2 ethanediol, adipic acid, Isophthalic acid, terephthalic acid, 2-Oxooxopane, BayFlex 2002H and 1,1'-methylenebis(isocyanatobenzene) (generic).
- 721.11271 Ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl].
- 721.11272 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).
- 721.11273 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics (generic).
- 721.11274 Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).
- 721.11275 Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol and polyol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).
- 721.11276 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).
- 721.11277 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).
- 721.11278 Amides, tallow, N,N-bis(2-hydroxypropyl).

- 721.11279 Substituted propanoic acid, polymer with alkylisocyanate-substituted carbomonocycle, dialkyl carbonate, hydroxyl alkyl substituted alkanediol, alkanediol, isocyanato substituted carbomonocycle, alkanol substituted amines-blocked, compds. with (alkylamino)alkanol (generic).
- 721.11280 Propanediol phosphate (generic).
- 721.11281 Substituted cashew, nutshell liquid, polymer with epichlorohydrin, phosphate (generic).
- 721.11282 2,5-Furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate.
- 721.11283 Waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids (generic).
- 721.11284 Di(substituted-1,3-trialkylammonium) dialkylammonium salt (generic).
- 721.11285 Substituted alkanolic acid polymer with alkylcarbonate, alkanediols and isocyanate substituted carbomonocycles, sodium salt, alkenoic acidsubstituted polyol reaction products-blocked (generic).
- 721.11286 Alkenoic acid, ester with [oxybis(alkylene)]bis[alkyl-substituted alkanediol], polymer with alkylcarbonate, alkanediols, substituted alkenoic acid and isocyanate and alkyl substituted carbomonocycle, sodium salt (generic).
- 721.11287 Castor oil, reaction products with soybean oil.
- 721.11288 Benzene, 1-(chloromethyl)-3-methyl-.
- 721.11289 1-Butanaminium,N,N,N-tributyl-,2(or 5)-[[benzoyldihydrodioxo [(sulfo)phenyl] amino]heteropolycycle[oxy]-5(or 2)-(1,1-dimethylpropyl)benzenesulfonate (2:1) (generic).
- 721.11290 Alkylsilsesquioxane, ethoxy-terminated (generic).
- 721.11291 Polythioether, short chain diol polymer terminated with aliphatic diisocyanate (generic).
- 721.11292 Alkenoic acid, polymer with alkenylcarbomonocycle, [alkanediylbis(substituted alkylene)] bis[heteromonocycle] and (alkylalkenyl) aromatic, salt (generic).
- 721.11293 Alkenoic acid, polymer with substituted alkyloxirane, alkenylcarbomonocycle, alkyl substituted alkyl alkanediol and (alkylalkenyl) aromatic salt (generic).
- 721.11294 Alkyl alkenoic acid, alkyl ester, telomer with alkylthiol, substituted carbomonocycle, substituted alkyl alkyl alkenoate and hydroxyalkyl alkenoate, tertbutyl alkyl peroxyate-initiated, (generic).
- 721.11295 Substituted heteromonocycle, polymer with substituted alkanediol and diisocyanate substituted carbomonocycle, alkylene glycol acrylate-blocked (generic).

§ 721.11267 Silane amine carbonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as silane amine carbonate (PMN P-17-157) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements, as specified in § 721.63(a)(1), (3), (4), and (5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible), (a)(6)(v), (vi), and (b) (concentrations set at 1.0%).

(ii) Requirements, as specified in § 721.72(a) through (d), (e) (concentrations set at 1.0%), (f), (g)(1)(i) and (ii), (g)(2)(i) through (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (h), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11268 Hydrochlorofluoroolefin (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as hydrochlorofluoroolefin (PMN P-17-295) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements, as specified in § 721.63(a)(1) through (5) (respirators must provide a National Institute for Occupational Safety and Health

(NIOSH) assigned protection factor (APF) of at least 10). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(v) and (vi), and (b) (concentrations set at 1.0%).

(A) As an alternative to the respirator requirements in this paragraph (a)(2)(i), a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 23.6 mg/m³ (3.9 ppm) as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(ii) Requirements, as specified in § 721.72(a) through (d), (e) (concentrations set at 1.0%), (f), (g)(1)(iv) and (vi), (fatality), (g)(2)(i) through (iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 23.6 mg/m³ (3.9 ppm), and (v)

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(f), (k) (a refrigerant used in closed systems for chillers (commercial comfort air conditioners) and industrial process refrigeration), and (o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11269 Fatty acid modified aromatic polyester polyols (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances generically identified as fatty acid modified aromatic polyester polyols (PMN P-17-306 and PMN P-17-307) are subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements, as specified in § 721.63(a)(1), (a)(2)(i), (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.*

Requirements, as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(iv), (ocular effects), (g)(2)(i), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use for any application method that generates a vapor, mist, aerosol or dust to which workers may be exposed.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11270 Dodecanedioic acid and 1,6-hexanediol polymer with 3-hydroxy-2,2-dimethylpropyl 2,2-dimethylhydracrylate, neopentylglycol, 1,2-ethanediol, adipic acid, isophthalic acid, terephthalic acid, 2-Oxooxopane, BayFlex 2002H and 1,1'-methylenebis(isocyanatobenzene) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as Dodecanedioic acid and 1,6-hexanediol polymer with 3-hydroxy-2,2-dimethylpropyl 2,2-dimethylhydracrylate, neopentylglycol, 1,2-ethanediol, adipic acid, isophthalic acid, terephthalic acid, 2-Oxooxopane, BayFlex 2002H and 1,1'-methylenebis(isocyanatobenzene) (PMN P-17-320) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements, as specified in § 721.63(a)(1) through (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50), (a)(6)(v) and (vi), (particulate), and (c).

(ii) *Hazard communication.*

Requirements, as specified in § 721.72(a) through (d), (f), (g)(1)(i) and (ii), (mutagenicity), (g)(2)(i), (ii), (iv), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard

Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(o) and (y)(1) and (2). It is a significant new use to manufacture the substance containing more than 1% residual isocyanate by weight.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11271 Ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl].

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]- (PMN P-17-329, CAS No. 1417782-28-5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements, as specified in § 721.63(a)(1), (a)(2)(i) through (iv), (a)(3) and (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), (4) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation)

or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50), (a)(6)(v) and (vi), (particulate), and (c).

(ii) *Hazard communication.*

Requirements, as specified in § 721.72(a) through (d), (f), (g)(1)(ii), (iv), (vi), (sensitization), (g)(2)(i), (ii), (iv), and (v), (g)(3)(i) and (ii), (g)(4) (do not release to water at concentrations that exceed 7 parts per billion), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(k).

(iv) *Release to water.* Requirements, as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 7.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11272 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (P-17-367) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the Order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an SDS as described in § 721.72 (c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to an SDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an SDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11273 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances generically identified as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics (P-17-368) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the Order for the substance, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an SDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to an SDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an SDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11274 Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances generically identified as waste plastics,

poly(ethylene terephthalate), depolymd. with diethylene glycol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (P-17-369) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the Order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an SDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to an SDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an SDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11275 Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol and polyol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances generically identified as waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol and polyol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (P-17-370) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the Order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an SDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to an SDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an SDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11276 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances generically identified as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (P-17-371) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communications program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the Order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an SDS, as described in § 721.72(c), within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to an SDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an SDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use

the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11277 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances generically identified as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (P-17-372) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the Order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an SDS, as described in § 721.72(c), within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to an SDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph

(a)(2)(i)(A) of this section, are provided an SDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11278 Amides, tallow, N,N-bis(2-hydroxypropyl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as amides, tallow, N, N-bis (2-hydroxypropyl) (PMN P-17-382; CAS No. 1454803-04-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process or use the substance in any manner that results in inhalation exposures. It is a significant new use to process the substance resulting in an end use product containing greater than 3% by weight of the substance.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 11.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c), (i), and (k), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11279 Substituted propanoic acid, polymer with alkylisocyanate-substituted carbomonocycle, dialkyl carbonate, hydroxyl alkyl substituted alkanediol, alkanediol, isocyanato substituted carbomonocycle, alkanol substituted amines-blocked, compds. with (alkylamino)alkanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted propanoic acid, polymer with alkylisocyanate-substituted carbomonocycle, dialkyl carbonate, hydroxyl alkyl substituted alkanediol, alkanediol, isocyanato substituted carbomonocycle, alkanol substituted amines-blocked, compds. with (alkylamino)alkanol (PMN P-17-394) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(f). It is a significant new use to use the substance for any use other than as a coating to improve chemical resistance. It is a significant new use to import the substance with average molecular weight greater than 1,000 daltons, containing greater than 0.1% residual isocyanate by weight, or with greater than 4% of the confidential chemical component specified in the Order.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11280 Propanediol phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as propanediol phosphate (PMN P-18-23) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements, as specified in § 721.72(a) through (d), (f), (g)(1)(i), (ii), and (iv), (eye irritation), (g)(2)(i), (ii), and (v), (use eye protection), (avoid eye contact), (g)(3)(i) and (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that generates a vapor, spray, mist, or aerosol.

(iii) *Release to water.* Requirements, as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c), (f) through (i), and (k), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11281 Substituted cashew, nutshell liquid, polymer with epichlorohydrin, phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted cashew, nutshell liquid, polymer with epichlorohydrin, phosphate (generic) (PMN P-18-24) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.* Requirements, as specified in § 721.72(a) through (d), (f), (g)(1)(i) and (ii), (eye irritation), (g)(2)(i), (ii), and (v), (use eye protection), (avoid eye contact), (g)(3)(i) and (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any

manner that generates a vapor, spray, mist, or aerosol.

(iii) *Release to water.* Requirements, as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c), (f) through (i), and (k), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11282 2,5-Furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,8a-hexahydro-4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,5-furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,8a-hexahydro-4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate (PMN P-18-41) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(g). It is a significant new use to manufacture (including import) the substance with the number average molecular weight of less than 1000 daltons.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11283 Waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids (PMN P-18-70) is subject to reporting under this section

for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section

§ 721.11284 Di(substituted-1,3-trialkylammonium) dialkylammonium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as di(substituted-1,3-trialkylammonium) dialkylammonium salt (PMN P-18-88) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements, as specified in § 721.72(a) through (d), (e) (concentration set at 1.0%), (f), (g)(1)(ii), (iii), and (iv), (g)(2)(i), (ii), (iii), and (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard

Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(k). It is a significant new use to manufacture, process, or use the substance in any manner that results in the generation of a vapor, mist, particulate, or aerosol.

(iii) *Release to water.* Requirements, as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 1000.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11285 Substituted alkanolic acid polymer with alkylcarbonate, alkanediols and isocyanate substituted carbomonocycles, sodium salt, alkenoic acid substituted polyol reaction products-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted alkanolic acid polymer with alkylcarbonate, alkanediols and isocyanate substituted carbomonocycles, sodium salt, alkenoic acidsubstituted polyol reaction products-blocked (PMN P-18-100) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(f), (j), and (o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section

§ 721.11286 Alkenoic acid, ester with [oxybis(alkylene)]bis[alkyl-substituted alkanediol], polymer with alkylcarbonate, alkanediols, substituted alkanolic acid and isocyanate and alkyl substituted carbomonocycle, sodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkenoic acid, ester with [oxybis(alkylene)]bis[alkyl-substituted alkanediol], polymer with alkylcarbonate, alkanediols, substituted alkanolic acid and isocyanate and alkyl substituted carbomonocycle, sodium salt (PMN P-18-102) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(f), (j), and (o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11287 Castor oil, reaction products with soybean oil.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as castor oil, reaction products with soybean oil (PMN P-18-116) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(f) and (j). It is a significant new use to process or use the substance that generates an aerosol or mist. It is a significant new use to exceed the confidential annual production volume stated in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11288 Benzene, 1-(chloromethyl)-3-methyl-

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as benzene, 1-(chloromethyl)-3-methyl- (P-18-134, CAS No. 620-19-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements, as specified in § 721.63(a)(1), (a)(2)(i) and (iii), and (a)(3) through (5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1000). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(v) and (vi), (particulate), (combination gas/vapor and particulate), (b)(concentration set at 0.1%), and (c).

(ii) *Hazard communication.*

Requirements, as specified in § 721.72(a) through (d), (e) (concentration set at 0.1%), (f), (g)(1)(i), (iii), (vi), (vii), and (ix), (respiratory irritation), (severe skin burns and eye damage), (sensitization (respiratory and dermal)), (serious eye irritation), (g)(2)(i), (ii), (iii), (iv), and (v), (g)(3) and (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, Commercial, and consumer activities.* Requirements, as specified in § 721.80(k). It is a significant new use to vary the process or use methods described in the PMN such that occupational exposure is increased; and

(iv) *Release to water.* Requirements, as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (i) and (k), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11289 1-Butanaminium,N,N,N-tributyl-,2(or 5)- [[benzoyldihydrodioxo [(sulfophenyl) amino]heteropolycycle]oxy]-5(or 2)-(1,1-dimethylpropyl)benzenesulfonate (2:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 1-butanaminium,N,N,N-tributyl-,2(or 5)- [[benzoyldihydrodioxo [(sulfophenyl) amino]heteropolycycle]oxy]-5(or 2)-(1,1-dimethylpropyl)benzenesulfonate (2:1) (PMN P-18-136) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process or use the substance if it results in inhalation exposure.

(ii) *Release to water.* Requirements, as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 19.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i) and (k), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11290 Alkylsilsesquioxane, ethoxy-terminated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkylsilsesquioxane, ethoxy-terminated (PMN P-18-137) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process or use the substance in any manner resulting in inhalation exposures.

(ii) *Release to water.* Requirements, as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 58.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i) and (k), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11291 Polythioether, short chain diol polymer terminated with aliphatic diisocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polythioether, short chain diol polymer terminated with aliphatic diisocyanate (PMN P-18-219) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the PMN substance with molecular weight greater than 10,000 daltons. It is a significant new use to manufacture the PMN substance with, free isocyanate residuals greater than 0.01% by weight.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) though (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11292 Alkenoic acid, polymer with alkenylcarbomonocycle, [alkanediylbis(substituted alkylene)] bis[heteromonocycle] and (alkylalkenyl) aromatic, salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkenoic acid, polymer with alkenylcarbomonocycle, [alkanediylbis (substituted alkylene)] bis[heteromonocycle] and (alkylalkenyl) aromatic, salt (PMN P-18-224) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process or use the substance in any manner resulting in inhalation exposures. It is a significant new use to manufacture the substance to contain an acid content greater than 20% by weight.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) though (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11293 Alkenoic acid, polymer with substituted alkyloxirane, alkenylcarbomonocycle, alkyl substituted alkyl alkanediol and (alkylalkenyl) aromatic salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkenoic acid, polymer with substituted alkyloxirane, alkenylcarbomonocycle, alkyl substituted alkyl alkanediol and (alkylalkenyl) aromatic salt (PMN P-18-225) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80. It is a significant new use to manufacture, process or use the substance in any manner resulting in inhalation exposures. It is a significant new use to manufacture the substance to contain an acid content greater than 20% by weight.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) though (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11294 Alkyl alkenoic acid, alkyl ester, telomer with alkylthiol, substituted carbomonocycle, substituted alkyl alkyl alkenoate and hydroxyalkyl alkenoate, tertbutyl alkyl peroxyate-initiated, (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkyl alkenoic acid, alkyl ester, telomer with alkylthiol, substituted carbomonocycle, substituted alkyl alkyl alkenoate and hydroxyalkyl alkenoate, tertbutyl alkyl peroxyate-initiated (PMN P-18-233) is subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(w)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) though (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11295 Substituted heteromonocycle, polymer with substituted alkanediol and diisocyanate substituted carbomonocycle, alkylene glycol acrylate-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted heteromonocycle, polymer with substituted alkanediol and diisocyanate substituted carbomonocycle, alkylene glycol acrylate-blocked (PMN P-18-279) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements, as specified in § 721.63(a)(1) (only persons subject to inhalation exposure from spray application are subject to these requirements), (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, and (5) (respirator must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) though (d), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

PART 725—REPORTING REQUIREMENTS AND REVIEW PROCESSES FOR MICROORGANISMS

■ 3. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625(c).

■ 4. Add § 725.1079 to subpart M to read as follows:

§ 725.1079 Arsenic detecting strain of *E. coli* with extra-chromosomal elements, including an intergeneric screening marker (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as Arsenic detecting strain of *E. coli* with extra-chromosomal elements, including an intergeneric screening marker (MCAN J-18-41) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements, as specified in § 721.80(f). It is a significant new use to use the microorganism other than to detect arsenic in small water samples.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements, as specified in § 721.125(a) through (c) and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2019-13989 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 5 and 15

[ET Docket No. 18-21; Report No. 3131]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: A Petition for Reconsideration (Petition) has been filed in the Commission's rulemaking proceeding by Robert Bosch LLC, on behalf of Robert Bosch LLC.

DATES: Oppositions to the Petition must be filed on or before August 15, 2019. Replies to an opposition must be filed on or before August 26, 2019.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Policy and Rules Division, Office of Engineering and Technology (OET), at (202) 418-2702, email: Brian.Butler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3131, released July 18, 2019. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: <http://apps.fcc.gov/ecfs/>. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Spectrum Horizons, ET Docket No. 18-21, FCC 19-19, published at 84 FR 25685, July 5, 2019. This document is being published pursuant to 47 CFR 1.429(e). See also 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019-16332 Filed 7-30-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 8, 64, and 76

[GN Docket No. 17-142; FCC 19-65]

Improving Competitive Broadband Access to Multiple Tenant Environments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we seek targeted comment on a variety of issues that may affect the provisioning of broadband to MTEs, including exclusive marketing and wiring arrangements, revenue sharing agreements, and state and local regulations. We also seek comment on our legal authority to address broadband, telecommunications, and video

deployment and competition in MTEs. The Commission adopted the NPRM in conjunction with a Declaratory Ruling in GN Docket No. 17-142 and MB Docket 17-91.

DATES: Comments are due on or before August 30, 2019, and reply comments are due on or before September 30, 2019.

ADDRESSES: You may submit comments, identified by GN Docket No. 17-142, by any of the following methods:

■ *Federal Communications Commission's Website:* <https://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

■ *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

■ *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Annick Banoun, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1521, annick.banoun@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in GN Docket No. 17–142, adopted on July 10, 2019 and released on July 12, 2019. The full text of this document is available at <https://docs.fcc.gov/public/attachments/FCC-19-65A1.pdf>. The full text is also available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (e.g. braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g. accessible format documents, sign language interpreters, CART, etc.), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

I. Notice of Proposed Rulemaking

1. In this *Notice of Proposed Rulemaking (NPRM)*, we continue our efforts to ensure that all Americans have access to high-speed broadband, regardless of the type of housing in which they reside or the level of income they earn, and regardless of where they work. Specifically, we seek comment on ways to facilitate enhanced deployment and greater consumer choice for Americans living and working in MTEs.

2. In this NPRM, we refresh the record in response to the *MTE Notice of Inquiry* and seek further targeted comment on a variety of issues that may affect the provisioning of broadband to MTEs, including exclusive marketing and wiring arrangements, revenue sharing agreements, and state and local regulations. We believe that the questions we ask here will facilitate the development of a more detailed record to establish effective, clear policy that is carefully tailored to promote broadband deployment to MTEs. We also seek comment on our legal authority to address broadband, telecommunications, and video deployment and competition in MTEs. Specifically, we seek comment on ensuring that any new rules we adopt apply equally to all competitors in the MTE marketplace and do not create regulatory asymmetry.

A. Revenue Sharing Agreements

3. We seek comment on whether we should require the disclosure or restrict the use of revenue sharing agreements for broadband service. In revenue sharing agreements, the building owner

receives consideration from the communications provider in return for giving the provider access to the building and its tenants. This consideration can take many forms, ranging from a *pro rata* share of the revenue generated from tenants' subscription service fees, to a one-time payment calculated on a per-unit basis (sometimes called a door fee), to provider contributions to building infrastructure, such as WiFi service for common areas.

4. We seek comment on what impact revenue sharing agreements have on competition and deployment within MTEs. Some commenters contend that such agreements are a key tool in building owners' ability to build out, maintain, and upgrade their networks, and they also contend that revenue sharing agreements do not raise costs for tenants. They argue that these agreements enable MTE owners to use the consideration they receive from communications providers to offset infrastructure costs associated with providing broadband service to tenants, and that restricting these types of agreements will induce MTE owners to raise rents or cut costs by reducing infrastructure investment. Blue Top Communications, a small cable and broadband provider, claims that, without revenue sharing agreements and other similar agreements granting access to the MTE, it will be unable to compete in the MTE market. We seek comment on these assertions. Do revenue sharing agreements enable competitive broadband providers to offer services in MTEs and, if so, how? For example, what effect do these agreements have on competitive providers' ability to secure financing to deploy facilities? Do revenue sharing agreements affect competition and deployment only if they are exclusive to a single provider?

5. Conversely, we seek comment on whether revenue sharing agreements reduce incentives for building owners to grant access to competitive providers when any subscriber gained by such a provider means reduced income to the building owner. Some commenters argue further that protracted negotiations over these types of agreements can inhibit competition by preventing providers from deploying broadband services on a timely basis. We seek comment on these assertions. In addition, we seek comment on whether revenue sharing agreements are being used to circumvent the ban on exclusive access agreements, as some commenters assert. To the extent that revenue sharing agreements are combined with other contractual provisions, such as exclusive wiring,

sale-and-leaseback, bulk billing, and exclusive marketing, what effect does the combination of these arrangements have on competition and deployment within MTEs?

6. Should we require all internet service providers or only telecommunications carriers and covered MVPDs to disclose the existence of revenue sharing agreements to the public? For purposes of this NPRM, the term "covered MVPDs" mean those MVPDs subject to section 628(b) of the Act: Cable operators; common carriers or their affiliates that provide video programming directly to subscribers; and operators of open video systems. Disclosure requirements are less burdensome than outright prohibitions and can promote informed decision-making. What are the costs and benefits of a disclosure requirement here? Would a disclosure requirement, by promoting transparency to prospective and current tenants, increase the likelihood that revenue sharing agreements benefit competition, deployment, and individual subscribers? What impact would a disclosure requirement have on small businesses, and should we consider exempting some small businesses from such a requirement? If we were to require disclosure of revenue sharing agreements, should we require the disclosure only of agreements that exceed the building's actual costs of allowing service, or all revenue sharing agreements? If we require disclosure, where, when, and how should we require covered providers to provide the disclosure, and how can we ensure that the public is able to associate the disclosure with a particular building? What contents should we require in a disclosure, and should we specify a format? How would such a disclosure requirement interact with First Amendment jurisprudence on compelled corporate speech? Any disclosure requirement we adopt would apply to the internet service provider (or MVPD or telecommunications carrier) and not the building owner, similar to the Commission's prohibition on covered MVPDs and telecommunications carriers, but not building owners, entering into exclusive access agreements.

7. If we determine that revenue sharing agreements harm competition and deployment and that transparency is an insufficient remedy, should we adopt a rule to restrict or prohibit revenue sharing agreements? To the extent we propose to regulate the practices of communications providers rather than require disclosures to the public, we do not propose to impose

such behavioral regulations on entities other than telecommunications carriers and covered MVPDs. For example, we could restrict covered MVPDs and telecommunications carriers from entering into revenue sharing agreements that provide the building owner with a share of revenue beyond the building's actual costs of allowing service. What are the benefits, drawbacks, and estimated costs of this approach? What is the impact of this approach on small businesses? What economic and business justifications, if any, exist for any such revenue sharing agreements that exceed the building's actual costs of allowing service? Would we face practical difficulties in administering such a prohibition? For instance, would covered MVPDs and telecommunications carriers when considering entering a revenue sharing agreement, and the Commission when considering an enforcement proceeding, be able to determine the building's actual costs of allowing service? If we determine that a rule restricting revenue sharing agreements is necessary, would a different rule be more appropriate?

B. Rooftop Antenna and DAS Facilities Access

8. We seek comment on whether we should act to increase competitive access to rooftop facilities, which are often subject to exclusivity agreements. Wireless communications providers rely on access to building rooftops to establish or improve backhaul for wireless services. We seek comment on the benefits and drawbacks of rooftop exclusivity agreements. How prevalent are such agreements, and what are common terms and conditions of such agreements that could affect broadband deployment? Do such agreements encourage building owners to allow rooftop access to the paying party, thereby promoting broadband, telecommunications, and video services deployment? Are there technical or safety benefits to a service provider, instead of the MTE owner, exercising control over rooftop facilities? As to drawbacks, in their comments, both INCOMPAS and Lumos Networks cite rooftop exclusivity agreements as an example of a common industry practice that reduces competition and deployment in MTEs with little to no consumer benefits. We seek comment on these claims. If we find that rooftop exclusivity agreements harm competition, should we prohibit telecommunications carriers and covered MVPDs from entering into such agreements, including agreements that would have the effect of exclusivity, just as the Commission previously

prohibited telecommunications carriers from reaching exclusive access agreements with residential and commercial MTEs and covered MVPDs from reaching exclusive access agreements with residential MTEs?

9. We also seek comment on whether we should take action on access to distributed antenna systems (DAS) facilities, which are "small antennas typically installed on shared wiring within the MTE" which transmit signals using internal wiring within the building "to a carrier point-of-presence." Wireless providers use DAS facilities within MTEs to "fill gaps in coverage caused by dense walls . . . and provide additional capacity" in areas with dense concentrations of people including stadiums and arenas. According to T-Mobile, if a fixed wireless provider is unable to access a DAS facility, that provider's customer may have little or no indoor cellular coverage. INCOMPAS, Sprint, and T-Mobile allege that building owners enter into private agreements with fixed wireless providers or third party operators for control over the deployment of wireless broadband service via DAS facilities. These commenters claim that fixed wireless providers or third party operators benefit from these arrangements by charging "monopoly rents" or otherwise restricting access to their facilities, to the detriment of competition and ultimately consumers. We seek comment on these assertions. Are such agreements between building owners and fixed wireless providers or third-party operators common practice? If so, are there benefits to this practice, such as encouraging investment in DAS facilities by allowing building owners to recoup their costs of installing such facilities, and such as allowing building owners to control access to their premises? Have any commenters found that these agreements encourage deployment of wireless broadband services? T-Mobile claims that in barring LECs from entering into exclusive access agreements with commercial MTEs, the Commission also prohibited agreements "that do not explicitly deny access to competing carriers, but nonetheless establish such onerous prerequisites to the approval of access that they effectively deny access." Do commenters agree with this argument? Should we take action against agreements that render DAS systems effectively inaccessible to certain providers due to unreasonable limitations or terms? Should we prohibit providers within our jurisdiction from enforcing existing DAS

exclusivity agreements, and if so, in what circumstances? Alternatively, would any such action discourage investment in DAS facilities, undermine MTE owners' control over their property, or lead to any other harmful outcomes? Property owners note that DAS deployments are expensive, and contend that owners often have no assurance that carriers will use DAS facilities even if the owner incurs the cost to build them. Are there any steps that the Commission should take to promote efficient use of DAS in MTEs? Should the Commission take any action with respect to wireless providers that would reduce the burden of DAS deployment on building owners? Are there policies the Commission could adopt that would increase incentives for property owners to deploy DAS facilities?

10. We also seek comment on the effect DAS access agreements have on deployment of advanced technology. For example, commenters argue that existing DAS facilities may be incompatible with a new provider's technology or so antiquated that they require replacement, as they are typically designed for the first provider to use them. As a result, T-Mobile claims that "many of the DAS facilities currently in place will be incompatible with . . . 5G wireless technologies once they are available for deployment." We seek comment on these claims. Should we require parties within our jurisdiction who deploy DAS facilities to take into account the compatibility of the systems with potential future provider occupants? Should we encourage or require providers to use DAS facilities that meet certain compatibility or future-proofing requirements? Would any such action reduce the level of investment of DAS facilities or otherwise harm deployment and/or competition? Are there quantifiable benefits and drawbacks to these approaches? What is the impact of these approaches on small businesses? We seek comment on these and other actions that can be taken to promote wireless broadband deployment and competition in and on MTEs.

C. Exclusive Wiring and Marketing Arrangements

11. We seek comment on the effect of sale-and-leaseback arrangements on competition and deployment of broadband, telecommunications service, and video in MTEs. Sale-and-leaseback arrangements occur when a service provider sells its wiring to the MTE owner and then leases back the wiring on an exclusive basis. The record reflects that sale-and-leaseback

arrangements often include provisions requiring the provider to maintain the inside wiring and other facilities.

12. Some commenters argue that sale-and-leaseback arrangements violate the Commission's existing cable inside wiring rules, as set out in section 76.802(j). Our rules require a cable provider to "take reasonable steps within [its] control to ensure that an alternative service provider has access to the home wiring at the demarcation point" and to not "prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service." FBA contends that "[if] the incumbent provider transfers legal title to its home wiring to the property owner before a customer terminates service and then leases it back with an exclusivity provision that prevents competitive use, the inside wiring will be unavailable for use by competitors when the customer is ready to change providers." Do sale-and-leaseback arrangements violate our existing cable inside wiring rules? Are sale-and-leaseback arrangements used to evade our exclusive access, cable inside wiring, or any other Commission rules? Regardless of whether they violate our rules currently, should we adopt a new rule prohibiting such arrangements? Alternatively, should we prohibit sale-and-leaseback arrangements in limited circumstances? For instance, should we prohibit these arrangements unless the provider can demonstrate that they are not anti-competitive? What is the impact of these arrangements on small businesses, and how would any restrictions on sale-and-leaseback arrangements affect small businesses? Can commenters quantify specific costs and benefits of restricting sale-and-leaseback arrangements? Are sale-and-leaseback arrangements beneficial because they give building owners and service providers incentives to deploy facilities?

13. Sale-and-leaseback arrangements are a subset of exclusive wiring arrangements. Under exclusive wiring arrangements, communications providers enter into agreements with MTE owners under which they obtain the exclusive right to use the wiring in the building. In the *2007 Exclusive Service Contracts Order*, the Commission drew a distinction between exclusive access agreements, which it prohibited because they completely denied new entrants access to buildings, and exclusive wiring arrangements, "which do not absolutely deny new entrants access to [residential MTEs] and thus do not cause the harms to consumers" caused by exclusive access agreements. We seek comment on

whether we should revisit the Commission's decision as to exclusive wiring arrangements. Do the policy considerations around sale-and-leaseback and other exclusive wiring arrangements differ? Is it the case today that exclusive wiring arrangements do not preclude competitive providers' access to buildings? If a building owner will only permit one set of wiring on its premises and enters into an exclusive wiring arrangement, is the effect tantamount to an exclusive access agreement? Do exclusive wiring arrangements take different forms in states and localities that have mandatory access laws? For example, NCTA contends that in states and localities with mandatory access laws, "building owners must allow additional providers to offer service," and the exclusive wiring arrangement will only require the new provider to install its own facilities. Is that a correct statement of fact and the law in areas with mandatory access laws, or can buildings still exclude new entrants? And in states and localities without mandatory access laws, do exclusive wiring arrangements reduce competition? If we were to revisit the Commission's policy about exclusive wiring arrangements, should we prohibit providers from entering into these arrangements? What are the estimated costs and benefits of this potential action? Would it benefit or burden small entities and if so, how and to what extent?

14. *Exclusive Marketing Arrangements.* An exclusive marketing arrangement is an arrangement, either written or in practice, between an MTE owner and a service provider that gives the service provider, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants of the MTE. In 2010, the Commission concluded that exclusive marketing arrangements "have no significant effects harmful to [MTE] residents and have some beneficial effects." In declining to regulate such arrangements, the Commission found that exclusive marketing could lead to lower costs to subscribers or partially defray deployment costs borne by buildings, without prohibiting or significantly hindering other providers from entering the building. While we do not revisit that conclusion at this time, we seek comment on whether there are specific circumstances in which exclusive marketing arrangements result in *de facto* exclusive access. In its comments, FBA asserts that exclusive marketing arrangements "inhibit competition in practice because MTE owners

misinterpret the otherwise acceptable terms of the agreement." We seek comment on whether and to what extent there is confusion among tenants and/or building owners regarding the distinction between exclusive access agreements, which are not permitted by the Commission's rules, and exclusive marketing agreements, which are permitted. If such confusion exists, how prevalent is it and what might be done to correct it?

15. Would transparency regarding exclusive marketing arrangements reduce any confusion about the impact of exclusive marketing agreements? Should we require specific disclaimers or other disclosures by carriers and covered MVPDs making clear that there is no exclusive access agreement and that customers are free to obtain services from alternative providers? If so, when, where, how, and in what circumstances should we require carriers and covered MVPDs to make any such disclosures, and how can we ensure that the public would associate the disclosure with the specific buildings to which they relate? How would such a requirement impact the incentives of providers to enter into exclusive marketing agreements and the potential benefits of such agreements for building owners and tenants? What impact, if any, would a disclosure requirement have on small entities? What are the costs and benefits of a disclosure requirement?

D. Other Contractual Provisions and Practices

16. We seek comment on whether there are other types of contractual provisions and non-contractual practices, other than those already mentioned, that impact the ability of broadband, telecommunications service, and video providers to compete in MTEs. If so, what form do these provisions and/or practices take, and how do they impact competition within MTEs? Are any such practices already prohibited under our existing rules?

E. State and Local Policies and Regulations

17. We seek comment on examples of state or local regulations or other policies that have successfully promoted broadband deployment, competition, and access to MTEs. We also seek comment on examples of state or local government programs that have succeeded in improving competition, deployment, and access to broadband in MTE buildings. For example, in response to the *MTE Notice of Inquiry*, Montgomery County, Maryland, explained how it had collaborated with private developers in an effort to spur

broadband deployment and how it planned to host a summit that convened architects, building engineers, urban planners, and broadband service providers. Similarly, the City of Boston described how the Boston Planning and Development Agency planned to incorporate broadband competition as an element of its review process for new projects, planned development areas, and institutional master plans. Have such local government programs proved effective?

18. We also seek comment on whether there are state and local regulations, or other state or local requirements, that deter broadband deployment and competition within MTEs because they “prohibit or have the effect of prohibiting” the ability of any entity to provide telecommunications service. The Commission has previously concluded that “[i]nfrastructure for wireline and wireless telecommunication services frequently is the same infrastructure used for the provision of broadband internet access service, and our ruling [in the *Wireline Infrastructure Third Report and Order* that state and local moratoria on telecommunications services and facilities deployment are barred by section 253(a) of the Act] will promote broadband deployment.” Facilities that provide telecommunications service are frequently used for the provision of broadband internet access service on a commingled basis. What form do any such regulations or legal requirements most often take? Commenters identifying regulations or legal requirements should explain how the provisions in question deter broadband deployment and investment within MTEs, and why they believe the provisions in question violate section 253 of the Act. What should we do to address any such regulations or legal requirements? Sprint argues that state and local governments that own large MTEs should not be able to enter into exclusive access contracts with providers. Do commenters agree, and if so what action—if any—should we take consistent with our authority under section 253? While the Commission clarified in the 2018 Wireless Infrastructure Third Report and Order that its interpretations of sections 253 and 332 applied to government-owned property in the public right-of-way, it did not take a position on whether sections 253 and 332 applied to “government-owned property located outside the public [right-of-way],” such as the government-owned MTEs that may be at issue in this proceeding.

F. Legal Authority

19. We seek comment on our jurisdiction and statutory authority to address the issues raised in this *NPRM*. In prohibiting exclusive access agreements, the Commission has previously relied on sections 201(b) and 628 of the Act. We seek comment on our authority pursuant to these statutory provisions to facilitate broadband, telecommunications service, and video deployment and competition within MTEs.

20. In the past, the Commission has found that sections 201(b) and 628 of the Act provide statutory authority to prohibit the execution and enforcement of anti-competitive contractual arrangements granting common carriers exclusive access to commercial and residential MTEs and covered MVPDs exclusive access to residential MTEs. Section 201(b) of the Act expressly authorizes the Commission to regulate all “charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service,” to ensure that such practices are “just and reasonable.” In the *2008 Competitive Networks Order*, the Commission found that a carrier’s execution or enforcement of an exclusive access provision within an MTE is an “unreasonable practice,” and that the Commission thus has “ample authority” under section 201(b) to prohibit such exclusivity provisions in the provision of telecommunications services. Section 628 makes it unlawful for a covered MVPD “to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing . . . programming to subscribers or customers.” In the *2007 Exclusive Service Contracts Order*, the Commission held that it had “ample authority under Section 628(b) of the Act to adopt rules prohibiting [covered MVPDs] from executing or enforcing contracts that give them the exclusive right to provide video programming services alone or in combination with other services to [residential MTEs]”—a determination upheld by the D.C. Circuit. The Commission recognized that the business model for competitive entrants was a triple-play bundle of video, broadband, and telephone, and that “[a]n exclusivity clause in a [residential MTE’s] agreement with a MVPD denies all these [competitive] benefits to the [MTE’s] residents.” The Commission’s existing rules thus prohibit both the execution and

enforcement of any contractual provisions granting common carriers exclusive access to commercial and residential MTEs and covered MVPDs exclusive access to residential MTEs. We seek comment on whether, if we were to act with respect to revenue sharing agreements, rooftop exclusivity clauses, or exclusive wiring, sections 201(b) and 628(b) would provide us authority to do so for telecommunications carriers and covered MVPDs, respectively. Are there other statutory provisions that grant us sufficient authority to act?

21. As stated by prior Commission decisions, we have authority over infrastructure that can be used for the provision of both telecommunications and other services on a commingled basis. Infrastructure for fixed and mobile telecommunications services frequently is used for the provision of broadband internet access service, and we believe that any steps we take in this proceeding to promote competition and deployment of telecommunications services within MTEs will simultaneously encourage broadband deployment in MTEs. For instance, DAS facilities provide telecommunications and other services on a commingled basis. We therefore believe that we have authority under sections 201(b) to facilitate broadband competition within MTEs, in cases where broadband services are offered over the same telecommunications facilities, to the same extent that we have authority under that provision to facilitate competition in the provision of telecommunications services. We seek comment on the foregoing analysis.

22. Congress also provided the Commission authority under section 628 to prohibit “unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing” programming to subscribers or consumers. We seek comment on whether and how we can use this authority to promote competition and deployment of broadband services in MTEs.

23. *Disclosure Requirements.* To the extent that we impose disclosure requirements, as suggested in the revenue sharing and exclusive marketing discussions, under what basis of legal authority could such requirements apply to ISPs that are not telecommunications carriers under Title II or cable operators under Title VI? We seek comment on whether sections 13 and 257 of the Act, as amended by section 401 of the RAY BAUM’S Act of

2018, provides the Commission with authority to require such disclosures for all internet service providers, and not just MVPDs and telecommunications carriers. The Commission has previously interpreted section 257 as providing a continuing obligation on the Commission “to identify any new barriers to entry,” and that the “statutory duty to ‘identify and eliminate’” such barriers “implicitly empower[s] the Commission to require disclosures from third parties who possess the information necessary for the Commission and Congress to find and remedy market entry barriers.” Congress replaced the triennial reporting requirement of section 257[®] with a virtually identical biennial reporting requirement in section 401 of the RAY BAUM’S Act, which continues to require the Commission to report to Congress on “market entry barriers for entrepreneurs and other small businesses in the communications marketplace.” Section 401 of the RAY BAUM’S Act requires the Commission to assess competition and deployment in the communications marketplace, and to determine whether “demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services.” Further, the RAY BAUM’S Act contains a savings clause, confirming that “[n]othing in this title or the amendments made by this title shall be construed to expand or contract the authority of the Commission.”

24. If we were to act only as to covered MVPDs and telecommunications carriers, would sections 201(b) and 628(b) provide us authority to require revenue sharing and exclusive marketing disclosures? The Commission has previously relied on section 201(b) to ensure that telecommunications carriers convey accurate and sufficient information about the services they provide to consumers. Do we have authority under section 201(b) to require carriers to disclose revenue sharing and/or exclusive marketing agreements in order to ensure that carriers’ charges and practices that affect MTE residents are just and reasonable? Section 202(a) of the Act makes it unlawful for common carriers to engage in “unjust or unreasonable” discrimination, to give “undue or unreasonable preference or advantage” to any particular person, class, or locality, or to subject any person, class, or locality to “undue or unreasonable prejudice or disadvantage.” Does section 202(a)

provide additional authority to require these disclosures as to telecommunications carriers? Under section 218, the Commission has broad authority to obtain “full and complete information” from carriers. Does section 218 grant us authority to impose a revenue sharing and/or exclusive marketing disclosure requirement on carriers? Would section 218 allow us to mandate such disclosures be made to the public? Are there other sources of authority on which we could rely? Would disclosure to the public of the existence or terms of revenue sharing and/or exclusive marketing agreements raise any confidentiality concerns? Would disclosure requirements be consistent with First Amendment jurisprudence?

25. *Sections 253 and 332.* We seek comment on whether sections 253 or 332 can serve as a basis for the Commission to address state or local regulations with respect to facilities deployment and competition within MTEs. Section 253(a) generally provides that no state or local legal requirements “may prohibit or have the effect of prohibiting” the provision of interstate or intrastate telecommunications services, and provides the Commission with “a rule of preemption” that “articulates a reasonably broad limitation on state and local governments’ authority to regulate telecommunications providers.” Section 332(c)(7)(B) provides that state or local government regulation of the siting of personal wireless service facilities “shall not prohibit or have the effect of prohibiting the provision” of personal wireless services. We seek comment on whether the Commission has authority under sections 253 and/or 332 to restrict or prohibit any of the contractual provisions and/or non-contractual practices listed in this NPRM where a state or local government owns or controls the MTE. Why or why not? Are there other preemptive actions we should take under sections 253 and/or 332 to promote the deployment of next-generation networks and services to MTEs?

26. *Other Authority.* Finally, we seek comment whether there exist any additional sources of authority on which the Commission may rely to prohibit, restrict, or require disclosure of the types of agreements or arrangements on which this NPRM seeks comment. If so, from where does this authority derive?

II. Initial Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act of 1980, as amended

(RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

28. The NPRM seeks to facilitate enhanced deployment and provide greater consumer choice for workers and residents of MTEs. Specifically, the NPRM solicits comments on whether revenue sharing agreements should be disclosed or otherwise regulated, on whether the Commission should preempt state and local regulations that may inhibit broadband deployment and competition within MTEs; on whether the Commission should act to increase competitive access to distributed antenna systems and rooftop facilities; about what effect exclusive wiring and sale-and-leaseback arrangements have on competition and deployment in MTEs; whether exclusive marketing arrangements should be disclosed; and on whether there exist other types of contractual provisions and noncontractual practices that impact the ability of broadband providers to compete in MTEs. The NPRM also asks what impact these proposals would have on small businesses and entities.

B. Legal Basis

29. The NPRM solicits comments about its jurisdiction and statutory authority to address these issues. It specifically asks whether sections 201(b) and 628 of the Communications Act of 1934, as amended, authorize prohibiting revenue sharing agreements. To the extent that the Commission would impose disclosure requirements, the NPRM also invites comments on whether section 257 of the Act, as amended by section 401 of the RAY BAUM’S Act of 2018, authorizes the Commission to require disclosures from ISPs. The NPRM seeks comment on whether sections 201(b), 202(a), 218, and 628 of the Act would provide authority to impose disclosure requirements on MVPDs and

telecommunications carriers. The NPRM also solicits comments on whether sections 253 and 332 of the Act authorize the Commission to address state or local regulations with respect to facilities deployment and competition within MTEs. Additionally, the NPRM seeks comments on whether any additional sources of authority exist on which the Commission may rely to prevent parties from entering into any agreements or arrangements on which it seeks comment.

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

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

31. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry-specific size standards for small businesses that are used in the regulatory-flexibility analysis, according to data from the SBA’s Office of Advocacy, a small business in general is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.2 million businesses.

32. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field” Nationwide, as of March 2019, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

33. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of

cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 37,132 general purpose governments (county, municipal, and town or township) with populations of less than 50,000, and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that a majority these governments have populations of less than 50,000. Based on this data, we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

34. *Multiple Tenant Environment (MTE) Operators—Residential.* The appropriate U.S. Census category for MTE residential operators is that of Residential Property Managers and is defined as an industry that “comprises establishments primarily engaged in managing residential real estate for others.” The SBA has established a small business size standard for this category of firms having \$7.5 million or less in annual receipts. Economic Census data for 2012 show that 25,936 residential property managers operated for that entire year. Of that number, 25,010 had annual receipts of less than \$5 million. Thus, under this size standard, the majority of firms in this industry can be considered small.

35. *Multiple Tenant Environment (MTE) Operators—Nonresidential.* The appropriate U.S. Census category for MTE nonresidential operators is that of Nonresidential Property Managers and is defined as an industry that “comprises establishments primarily engaged in managing nonresidential real estate for others.” The SBA has established a small business size standard for this category of firms having \$7.5 million or less receipts. Economic Census data for 2012 show that 12,828 nonresidential property managers operated for that entire year. Of that number, 12,344 had annual receipts of less than \$5 million. Thus, under this size standard, the majority of firms in this industry can be considered small.

36. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments

primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small-business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year and that of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

37. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that 3,117 firms operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

38. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small-business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, 1,307 Incumbent

Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard, the majority of incumbent LECs can be considered small entities.

39. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small-business size standard specifically for these service providers. The most appropriate NAICS Code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Additionally, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

40. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small-business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and

determinations in other, non-RFA contexts.

41. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

42. *Local Resellers.* The SBA has developed a small-business size standard for Telecommunications Resellers that includes Local Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small-business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Local Resellers are small entities.

43. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing

access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small-business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small-business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

44. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small-business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

45. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications

services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small-business size standards.

46. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite), and under the most appropriate size standard for this category, such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

47. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small-business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Industry data indicates that there are currently 4,600 active cable systems in the United States. Of this total, all but 11 cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

48. *Cable System Operators (Telecom Act Standard).* The Communications Act, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any

entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission’s rules. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

49. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small-business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 42 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of “All Other

Telecommunications” firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

50. The NPRM seeks comments on a number of potential rule changes that would affect reporting, recordkeeping, and other compliance requirements. Specifically, the NPRM seeks comment on potential regulation or disclosure of revenue sharing and exclusive marketing arrangements. If the Commission were to move forward with such a rule, MVPDs and telecommunications carriers, and potentially all ISPs, would have new reporting, recordkeeping, and other compliance requirements with regard to these arrangements.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

52. In the NPRM, the Commission seeks comment on alternatives to the proposals and on alternative ways of implementing the proposals. Any revisions proposed to the Commission’s rules are not expected to result in significant economic impact to small entities. The Commission specifically seeks comment on what effect the proposals will have on small entities and whether the Commission should consider alternative rules or exemptions for small entities.

53. We expect to take into account the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching our final conclusions and promulgating rules in this proceeding.

54. As discussed in the NPRM, the Commission has initiated this proceeding to solicit comments on various types of actions the Commission is considering to facilitate enhanced broadband deployment and provide

greater consumer choice for MTE workers and residents.

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

55. None.

III. Procedural Matters

56. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

57. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this NPRM. Written

public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

58. *Paperwork Reduction Act.* This document may propose new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it may contain new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

IV. Ordering Clauses

59. *It is ordered* that pursuant to the authority contained in sections 1–4, 201(b), 202, 303(r), 403, 601(4), 601(6), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201(b), 202, 303(r), 403, 521(4), 521(6), and 548, and section 401 of the RAY BAUM’s Act of 2018, 47 U.S.C. 163, this Notice of Proposed Rulemaking is *adopted*.

60. *It is further ordered* that the Notice of Proposed Rulemaking will be *effective* upon publication in the **Federal Register** and comments will be due on the dates stated therein.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–16231 Filed 7–30–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 18–119; Report No. 3132]

Petitions for Reconsideration of Action in Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission’s proceeding by Louis P. Vito, on behalf of V-Tech Communications, Inc.; by Brad Johnson, on behalf of KGIG–LP; by Michael W. Richards, on behalf of LPFM Coalition; by David J. Doherty, on behalf of Skywaves Communications LLC; and by Charles M. Anderson, on behalf of Charles M. Anderson.

DATES: Oppositions to the Petitions must be filed on or before August 15, 2019. Replies to an opposition must be filed on or before August 26, 2019.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christine Goepp, Attorney Advisor, Media Bureau, Audio Division, (202) 418–7834; Lisa Scanlan, Deputy Division Chief, Media Bureau, Audio Division, (202) 418–2704.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s document, Report No. 3132, released July 19, 2019. The full text of the Petitions are available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Petitions also may be accessed online via the Commission’s Electronic Comment Filing System at: <http://apps.fcc.gov/ecfs/>. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

Subject: Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference, MB Docket No. 18–119, Report and Order, FCC 19–40, published at 84 FR 27734 on June 14, 2019 (date correction published at 84 FR 29806 (June 25, 2019)). This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 5.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–16333 Filed 7–30–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III, Subchapter B

[Docket No. FMCSA–2018–0037]

Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) extends the comment period for its May 28, 2019, advance notice of proposed rulemaking (ANPRM) and its May 31, 2019 correction notice concerning Federal Motor Carrier Safety Regulations that may need to be amended, revised, or eliminated to facilitate the safe introduction of automated driving systems equipped commercial motor vehicles onto our Nation's roadways. FMCSA received a request for an extension to the comment period from the American Trucking Associations and the U.S. Chamber of Commerce's Technology Engagement Center. The Agency believes it is appropriate to extend the comment period to provide interested parties additional time to submit their responses to the ANPRM. Therefore, the Agency extends the deadline for the submission of comments for 30 days.

DATES: The comment period for the ANPRM published May 28, 2019, at 84 FR 24449, and corrected on May 31, 2019, at 84 FR 25229, is extended by 30 days. Comments must be received on or before August 28, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2018-0037 using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/docket?D=FMCSA-2018-0037>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Division Chief, Vehicle and Roadside Operations, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, Federal Motor Carrier Safety

Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, michael.huntley@dot.gov, (202) 366-9209. If you have questions on viewing or submitting material to the docket, contact Docket Services, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this ANPRM (Docket No. FMCSA-2018-0037), indicate the specific section of the ANPRM to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to <https://www.regulations.gov/docket?D=FMCSA-2018-0037>. Click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in the ANPRM as being available in the docket, go to <https://www.regulations.gov/docket?D=FMCSA-2018-0037> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140

on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

The May 2019 ANPRM (84 FR 24449) requested public comment on 10 subject areas: Whether the FMCSRs require a human driver; commercial driver's license endorsements; drivers' hours of service rules; medical qualifications for human operators; distracted driving and monitoring; safe driving and drug and alcohol testing; inspection, repair, and maintenance; roadside inspections; cybersecurity; and confidentiality of shared information.

The comment period for the ANPRM was set to expire on July 29, 2019. FMCSA received a request to extend the comment period from the American Trucking Associations and the U.S. Chamber of Commerce's Technology Engagement Center. A copy of the request, which was not filed in the docket, has been placed in the docket for this rulemaking.

ATA and C TEC requested a 30-day extension of the comment period, stating that the additional time was needed to coordinate with and gather information from members and more usefully respond to the detailed questions posed in the ANPRM.

FMCSA believes that other potential commenters to this ANPRM will benefit from an extension as well. Accordingly, FMCSA extends the comment period for all comments on the ANPRM to August 28, 2019.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019-16331 Filed 7-26-19; 4:15 pm]

BILLING CODE 4910-EX-P

Notices

Federal Register

Vol. 84, No. 147

Wednesday, July 31, 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

Agricultural Marketing Service

[Document No. AMS-TM-19-0067]

Transportation and Marketing Program; Notice of Extension and Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to seek renewal and extension of its current approval from the Office of Management and Budget to collect information for eight competitive and one non-competitive AMS Grant Programs administered by its Grants Division. Three of these programs were created pursuant to the Agriculture Improvement Act of 2018 (Farm Bill), thereby increasing the number of respondents who are potentially subject to this information collection. However, the reporting requirements should remain the same across all of the grant programs.

DATES: Comments on this notice must be received by September 30, 2019 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this information collection notice. Comments should be submitted online at www.regulations.gov or sent to John Miklozek, Grants Division Director, AMS Transportation and Marketing Program, 1400 Independence Avenue SW, Stop 0269, Washington, DC 20250-0264, or by facsimile to (202) 690-0338. All comments should reference the Doc. No. AMS-TM-19-0067, the date, and the page number of this issue of the **Federal Register**. All comments

received, including any personal information provided, will be posted online, without change, at www.regulations.gov and will be made available for public inspection at the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: John Miklozek at the above physical address, or by email at John.Miklozek@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: AMS Grant Programs.

OMB Number: 0581-0240.

Expiration Date of Approval: 11/30/2019.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: AMS Grant Programs are authorized pursuant to the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621 *et seq.*) and are implemented through the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular) (2 CFR 200). In addition to renewal, the AMS Grants Division requests to extend its current approval to collect information for four additional grant programs. The four grant programs being added to this collection are the Dairy Business Innovation (DBI) Initiatives, Regional Food System Partnerships (RFSP), the Sheep Production and Marketing Grant Program (SPMGP), and the Acer Access and Development Program (Acer).

The Farm Bill authorizes the appropriation of up to \$20 million dollars per fiscal year for the DBI Initiatives grant program. This program will establish three or more regionally located dairy product and business innovation initiatives for the purposes of diversifying dairy product markets to reduce risk and develop higher-value uses for dairy products; promoting business development that diversifies farmer income through processing and marketing innovation; and encouraging the use of regional milk production. The RFSP grant program supports partnerships to plan and develop a local or regional food system. The SPMGP strengthens and enhances the production and marketing of sheep and sheep products in the United States, including the improvement of business infrastructure, resource development and the development of innovative approaches to solve long-term needs. Acer supports efforts to promote the

domestic maple syrup industry through activities associated with the promotion and expansion of, and research and education about, maple-sugaring activities on the land.

AMS solicits subject matter experts to act as peer reviewers for competitive grant programs under its purview. Interested individuals apply and those selected objectively review and evaluate grant applications against the criteria outlined in the published announcement.

Because AMS Grant Programs are voluntary, respondents request or apply for the specific competitive or non-competitive grant program(s) they select, and in doing so, they provide information. AMS is the primary user of the information. The information collected is needed to certify that grant participants are complying with applicable program regulations, and the data collected are the minimum information necessary to effectively carry out the requirements of the program. The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer these programs. The burden of the AMS Grant Programs is as follows:

Combined Burden for AMS Grant Programs

Estimate of Burden: 2.58 hours.

Respondents: Peer reviewers, grant applicants, grant recipients.

Estimated Number of Respondents: 10,641.

Estimated Total Annual Responses including Recordkeeping: 17,257.

Estimated Number of Responses per Respondent: 29.

Estimated Total Annual Burden on Respondents and Recordkeepers: 44,607.18 hours.

Dairy Business Innovation (DBI) Initiatives

Estimate of Burden: 2.51 hours.

Respondents: Peer reviewers, grant applicants, grant recipients.

Estimated Number of Respondents and Recordkeepers: 121.

Estimated Total Annual Responses including Recordkeeping: 219.

Estimated Number of Responses per Respondent including Recordkeepers: 31.

Estimated Total Annual Burden on Respondents and Recordkeepers: 549.41 hours.

Regional Food System Partnerships (RFSP)

Estimate of Burden: 2.32 hours.
Respondents: Peer reviewers, grant applicants, grant recipients.

Estimated Number of Respondents and Recordkeepers: 435.

Estimated Total Annual Responses including Recordkeeping: 768.

Estimated Number of Responses per Respondent including Recordkeepers: 45.

Estimated Total Annual Burden on Respondents and Recordkeepers: 1783.75 hours.

Sheep Production and Marketing Grant Program (SPMGP)

Estimate of Burden: 1.96 hours.
Respondents: Peer reviewers, grant applicants, grant recipients.

Estimated Number of Respondents and Recordkeepers: 15.

Estimated Total Annual Responses including Recordkeeping: 29.

Estimated Number of Responses per Respondent including Recordkeepers: 29.

Estimated Total Annual Burden on Respondents and Recordkeepers: 56.83 hours.

Acer Access and Development Program (Acer)

Estimate of Burden: 2.05 hours.
Respondents: Peer reviewers, grant applicants, grant recipients.

Estimated Number of Respondents and Recordkeepers: 172.

Estimated Total Annual Responses including Recordkeeping: 304.

Estimated Number of Responses per Respondent including Recordkeepers: 38.

Estimated Total Annual Burden on Respondents and Recordkeepers: 623.58 hours.

Comments are invited on: (1) Whether the new collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 26, 2019.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2019-16273 Filed 7-30-19; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet in Petersburg, Alaska and Wrangell, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: https://cloudapps-usda.gov.secure.force.com/FSSRS/RAC_Page?id=001t00000002JcwHAAS.

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

- Wednesday, August 14, 2019, from 6:30 p.m. to 9:00 p.m., and
- Thursday, August 15, 2019, from 6:30 p.m. to 9:00 p.m., or until business is concluded.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact Linda Slaght, by telephone at 907-772-5948 or by email at lslaght@usda.gov.

ADDRESSES: The meeting will be held at the Wrangell Ranger District Office, 525 Bennett Street, Wrangell, Alaska and at the Petersburg Ranger District Office, 12 North Nordic Drive, Petersburg, Alaska. The two locations will be connected via videoteleconference. Interested persons may attend in person at either location, or by teleconference. For anyone who would like to attend by teleconference, please contact Linda Slaght, by telephone at 907-772-5948 or by email at lslaght@usda.gov.

Written comments may be submitted as described under *Supplementary Information*. All comments, including

names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District Office or the Wrangell Ranger District Office, Monday through Friday at 8:00 a.m. to 4:30 p.m. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Linda Slaght, RAC Coordinator, by telephone at 907-772-5948 or by email at lslaght@fs.fed.us.

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review progress of previously funded projects;
2. Review new project proposals; and
3. Conclude any business that may be remaining concerning recommendations for allocation of Title II funding to projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, August 9, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments may be sent to Linda Slaght, RAC Coordinator, Post Office Box 1328, Petersburg, Alaska 99833; by email to lslaght@usda.gov or by facsimile to 907-772-5995.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact Linda Slaght, by telephone at 907-772-5948 or by email at lslaght@usda.gov. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 12, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019-16282 Filed 7-30-19; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of New Fee Sites**

AGENCY: Forest Service, USDA.

ACTION: Notice of new fee sites.

SUMMARY: The Kisatchie National Forest is proposing to begin charging fees. Funds from the new fees will help the Kisatchie National Forest maintain the sites and boat launches at the level and quality visitors have come to expect. People are invited to comment on these proposed fee changes.

DATES: Comments on the fee changes will be accepted through August 15, 2019. The fees will become available pending a recommendation from the Southern Region Recreation Resource Advisory Committee. If approved by the Regional Forester, the Forest Service will implement the fee changes in 2020.

ADDRESSES: Written comments concerning this notice should be addressed to the Supervisor's Office at: Stacy Blomquist, Public Affairs Specialist, Kisatchie National Forest, 2500 Shreveport Hwy, Pineville, Louisiana, 71360.

FOR FURTHER INFORMATION CONTACT: Stacy Blomquist, Public Affairs Specialist, Kisatchie National Forest by phone at (318) 473-7242 or via email at stacy.blomquist@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Kisatchie National Forest is proposing to begin charging fees at the following sites:

- *Caney Ranger District:* Corney Lake Boat Launch—\$5.00/vehicle/day
- *Kisatchie Ranger District:* Oak Camp—\$10.00/single site/night
- *Winn Ranger District:* Cloud Crossing Campground—\$10.00/single site/night

The Kisatchie National Forest currently has 14 campgrounds where fees are collected. Oak Camp on the Kisatchie Ranger District offers amenities that support the \$10 per night fee and is consistent with the other campgrounds in the district. Cloud Crossing Campground located on Saline Bayou, a designated national scenic river, offers amenities that support the \$10 per night fee as both reasonable and acceptable for this recreation experience.

Currently there are five boat launches where fees are collected. The Corney

Lake Boat Launch of \$5.00/vehicle/day is consistent with other boat launch fees throughout the Kisatchie National Forest.

Prior to these fees being implemented, the Kisatchie National Forest will present this proposal to the Southern Region Recreation Resource Advisory Committee. The Federal Lands Recreation Enhancement Act requires a recommendation from the Southern Region Recreation Resource Advisory Committee prior to a decision and implementation.

Dated: July 8, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019-16281 Filed 7-30-19; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108-447)**

AGENCY: Chequamegon-Nicolet National Forest, USDA Forest Service.

ACTION: Notice of proposed new fee sites.

SUMMARY: The Chequamegon-Nicolet National Forest is proposing new recreation fee sites and increasing fees at 15 of the 45 developed campgrounds. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. These fees are proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements to the facilities within the recreation areas. An analysis of nearby recreation facilities with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: To ensure consideration of public comments, comments shall be submitted on or before September 30, 2019. If approved, new fees would be implemented as improvements are made to recreation sites and chalet rentals are available on recreation.gov.

ADDRESSES: Paul I.V. Strong, Forest Supervisor, Chequamegon-Nicolet National Forest, 500 Hanson Lake Road Rhinelander, WI 54501.

FOR FURTHER INFORMATION CONTACT: Hilary Markin, Public Affairs Officer, 715-362-1354. Information about these and other proposed fee changes can also

be found on the Chequamegon-Nicolet National Forest website: <https://www.fs.usda.gov/CNNF>.

SUPPLEMENTARY INFORMATION: The Chequamegon-Nicolet National Forest is proposing new recreation fee sites and increasing fees at 15 of the 45 developed campgrounds. The Chequamegon-Nicolet's proposal includes: A \$50 daily rental fee for the Lake Owen Chalet, a \$50 daily rental fee for the Namekagon Chalet, and a \$75 daily rental fee for Mount Valhalla Chalet. These chalets would be available for daily rentals as picnic or event shelters. In addition, the forest is proposing to add three day use sites at \$5 to the Forest's day use fee program including the Boulder Lake Beach, Boulder Lake Boat Landing, & Mineral Lake Boat Landing. Lastly, a new \$5 expanded amenity fee is proposed for the Boulder Lake Dump Station. Proposed fee eliminations include: Five day use fees and seven campground expanded amenity fees. These fees are proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements to the facilities within the recreation areas. An analysis of nearby recreation facilities with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. All proposed day use sites have the six amenities required under the Federal Lands Recreation Enhancement Act and are similar to other fee sites on the Chequamegon-Nicolet National Forest.

Dated: July 8, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019-16296 Filed 7-30-19; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****Ozark-Ouachita Resource Advisory Committee**

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ozark-Ouachita Resource Advisory Committee (RAC) will meet in Russellville, Arkansas. The committee is authorized under the Secure Rural

Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following website: https://cloudapps-usda.gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcwBAAS.

DATES: The meeting will be held on Thursday, August 29, 2019, beginning at 1:00 p.m., Central Standard Time (CST).

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact Caroline Mitchell, by telephone at 501-321-5318 or by email at carolinemitchell@usda.gov or Craig McBroome, by telephone at 479-964-7248 or by email at cmcbroome@usda.gov.

ADDRESSES: The meeting will be held at the Ozark-St. Francis National Forests Supervisor's Office, 605 West Main, Russellville, Arkansas.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Reserve Street, Hot Springs, Arkansas. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, by phone at 501-321-5318 or by email at carolinemitchell@usda.gov or Craig McBroome, Designated Federal Officer (DFO), by phone at 479-964-7248 or by email at cmcbroome@usda.gov.

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review Title II proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 22, 2019, to be scheduled on

the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Caroline Mitchell, Committee Coordinator, Post Office Box 1270, Hot Springs, Arkansas or by facsimile at 501-321-5399.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation. For access to the facility or proceedings, please contact Caroline Mitchell, by telephone at 501-321-5318 or by email at carolinemitchell@usda.gov or Craig McBroome, by telephone at 479-964-7248 or by email at cmcbroome@usda.gov. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 12, 2019.

Richard A. Cooksey,
Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019-16286 Filed 7-30-19; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho (Boise, Caribou-Targhee, Salmon-Challis, and Sawtooth National Forests and Curlew National Grassland); Nevada (Humboldt-Toiyabe National Forest); Utah (Ashley, Dixie, Fishlake, Manti-La Sal, and Uinta-Wasatch-Cache National Forests); Wyoming (Bridger-Teton National Forest); and Wyoming/Colorado (Medicine Bow-Routt National Forest and Thunder Basin National Grassland) Amendments to Land Management Plans for Greater Sage-Grouse Conservation

AGENCY: Forest Service, USDA.

ACTION: Notice of opportunity to object to the Greater Sage-Grouse Proposed Land Management Plan Amendments, Five Draft Records of Decision for National Forests in Idaho, Nevada, Utah, Wyoming, and Wyoming/Colorado.

SUMMARY: The USDA Forest Service has prepared the Final Environmental Impact Statement (EIS) for the Greater Sage-Grouse Proposed Land Management Plan Amendments (LMPA) and Five Draft Records of Decision (ROD) for National Forests in Idaho, Nevada, Utah, Wyoming, and Wyoming/Colorado. The Final EIS identifies and

addresses potential impacts upon the environment of 19 National Forest System (NFS) planning units on 5.4 million acres of potential greater sage-grouse habitats. This notice is to inform the public that a 60-day period is being initiated where individuals or entities with specific concerns on the Greater Sage-Grouse Forest Plan Amendments may file an objection for a Forest Service review prior to the approval of the RODs.

DATES: The Greater Sage-Grouse draft RODs, Final EIS, and other supporting information will be available for review at <https://www.fs.usda.gov/detail/r4/home/?cid=stelprd3843381> starting August 2, 2019. A legal notice of the initiation of the 60-day objection period will be published in the newspapers of record, which are the *Salt Lake Tribune* and the *Denver Post*. The date of publication of the legal notice in the newspapers of record will determine the date of initiation of the 60-day objection period.

ADDRESSES: Copies of the Final EIS and Draft RODs are available at the Intermountain Region website: <https://www.fs.usda.gov/detail/r4/home/?cid=stelprd3843381>. Regardless of submission method, all objections should have a subject line stating "Objection regarding the Greater Sage-Grouse Draft ROD and LMPA for NFS Land in [insert state(s)]." Objections must be submitted to the Reviewing Officer by one of the following methods:

- Electronically to the Objection Reviewing Officer via the Comment and Analysis Response Application (CARA) objection web form: <https://cara.ecosystem-management.org/Public/CommentInput?project=52904>. Electronic submissions must be submitted in a format (Word, PDF, or Rich Text) that is readable and searchable with optical character recognition software.

- Via fax to 801-625-5277. Faxes must be addressed to "Objection Reviewing Officer." The fax coversheet should specify the number of pages being submitted.

- Via regular mail to the following address: USDA Forest Service, Attn: Objection Reviewing Officer, 1400 Independence Ave. SW, EMC-PEEARS, Mailstop 1104, Washington, DC 20250.
- Via carrier or hand deliveries to the following address: USDA Forest Service, Attn: Objection Reviewing Officer, 201 14th Street SW, EMC-PEEARS, Mailstop 1104, Washington, DC 20250. Office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time, excluding Federal holidays. Carrier deliveries may call 202-791-

8488 during regular business days and hours, above, to coordinate delivery of objections.

FOR FURTHER INFORMATION CONTACT: John Shivik at 801-625-5667 or via email at john.shivik@usda.gov. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The USDA Forest Service, Intermountain and Rocky Mountain Regions, prepared a Forest Plan Amendment for Greater Sage-Grouse. This notice is to inform the public that a 60-day period is being initiated where individuals or entities with specific concerns on the Forest Plan Amendments may file an objection for a Forest Service review prior to the approval of the RODs for the Final EIS.

The publication date of the legal notice in the local newspapers of record will initiate the 60-day objection period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5) and 219.56(b)). An electronic scan of the notice with the publication date will be posted on the Intermountain Region's website at: <https://www.fs.usda.gov/detail/r4/home/?cid=stelprd3843381>.

The objection process under 36 CFR 219 subpart B provides an opportunity for members of the public who have participated in the planning process for the Greater Sage-Grouse Plan Amendments to have any unresolved concerns reviewed by the Forest Service prior to a final decision by the Responsible Officials. Only those who provided substantive formal comments during opportunities for public comment during the planning process are eligible to file an objection. Regulations at 36 CFR 219.62 define substantive formal comments as: *"Written comments submitted to, or oral comments recorded by, the responsible official or his designee during an opportunity for public participation provided during the planning process, and attributed to the individual or entity providing them. Comments are considered substantive when they are within the scope of the proposal, are specific to the proposal, have a direct relationship to the proposal, and include supporting reasons for the responsible official to consider."*

How To File an Objection

The Forest Service will accept mailed, emailed, faxed, and hand-delivered objections concerning Greater Sage-Grouse Amendments for 60 calendar

days following the date of the publication of the legal notice of this objection period in the newspaper of record. It is the responsibility of the objector to ensure that the Reviewing Officer receives the objection in a timely manner. The regulations prohibit extending the length of the objection filing period (36 CFR 219.56(d)).

Objections must be submitted to the Reviewing Officer, at the address shown in the **ADDRESSES** section of this notice. An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name and State of the forest plan amendment being objected to, and the name and title of the Responsible Official;

(5) A statement of the issues and/or parts of the forest plan amendment to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the forest plan amendment is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except that the following need not be provided:

a. All or any part of a Federal law or regulation,
b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the plan amendment comment period.

Responsible Officials

The responsible officials for the Greater Sage-Grouse Plan Amendments are:

Nora Rasure
Regional Forester, Intermountain Region
Brian Ferebee
Regional Forester, Rocky Mountain Region

Dated: June 28, 2019.

Frank R. Beum,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019-16283 Filed 7-30-19; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Annual Wildfire Summary Report

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, OMB-596-0025; Annual Wildfire Summary Report.

DATES: Comments must be received in writing on or before September 30, 2019 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Tim Melchert, Fire and Aviation Management, National Interagency Fire Center, USDA Forest Service, 3833 S Development Avenue, Boise, ID 83705.

Comments also may be submitted via facsimile to 208-387-5375 or by email to: timothy.melchert@usda.gov.

The public may inspect comments received at National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID 83705, during normal business hours. Visitors are encouraged to call ahead to 208-387-5604 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Tim Melchert, Fire and Aviation Manager, National Interagency Fire Center, 208-387-5887.

Individuals who use TDD may call the Federal Relay Service (FRS) at 1-800-

877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual Wildfire Summary Report.

OMB Number: 0596–0025.

Expiration Date of Approval: October 31, 2019.

Type of Request: Extension of a currently approved collection.

Abstract: The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 (note) Sec. 10) requires the Forest Service to collect information about wildfire suppression efforts by State and local firefighting agencies in support of congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State and local firefighting agencies. The Forest Service works cooperatively with State and local firefighting agencies to support their fire suppression efforts.

State fire marshals and State forestry officials use form FS–3100–8 (Annual Wildfire Summary Report) to report information to the Forest Service regarding State and local wildfire suppression efforts. The Forest Service is unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program without this information. Forest Service managers evaluate the information to determine if the Cooperative Fire Program funds used by State and local fire agencies have improved fire suppression capabilities. The Forest Service shares the information with Congress as part of the annual request for funding for this program.

The information collected includes the number of fires responded to by State or local firefighting agencies within a fiscal year, as well as the following information pertaining to such fires:

- Fire type (timber, structural, or grassland);
- Size (in acres) of the fires;
- Cause of fires (lightning, campfires, arson, etc.); and
- Suppression costs associated with the fires.

The data gathered is not available from any other sources.

Estimate of Burden per Response: 30 minutes.

Type of Respondents: State fire marshals or State forestry officials.

Estimated Annual Number of Respondents: 56.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 28 hours.

Comment is invited on: (1) Whether this collection of information is

necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 16, 2019.

John Phipps,

Deputy Chief, State and Private Forestry.

[FR Doc. 2019–16201 Filed 7–30–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, OMB 0596–0105, Land Exchanges.

DATES: Comments must be received in writing on or before September 30, 2019 to be assured of consideration.

Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Greg Smith, National Lands Director, Lands, Forest Service, 201 14th Street SW, Suite 1SE, Mail Stop 1124, Washington, DC 20024.

Comments also may be submitted via facsimile to 703–605–5117 or by email to: greg.smith3@usda.gov.

The public may inspect comments received at Office of the Lands Staff, Yates Building, 201 14th Street SW, Washington, DC during normal business hours. Visitors are encouraged to call

ahead to 202–205–3563 or 800–832–1355 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Greg Smith, Lands Director, 202–205–1238.

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

SUPPLEMENTARY INFORMATION:

Title: Land Exchanges.

OMB Number: 0596–0105.

Expiration Date of Approval: October 31, 2019.

Type of Request: Extension of a currently approved information collection.

Abstract: Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). Land exchanges can be initiated by a non-Federal party (or parties), an agent of a landowner, a broker, a third party, or a non-Federal public agency.

Each land exchange requires preparation of an Agreement to Initiate as required by Title 36 Code of Federal Regulations (CFR), part 254, subpart A—section 254.4—Agreement to Initiate. The Agreement to Initiate document specifies the preliminary and non-binding intentions of the non-Federal land exchange party and the Forest Service in pursuing a land exchange. The Agreement to Initiate can contain such information as the description of properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item.

As the exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding Exchange Agreement, pursuant to Title 36 CFR part 254, subpart A, section 254.14—Exchange Agreement. The Exchange Agreement documents the conditions that must be met to complete the exchange. The Exchange Agreement can contain information such as identification of parties, description of lands and interests to be exchanged, identification of all reserved and outstanding interest, and all other terms and conditions necessary to complete the exchange.

The Forest Service collects the information from the non-Federal party (or parties) necessary to complete the Agreement to Initiate and the Exchange Agreement. The information is collected

by Forest Service personnel from parties involved in the exchange via telephone, email or in person. Data from this information collection is unique to each land exchange and is not available from other sources. No standardized forms are associated with this information collection.

Estimate of Annual Burden

Agreement to Initiate: 3 hours.

Exchange Agreement: 1 hour.

Type of Respondents: Non-Federal party (or parties) that can include landowners, agents of landowners, brokers, a third party or a non-Federal public agency.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.826.

Estimated Total Annual Burden on Respondents: 88.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: July 12, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019-16202 Filed 7-30-19; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Federal Lands Recreation Enhancement Act

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed fee hanges.

SUMMARY: The Chippewa National Forest is seeking public comments on a proposal that would change recreation fees to enhance campgrounds. Fee changes are being proposed at the Norway Beach Recreation Area, including an \$8 amenity fee for those campsites with electricity. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. These fees are proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements to the facilities within the recreation areas. An analysis of nearby recreation facilities with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: To ensure consideration of public comments, comments shall be submitted on or before September 30, 2019. If approved, new fees would be implemented in 2020.

ADDRESSES: Darla Lenz, Forest Supervisor, Chippewa National Forest, 200 Ash Avenue NW, Cass Lake, Minnesota 56633.

FOR FURTHER INFORMATION CONTACT:

Christine Brown, Forest Recreation Program Manager, 218-335-8661. Information about the proposed fees can also be found on the Chippewa National Forest website: <http://www.fs.usda.gov/chippewa>.

SUPPLEMENTARY INFORMATION:

The Chippewa National Forest is proposing a change to recreation fees at the Norway Beach Recreation Area. Based on the proposed fee changes, Onegume Campground is proposed to change from \$23 per night to \$22 per night, and Stony Point Campground and Chippewa Loop in the Norway Beach Recreation Area are proposed to change from \$26 per night to \$22 per night plus an additional \$8 amenity fee for sites with electrical hook up. Other fee changes proposed for the Norway Beach Recreation Area campgrounds include: The Cass Lake Loop is planned to decrease from \$21 per night to \$16 per night upon completion of changes including: Walk in access only and removal of the shower and flush toilet building. Norway Beach Loop will be increased from \$21 per night to \$22 plus \$8 amenity fee for electrical hook ups, once completed. The Norway Beach group site fees are proposed to be \$55 for up to 2 units and \$85 per night for up to 3 units on site. The upgrades to Norway Beach Loop are slated to be complete before 2023. The Wanaki Loop fee will increase from \$21 per night to

\$22 per night to be in line with the other campgrounds in the Norway Beach Recreation Area.

Revenue generated from the proposed fees would be used to make improvements, such as the addition of electrical hook ups as well as upgrades in existing hook ups to 50 amps; upgrading picnic tables, grills, fire rings, restroom facilities, signage; new septic systems in three campgrounds loops in Norway Beach Recreation Area and addition of group sites in the Norway Beach Loop.

Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. The fees are proposed and will be determined upon further analysis and public comment. An analysis of nearby recreation facilities with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) requires the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are proposed. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: July 12, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019-16295 Filed 7-30-19; 8:45 am]

BILLING CODE 3411-15-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico 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 a meeting of the New Mexico Advisory Committee will be held at 12:00 p.m. Mountain Time on Friday, August 9, 2019. The purpose of the meeting is for the Committee to discuss its briefing on wage issues in the state.

DATES: The meeting will be held on Friday, August 9, 2019, at 12:00 p.m. Mountain Time.

ADDRESSES: Public Call Information: Dial: 800-367-2403. Conference ID: 3111196.

FOR FURTHER INFORMATION CONTACT: Alejandro Ventura at aventura@usccr.gov or (213) 894-3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800-367-2403, conference ID number: 3111196. 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 Alejandro Ventura at aventura@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 meeting at https://www.facadatabase.gov/FACA/FACA_PublicViewCommitteeDetails?id=a10t0000001gzlGAAQ

Please click on "Committee Meetings" tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome and Roll Call
- II. Approval of Minutes from June 18, 2019 and June 28, 2019 Meetings
- III. Discussion of Wage Briefing

- a. Review of Materials in the Record
- b. Review of Project Process and Next Steps
- i. Issuing a Briefing/Advisory Memorandum or Statement of Concern
- ii. Narrowing Scope of Study and Gathering Additional Testimony
- c. Committee Discussion of Themes and Observations from Briefing

IV. Public Comment

V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: July 25, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019-16241 Filed 7-30-19; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-23-2019]

Foreign-Trade Zone (FTZ) 38—Mount Pleasant, South Carolina; Authorization of Production Activity; Electrolux Home Products, Inc. (Appliances), Anderson, South Carolina

On March 28, 2019, The South Carolina State Ports Authority, grantee of FTZ 38, submitted a notification of proposed production activity to the FTZ Board on behalf of Electrolux Home Products, Inc., within FTZ 38, in Anderson, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the *Federal Register* inviting public comment (84 FR 15580-15581, April 16, 2019). On July 26, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: July 26, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019-16325 Filed 7-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-46-2019]

Foreign-Trade Zone 213—Ft. Myers, Florida; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Lee County Port Authority, grantee of FTZ 213, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on July 25, 2019.

FTZ 213 was approved by the FTZ Board on June 5, 1996 (Board Order 814, 61 FR 30593, June 17, 1996). The current zone includes the following sites: *Site 1* (2,938 acres)—Southwest Florida International Airport, 11000 Terminal Access Road, Suite 8671, Ft. Myers; *Site 2* (640 acres)—Page Field, 5200 Captain Channing Page Drive, Ft. Myers; *Site 3* (59 acres)—Immokalee Airport, Airport Road and State Road 846, Immokalee; *Site 4* (60 acres)—Charlotte County Airport Industrial Park, 2800 Airport Road, Punta Gorda; *Site 5* (18 acres)—Portside Development, Inc., 17051 Highway 31, North Ft. Myers; *Site 6* (144 acres)—Viscaya Industrial Park, located between the Nackinac Canal to the west, SE 9th Street/Viscaya Parkway to the north, Del Prado Blvd. to the east and the Montevideo and Rubicon Canals to the south, Cape Coral; and, *Site 7* (93 acres)—North Cape Industrial Park, Andalusia Blvd. and NE 24th Lane, Cape Coral.

The grantee's proposed service area under the ASF would be Charlotte, Collier and Lee Counties, Florida, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Ft. Myers, Florida, U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include all of the existing sites as “magnet” sites. The ASF allows for the possible exemption of one magnet site from the “sunset” time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No subzones/usage-driven sites are being requested at this time.

In accordance with the FTZ Board’s regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board’s Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is September 30, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 15, 2019.

A copy of the application will be available for public inspection in the “Reading Room” section of the FTZ Board’s website, which is accessible via www.trade.gov/ftz. For further information, contact Christopher Kemp at Christopher.Kemp@trade.gov or (202) 482-0862.

Dated: July 25, 2019.

Elizabeth Whiteman,
Acting Executive Secretary.

[FR Doc. 2019-16323 Filed 7-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2085]

Reorganization of Foreign-Trade Zone 263, (Expansion of Service Area) Under Alternative Site Framework, Lewiston-Auburn, Maine

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Lewiston-Auburn Economic Growth Council, grantee of Foreign-Trade Zone 263, submitted an application to the Board (FTZ Docket B-79–2018, docketed December 19, 2018) for authority to expand the service area of the zone to include York County, Maine, as described in the application, adjacent to the Portland, Maine Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (83 FR 66675, December 27, 2018) and the application has been processed pursuant to the FTZ Act and the Board’s regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner’s report, and finds that the requirements of the FTZ Act and the Board’s regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 263 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board’s regulations, including Section 400.13, and to the Board’s standard 2,000-acre activation limit for the zone.

Dated: July 25, 2019.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2019-16324 Filed 7-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee) will hold an open in-person meeting on Friday, September 6, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time. The primary purposes of this meeting are to update the Committee on the progress of the NCST technical investigation to study building failures and emergency response and evacuation during Hurricane Maria, which made landfall

in the U.S. territory of Puerto Rico on September 20, 2017, and the implementation of recommendations from previous NCST investigations, including the Joplin tornado investigation. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at <https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee>.

DATES: The NCST Advisory Committee will meet on Friday, September 6, 2019, from 8:30 a.m. until 5:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in person in the Portrait Room of Building 101, NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Benjamin Davis, Management and Program Analyst, Disaster and Failure Studies Program, Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, Maryland 20899–8604. Benjamin Davis’ email address is Benjamin.Davis@nist.gov; and his phone number is (301) 975–6071.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the NCST Act (Pub. L. 107–231, codified at 15 U.S.C. 7301 *et seq.*). The Committee is currently composed of six members, appointed by the Director of NIST, who were selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams. The Committee advises the Director of NIST on carrying out the NCST Act; reviews the procedures developed for conducting investigations; and reviews the reports issued documenting investigations. Background information on the NCST Act and information on the NCST Advisory Committee is available at <https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee>.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NCST Advisory Committee will meet on Friday, September 6, 2019, from 8:30 a.m. until 5:00 p.m. Eastern Time. The meeting will be open to the public. The meeting will be held in person in the Portrait Room of Building 101, NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. The primary purposes of this meeting are to update the

Committee on the progress of the NCST technical investigation to study building failures and emergency response and evacuation during Hurricane Maria, which made landfall in the U.S. territory of Puerto Rico on September 20, 2017, and the implementation of recommendations from previous NCST investigations, including the Joplin tornado investigation. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at <https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. Approximately fifteen minutes will be reserved near the conclusion of the meeting for public comments and speaking times will be assigned on a first-come, first-served basis. Public comments can be provided in person or by teleconference attendance. The amount of time per speaker will be determined by the number of requests received, but is likely to be three minutes each. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Benjamin Davis at Benjamin.Davis@nist.gov, by 5:00 p.m. Eastern Time, Friday, August 23, 2019.

Speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements to the NCST, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, or electronically by email to Benjamin.Davis@nist.gov.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting in person must register by 5:00 p.m. Eastern Time, Friday, August 9, 2019, to attend. Please submit your full name, email address, and phone number to Benjamin Davis at Benjamin.Davis@nist.gov; his phone number is (301) 975–8912. Non-U.S. citizens must submit additional information; please contact Mr. Davis. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005

(Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information, please visit: http://www.nist.gov/public_affairs/visitor/.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–16234 Filed 7–30–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session on Wednesday, August 21, 2019, from 9:00 a.m. to 3:30 p.m. Eastern time. The purpose of this meeting is to review the results of examiners' scoring of written applications. Panel members will vote on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed.

DATES: The meeting will be held on Wednesday, August 21, 2019, from 9:00 a.m. to 3:30 p.m. Eastern time. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland 20899–1020, telephone number (301) 975–2360, email robert.fangmeyer@nist.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the

Judges Panel of the Malcolm Baldrige National Quality Award will meet on Wednesday, August 21, 2019, from 9:00 a.m. to 3:30 p.m. Eastern time. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, with a balanced representation from U.S. service, manufacturing, nonprofit, education, and health care industries. Members are selected for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The purpose of this meeting is to review the results of examiners' scoring of written applications. Panel members will vote on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed.

The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Employment, Litigation and Information, formally determined on July 1, 2019 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4), because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential, and 5 U.S.C. 552b(c)(9)(B) because the meeting is likely to disclose information the premature disclosure of which would, in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action.

The meeting, which involves examination of current Malcolm Baldrige National Quality Award (Award) applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2019–16235 Filed 7–30–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XV010

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Trawl Electronic Monitoring Committee will meet August 21, 2019 through August 22, 2019.

DATES: The meeting will be held on Wednesday, August 21, 2019, from 1 p.m. to 5 p.m. and on Thursday, August 22, 2019, from 8:30 a.m. to 5 p.m., Pacific Standard Time.

ADDRESSES: The meeting will be held in the offices of the Pacific States Marine Fisheries Commission, 205 SE Spokane Street, Suite 100, Portland, OR 97202. Teleconference: (907) 245–3900, Pin is 2809.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:**Agenda**

Wednesday, August 21, 2019 to Thursday, August 22, 2019

The agenda will include discussion of: A strategic review of fishery monitoring committee roles; EM cost metrics; 2019 Trawl EM program; the west coast whiting program; planning for the 2020 Trawl EM program; update on relevant information from the observer fee analysis; and, scheduling and other issues. The Agenda is subject to change, and the latest version will be posted at www.npfmc.org/Meetings/Details/745 prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted either electronically to www.meetings.npfmc.org/Meetings/Details/745 or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chair.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

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

Dated: July 26, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–16252 Filed 7–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XR023

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Office of Naval Research Arctic Research Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Navy's Office of Naval Research (ONR) for authorization to take marine mammals incidental to Arctic Research Activities in the Beaufort and Chukchi Seas. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision. ONR's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

DATES: Comments and information must be received no later than August 30, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.Fowler@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:**Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below. The proposed action constitutes a military readiness activity because these proposed scientific research activities directly support the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use by providing critical data on the changing natural and physical environment in which such materiel will be assessed and deployed. This proposed scientific research also directly supports fleet training and operations by providing up to date information and data on the natural and physical environment essential to training and operations.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS plans to adopt the Navy’s Environmental Assessment/ Overseas Environmental Assessment, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA. The Navy’s OEA is available at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On April 25, 2019, NMFS received a request from ONR for an IHA to take marine mammals incidental to Arctic Research Activities in the Beaufort and Chukchi Seas. The application was deemed adequate and complete on July 16, 2019. ONR’s request is for take of a small number of beluga whales (*Delphinapterus leucas*), bearded seals (*Erignathus barbatus*), and ringed seals (*Pusa hispida hispida*) by Level B harassment only. Neither ONR nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover the second year of a larger project for which ONR obtained a prior IHA and intends to request take authorization for subsequent facets of the project. This IHA would be valid for a period of one year from the date of issuance. The larger three-year project involves several scientific objectives which support the Arctic and Global Prediction Program, as well as the Ocean Acoustics Program and the Naval Research Laboratory, for which ONR is the parent command. ONR complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA (83 FR 48799; September 27, 2019).

Description of Proposed Activity

Overview

ONR’s Arctic Research Activities include scientific experiments to be conducted in support of the programs named above. Specifically, the project includes the Stratified Ocean Dynamics of the Arctic (SODA), Arctic Mobile Observing System (AMOS), Ocean Acoustics field work (including the Coordinated Arctic Active Tomography

Experiment (CAATEX)), and Naval Research Laboratory experiments in the Beaufort and Chukchi Seas. These experiments involve deployment of moored and ice-tethered active acoustic sources, primarily from the U.S Coast Guard Cutter (CGC) HEALY. CGC HEALY may also be required to perform icebreaking to deploy the acoustic sources in deep water. Underwater sound from the acoustic sources and icebreaking may result in behavioral harassment of marine mammals.

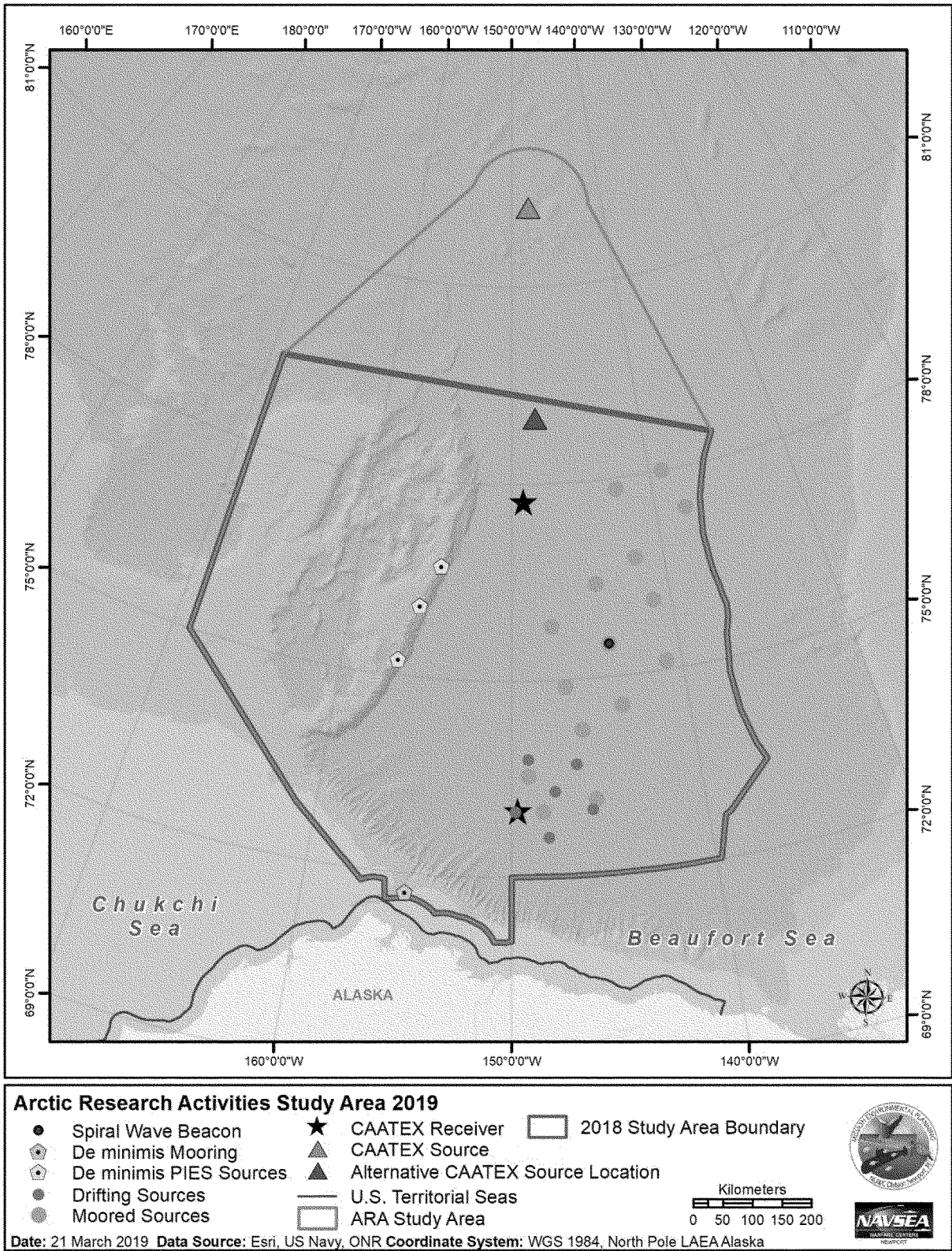
Dates and Duration

ONR’s Arctic Research Activities began in August 2018 with deployment of autonomous gliders in the Beaufort and Chukchi Seas and subsequent deployment of moored acoustic sources in September 2018. The activities analyzed in this proposed IHA would begin in September 2019, with a tentative sail date of September 3, 2019. CGC HEALY would perform a research cruise for up to 60 days in September and October 2019 to deploy acoustic sources. If required, a second, non-icebreaking ship would perform a cruise of up to 30 days to deploy any remaining sources in the fall of 2019. A total of eight days of icebreaking within the effective dates of this IHA are anticipated to be required to deploy and/or retrieve the northernmost acoustic sources. CGC HEALY, a similar icebreaking ship, or a non-icebreaking ship would be used for a subsequent research cruise for up to 60 days beginning in August 2020. The initial stages of the August 2020 cruise (*i.e.*, the spiral wave beacon, see *Detailed Description of Specific Activity* below) are included in the activities analyzed in this IHA. The latter stages of the 2020 cruise would be analyzed in a subsequent IHA.

Specific Geographic Region

The proposed actions would occur in either the U.S. Exclusive Economic Zone (EEZ) or the high seas north of Alaska (Figure 1). All activities, except for the transit of ships, would take place outside U.S. territorial waters. The total area of the study area is 835,860 square kilometers (km²) (322,727 square miles (mi²)). The closest active acoustic source (aside from *de minimis* sources described below) within the study area is approximately 145 miles (mi; 233 kilometers (km)) from land.

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Figure 1. Arctic Research Activities Study Area
Detailed Description of Specific Activity
The ONR Arctic and Global Prediction Program is supporting two

major projects (SODA and AMOS), which will both occur during time period covered by this IHA. The SODA project began field work in August 2018, consisting of research cruises and the deployment of autonomous

measurement devices for year-round observation of water properties (temperature and salinity) and the associated stratification and circulation. These physical processes are related to the ice cover and as the properties of the ice cover change, the water properties will change as well. Warm water feeding into the Arctic Ocean also plays an important role changing the environment. Observations of these phenomena require geographical sampling of areas of varying ice cover and temperature profile, and year-round temporal sampling to understand what happens during different parts of the year. Unmanned gliders and autonomous platforms are needed for this type of year-round observation of a representative sample of arctic waters. The SODA project also involved the initial deployment of navigation sources for unmanned vehicles. Under the AMOS project, there will be new deployments of navigation sources in September 2019 (Figure 1). Geolocation of autonomous platforms requires the use of acoustic navigation signals, and therefore, year-long use of active acoustic signals.

The ONR Ocean Acoustics Program also supports Arctic field work. The emphasis of the Ocean Acoustics Program field efforts is to understand how the changing environment affects acoustic propagation and the noise environment. The ONR Acoustic Program would be utilizing new technology for year-round observation of the large-scale (range and depth) temperature structure of the ocean at very low frequencies. The use of specialized waveforms and acoustic arrays allows signals to be received over 100 km from a source, while only requiring moderate source levels. The Ocean Acoustics program is planning to perform experiments in conjunction with the Arctic and Global Prediction Program by operating in the same general location and with the same research vessel.

The Naval Research Laboratory would also conduct Arctic research in the same time frame, using drifting buoys with active acoustic sources that are deployed in the ice. The buoys are deployed for real-time environmental characterization to aid in mid-frequency sonar performance predictions. Real-time assimilation of acoustic data into an ocean model is also planned.

Below are descriptions of the equipment and platforms that would be deployed at different times during the proposed action.

Research Vessels

CGC HEALY would be the primary vessel performing the research cruise in September and October 2019. CGC HEALY travels at a maximum speed of 17 knots (kn) with a cruising speed of 12 kn (United States Coast Guard 2013), and a maximum speed of 3 kn when traveling through 3.5 feet (ft; 1.07 meters (m)) of sea ice (Murphy 2010). CGC HEALY may be required to perform icebreaking to deploy the moored and ice tethered acoustic sources in deep water. Icebreaking would only occur during the warm season, presumably in the August through October timeframe. CGC HEALY has proven capable of breaking ice up to 8 ft (2.4 m) thick while backing and ramming (Roth *et al.* 2013). A study in the western Arctic Ocean was conducted while CGC HEALY was mapping the seafloor north of the Chukchi Cap in August 2008. During this study, CGC HEALY icebreaker events generated signals with frequency bands centered near 10, 50, and 100 Hertz (Hz) with maximum source levels of 190 to 200 decibel(s) (dB) referenced to 1 microPascal (μ Pa) at 1 meter (dB re 1 μ Pa at 1 m; full octave band) (Roth *et al.* 2013). Icebreaking would likely only occur in the northernmost areas of the study area while deploying and/or retrieving sources.

The CGC HEALY or other vessels may perform the following activities during the research cruises (some of these activities may result in take of marine mammals, while others may not, as described further below):

- Deployment of moored and/or ice-tethered passive sensors (*e.g.*, oceanographic measurement devices, acoustic receivers);
- Deployment of moored and/or ice-tethered active acoustic sources to transmit acoustic signals for up to two years after deployment. Transmissions could be terminated during ice-free periods (August-October) each year, if needed;
- Deployment of unmanned surface, underwater, and air vehicles; and
- Recovery of equipment.

Additional oceanographic measurements would be made using ship-based systems, including the following:

- Modular Microstructure Profiler, a tethered profiler that would measure oceanographic parameters within the top 984 ft (300 m) of the water column;
- Shallow Water Integrated Mapping System, a winched towed body with a Conductivity Temperature Depth sensor, upward and downward looking Acoustic Doppler Current Profilers

(ADCPs), and a temperature sensor within the top 328 ft (100 m) of the water column;

- Three-dimensional Sonic Anemometer, which would measure wind stress from the foremast of the ship;
- Surface Wave Instrument Float with Tracking (SWIFTs) buoys are freely drifting buoys measuring winds, waves, and other parameters with deployments spanning from hours to days; and
- A single mooring would be deployed to perform measurements of currents with an ADCP.

Moored and Drifting Acoustic Sources

Up to 15 moored acoustic navigation sources would be deployed during the period September 2019 to September 2020 at the locations shown in Figure 1. Each navigation source transmits for 8 seconds every 4 hours, with the sources transmitting with a five minute offset from each other. The purpose of the navigation sources is to allow autonomous vehicles and gliders to navigate by receiving acoustic signals from multiple locations and triangulating position. This is needed for vehicles that are under ice and cannot communicate with satellites.

A single very low frequency (VLF) source would be deployed in the furthest north part of the study area, shown by the triangle symbols in Figure 1. The northernmost location is the preferred location, but the alternative location may be used. The VLF source provides capability for persistent (year-long) observation of Arctic oceanographic processes and measures oceanographic changes (*e.g.* regional increases in temperature) over long ranges.

All moorings would be anchored on the seabed and held in the water column with subsurface buoys. All sources would be deployed by shipboard winches, which would lower sources and receivers in a controlled manner. Anchors would be steel “wagon wheels” typically used for this type of deployment.

Up to six drifting sources would be deployed for the purpose of near-real time environmental characterization, which is accomplished by communicating information from the drifting buoys to a satellite. They would be deployed in the ice for purposes of buoy stability, but would eventually drift in open water. The sources would transmit signals to each other to measure oceanographic properties of the water between them. The sources would stop transmitting when this IHA expires in September 2020 or when they leave the Study Area, whichever comes first.

On the fall 2020 cruise, a spiral wave beacon source would be tested for fine-scale navigation. The spiral wave beacon is a mid-frequency source that

transmits a 50 millisecond signal at 30 second intervals. The source would be deployed from a ship at a single location and transmit for up to 5 days. It will

either be attached to the ship or moored near the ship. The ship will remain for the 5 days of the test, and the source will be recovered at the end of testing.

TABLE 1—CHARACTERISTICS OF PROPOSED ACOUSTIC SOURCES

Source name	Frequency range (Hz)	Sound pressure level (dB re 1 μ Pa at 1 m)	Pulse length (milli-seconds)	Duty cycle (percent)	Source type	Usage
Navigation Sources	900	185	8,000	<1	Moored	15 sources transmitting 8 seconds every 4 hours, up to 2 years.
Real-Time Sensing Sources	900 to 1000	184	60,000	<1	Drifting	6 sources transmitting 1 minute every 4 hours, up to 2 years.
Spiral Wave Beacon	2,500	183	50	<1	Moored	5 days.
Very Low Frequency (VLF source)	34	185 (peak)	1,800,000	<1	Moored	One source transmitting 30 minutes every 6 days, up to 2 years.

Activities Not Likely to Result in Take

The following in-water activities have been determined to be unlikely to result in take of marine mammals. These activities are described here but their effects are not described further in this document.

De minimis Sources—*De minimis* sources have the following parameters: Low source levels, narrow beams, downward directed transmission, short pulse lengths, frequencies outside known marine mammal hearing ranges, or some combination of these factors

(Department of the Navy 2013b). For further detail regarding the *de minimis* sources planned for use by the Navy, which are not quantitatively analyzed, please see the Navy's application. Descriptions of example sources are provided below and in Table 2.

TABLE 2—PARAMETERS FOR De Minimis SOURCES

Source name	Frequency range (kHz)	Sound pressure level (dB re 1 μ Pa at 1 m)	Pulse length (milli-seconds)	Duty cycle (percent)	Beamwidth	De minimis justification
Pressure Inverted Echosounders (PIES) ...	12	170–180	6	<0.01	45	Extremely low duty cycle, low source level, very short pulse length.
ADCP	>200, 150, or 75.	190	<1	<0.1	2.2	Very low pulse length, narrow beam, moderate source level.
Chirp sonar	2–16	200	20	<1	narrow	Very short pulse length, low duty cycle, narrow beam width.
Expendable Mobile Anti-Submarine Warfare Training Targets (EMATTs).	700–1100 Hz and 1100–4000 Hz.	<150	N/A	25–100	Omni	Very low source level.
Coring system	25–200	158–162	<1	16	Omni	Very low source level. ²
CTD ¹ attached Echosounder	5–20	160	4	2	Omni	Very low source level.

¹ CTD = Conductivity Temperature Depth.

² Within sediment, not within the water column.

Drifting Oceanographic Sensors—Observations of ocean-ice interactions require the use of sensors which are moored and embedded in the ice. Sensors are deployed within a few dozen meters of each other on the same ice floe. Three types of sensors would be used: Autonomous Ocean Flux Buoys, Integrated Autonomous Drifters, and Ice Tethered Profilers. The autonomous ocean flux buoys measure oceanographic properties just below the ocean-ice interface. The autonomous ocean flux buoys would have ADCPs and temperature chains attached, to measure temperature, salinity, and other ocean parameters in the top 20 ft (6 m) of the water column. Integrated Autonomous Drifters would have a long temperature string extending down to 656 ft (200 m) depth and would incorporate meteorological sensors, and a temperature string to estimate ice

thickness. The Ice Tethered Profilers would collect information on ocean temperature, salinity, and velocity down to 820 ft (250 m) depth.

Fifteen autonomous floats (Air-Launched Autonomous Micro Observers) would be deployed during the proposed action to measure seasonal evolution of the ocean temperature and salinity, as well as currents. They would be deployed on the eastern edge of the Chukchi Sea in water less than 3,280 ft (1,000 m) deep. Three autonomous floats would act as virtual moorings by originating on the seafloor, then moving up the water column to the surface and returning to the seafloor. The other 12 autonomous floats would sit on the sea floor and at intervals begin to move toward the surface. At programmed intervals, a subset of the floats would release anchors and begin their profiling mission. Up to 15 additional floats may

be deployed by ships of opportunity in the Beaufort Gyre.

The drifting oceanographic sensors described above use only *de minimis* sources and are therefore not anticipated to have the potential for impacts on marine mammals or their habitat.

Moored Oceanographic Sensors—Moored sensors would capture a range of ice, ocean, and atmospheric conditions on a year-round basis. The location of the bottom-anchored sub-surface moorings are depicted by the purple stars in Figure 1–1 of the IHA application. These would be bottom-anchored, sub-surface moorings measuring velocity, temperature, and salinity in the upper 1,640 ft (500 m) of the water column. The moorings also collect high-resolution acoustic measurements of the ice using the ice profilers described above. Ice velocity

and surface waves would be measured by 500 kHz multibeam sonars.

Additionally, Beaufort Gyre Exploration Project moorings BGOS-A and BGOS-B (depicted by the black plus signs in Figure 1–1 of the IHA application) would be augmented with McLane Moored Profilers. BGOS-A and BGOS-B would provide measurements near the Northwind Ridge, with considerable latitudinal distribution. Existing deployments of Nortek Acoustic Wave and Current Profilers on BGOS-A and BGOS-B would also be continued as part of the proposed action.

The moored oceanographic sensors described above use only *de minimis* sources and are therefore not anticipated to have the potential for impacts on marine mammals or their habitat.

Fixed and Towed Receiving Arrays—Horizontal and vertical arrays may be used to receive acoustic signals. Two receiving arrays will be deployed in September–October 2020 to receive signals from the CAATEX source. Other receiving arrays are the Single Hydrophone Recording Units and Autonomous Multichannel Acoustic Recorder. All these arrays would be moored to the seafloor and remain in place throughout the activity.

These are passive acoustic sensors and therefore are not anticipated to have the potential for impacts on marine mammals or their habitat.

Activities Involving Aircraft and Unmanned Air Vehicles—Naval Research Laboratory would be conducting flights to characterize the ice structure and character, ice edge and wave heights across the open water and marginal ice zone to the ice. Up to 4 flights, lasting approximately 3 hours in duration would be conducted over a 10 day period during February or March for ice structure and character measurements and during late summer/early fall for ice edge and wave height studies. Flights would be conducted with a Twin Otter aircraft over the seafloor mounted acoustic sources and receivers. Most flights would transit at 1,500 ft or 10,000 ft (457 or 3,048 m) above sea level. Twin Otters have a typical survey speed of 90 to 110 kn, 66 ft (20 m) wing span, and a total length of 26 ft (8 m) (U.S. Department of Commerce and NOAA 2015). At a distance of 2,152 ft (656 m) away, the received pressure levels of a Twin Otter range from 80 to 98.5 A-weighted dB (expression of the relative loudness in the air as perceived by the human ear) and frequency levels ranging from 20 Hz to 10 kHz, though they are more typically in the 500 Hz range (Metzger

1995). The objective of the flights is to characterize thickness and physical properties of the ice mass overlying the experiment area.

Rotary wing aircraft may also be used during the activity. Helicopter transit would be no longer than two hours to and from the ice location. A twin engine helicopter may be used to transit scientists from land to an offshore floating ice location. Once on the floating ice, the team would drill holes with up to a 10 inch (in; 25.4 centimeter (cm)) diameter to deploy scientific equipment (e.g., source, hydrophone array, EMATT) into the water column. The science team would depart the area and return to land after three hours of data collection and leave the equipment and leave the equipment behind for a later recovery.

The proposed action includes the use of an Unmanned Aerial System (UAS). The UAS would be deployed ahead of the ship to ensure a clear passage for the vessel and would have a maximum flight time of 20 minutes. The UAS would not be used for marine mammal observations or hover close to the ice near marine mammals. The UAS that would be used during the proposed action is a small commercially available system that generates low sound levels and is smaller than military grade systems. The dimensions of the proposed UAS are, 11.4 in (29 cm) by 11.4 in (29 cm) by 7.1 in (18 cm) and weighs 2.5 lb (1.13 kg). The UAS can operate up to 984 ft (300 m) away, which would keep the device in close proximity to the ship. The planned operation of the UAS is to fly it vertically above the ship to examine the ice conditions in the path of the ship and around the area (*i.e.*, not flown at low altitudes around the vessel). Currently acoustic parameters are not available for the proposed models of UASs to be used. As stated previously, these systems are small and are similar to a remote control helicopter. It is likely marine mammals would not hear the device since the noise generated would likely not be audible from greater than 5 ft (1.5 m) away (Christiansen *et al.*, 2016).

All aircraft (manned and unmanned) would be required to maintain a minimum separation distance of 1,000 ft (305 m) from any pinnipeds hauled out on the ice. Therefore, no take of marine mammals is anticipated from these activities.

On-Ice Measurement Systems—On-ice measurement systems would be used to collect weather data. These would include an Autonomous Weather Station and an Ice Mass Balance Buoy. The Autonomous Weather Station

would be deployed on a tripod; the tripod has insulated foot platforms that are frozen into the ice. The system would consist of an anemometer, humidity sensor, and pressure sensor. The Autonomous Weather Station also includes an altimeter that is *de minimis* due to its very high frequency (200 kHz). The Ice Mass Balance Buoy is a 20 ft (6 m) sensor string, which is deployed through a 2 in (5 cm) hole drilled into the ice. The string is weighted by a 2.2 lb (1 kg) lead weight, and is supported by a tripod. The buoy contains a *de minimis* 200 kHz altimeter and snow depth sensor. Autonomous Weather Stations and Ice Mass Balance Buoys will be deployed, and will drift with the ice, making measurements, until their host ice floes melt, thus destroying the instruments (likely in summer, roughly one year after deployment). After the on-ice instruments are destroyed they cannot be recovered, and would sink to the seafloor as their host ice floes melted.

All personnel conducting experiments on the ice would be required to maintain a minimum separation distance of 1,000 ft (305 m) from any pinnipeds hauled out on the ice. Therefore, no take of marine mammals is anticipated from these activities.

Bottom Interaction Systems—Coring of bottom sediment could occur anywhere within the study area to obtain a more complete understanding of the Arctic environment. Coring equipment would take up to 50 samples of the ocean bottom in the study area annually. The samples would be roughly cylindrical, with a 3.1 in (8 cm) diameter cross-sectional area; the corings would be between 10 and 20 ft (3 and 6 m) long. Coring would only occur during research cruises, during the summer or early fall. The coring equipment moves slowly through the muddy bottom, at a speed of approximately 1 m per hour, and would not create any detectable acoustic signal within the water column, though very low levels of acoustic transmissions may be created in the mud (see parameters listed in Table 2).

Weather Balloons—To support weather observations, up to 40 Kevlar or latex balloons would be launched per year for the duration of the proposed action. These balloons and associated radiosondes (a sensor package that is suspended below the balloon) are similar to those that have been deployed by the National Weather Service since the late 1930s. When released, the balloon is approximately 5 to 6 ft (1.5–1.8 m) in diameter and gradually expands as it rises due to the decrease in air pressure. When the balloon

reaches a diameter of 13–22 ft (4–7 m), it bursts and a parachute is deployed to slow the descent of the associated radiosonde. Weather balloons would not be recovered.

The deployment of weather balloons does not include the use of active acoustics and is therefore not anticipated to have the potential for impacts on marine mammals or their habitat.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation and Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats

may be found in NMFS's Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

Table 3 lists all species with expected potential for occurrence in the study area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no

mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2018 SARs (e.g., Muto *et al.*, 2019; Carretta *et al.*, 2019). All values presented in Table 3 are the most recent available at the time of publication and are available in the 2018 SARs (Muto *et al.*, 2019; Carretta *et al.*, 2019).

TABLE 3—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance sur- vey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae: <i>Gray whale</i>	<i>Eschrichtius robustus</i>	Eastern North Pacific	-/- ; N	26,960 (0.05, 25,849, 2016) ...	801	135
Family Balaenidae: <i>Bowhead whale</i>	<i>Balaena mysticetus</i>	Western Arctic	E/D ; Y	16,820 (0.052, 16,100, 2011)	161	46
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae: <i>Beluga whale</i>	<i>Delphinapterus leucas</i>	Beaufort Sea	-/- ; N	39,258 (0.229, N/A, 1992)	⁴ Undet	139
<i>Beluga whale</i>	<i>Delphinapterus leucas</i>	Eastern Chukchi Sea	-/- ; N	20,752 (0.70, 12,194, 2012) ..	244	67
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
<i>Bearded seal</i> ⁵	<i>Erignathus barbatus</i>	Alaska	T/D ; Y	299,174	8,210	557
<i>Ribbon seal</i>	<i>Histiophoca fasciata</i>	Alaska	-/- ; N	(-, 273,676, 2013)	9,785	3.9
<i>Ringed seal</i> ⁵	<i>Pusa hispida hispida</i>	Alaska	T/D ; Y	184,697	5,100	1,054
<i>Spotted seal</i>	<i>Phoca largha</i>	Alaska	-/- ; N	(-, 163,086, 2013)	12,697	329
				170,000		
				(-, 170,000, 2013)		
				461,625		
				(-, 423,237, 2013)		

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁴ The 2016 guidelines for preparing SARs state that abundance estimates older than 8 years should not be used to calculate PBR due to a decline in the reliability of an aged estimate. Therefore, the PBR for this stock is considered undetermined.

⁵ Abundances and associated values for bearded and ringed seals are for the U.S. population in the Bering Sea only.

Note: Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 3. Activities conducted during the proposed action

are expected to cause harassment, as defined by the MMPA as it applies to military readiness, to the beluga whale (of the Beaufort and Eastern Chukchi

Sea stocks), bearded seal, and ringed seal. Due to the location of the study area (i.e., northern offshore, deep water), there were no calculated exposures for

the bowhead whale, gray whale, spotted seal, and ribbon seal from quantitative modeling of non-impulsive acoustic and icebreaking sources. Bowhead and gray whales remain closely associated with the shallow waters of the continental shelf in the Beaufort Sea and are unlikely to be exposed to acoustic harassment (Carretta *et al.*, 2017; Muto *et al.*, 2018). Similarly, spotted seals tend to prefer pack ice areas with water depths less than 200 m during the spring and move to coastal habitats in the summer and fall, found as far north as 69–72° N (Muto *et al.*, 2018). Although the study area includes waters south of 72° N, the acoustic sources with the potential to result in take of marine mammals are not found below that latitude and spotted seals are not expected to be exposed. Ribbon seals are found year-round in the Bering Sea but may seasonally range into the Chukchi Sea (Muto *et al.*, 2018). The proposed action occurs primarily in the Beaufort Sea, outside of the core range of ribbon seals, thus ribbon seals are not expected to be behaviorally harassed. Narwhals are considered extralimital in the project area and are not expected to be encountered or taken. As no harassment is expected of bowhead whales, gray whales, spotted seals, and ribbon seals, these species will not be discussed further in this IHA.

Beluga Whale

Beluga whales are distributed throughout seasonally ice-covered arctic and subarctic waters of the Northern Hemisphere (Gurevich 1980), and are closely associated with open leads and polynyas in ice-covered regions (Hazard 1988). Belugas are both migratory and residential (non-migratory), depending on the population. Seasonal distribution is affected by ice cover, tidal conditions, access to prey, temperature, and human interaction (Frost *et al.*, 1985).

There are five beluga stocks recognized within U.S. waters: Cook Inlet, Bristol Bay, eastern Bering Sea, eastern Chukchi Sea, and Beaufort Sea. Two stocks, the Beaufort Sea and eastern Chukchi Sea stocks, have the potential to occur in the Study Area.

There are two migration areas used by Beaufort Sea belugas that overlap the Study Area. One, located in the Eastern Chukchi and Alaskan Beaufort Sea, is a migration area in use from April to May. The second, located in the Alaskan Beaufort Sea, is used by migrating belugas from September to October (Calambokidis *et al.*, 2015). During the winter, they can be found foraging in offshore waters associated with pack ice. When the sea ice melts in summer, they move to warmer river estuaries and

coastal areas for molting and calving (Muto *et al.*, 2017). Annual migrations can span over thousands of kilometers. The residential Beaufort Sea populations participate in short distance movements within their range throughout the year. Based on satellite tags (Suydam *et al.*, 2001) there is some overlap in distribution with the eastern Chukchi Sea beluga whale stock.

During the winter, eastern Chukchi Sea belugas occur in offshore waters associated with pack ice. In the spring, they migrate to warmer coastal estuaries, bays, and rivers where they may molt (Finley 1982; Suydam 2009) and give birth to and care for their calves (Sergeant and Brodie 1969). Eastern Chukchi Sea belugas move into coastal areas, including Kasegaluk Lagoon (outside of the Study Area), in late June and animals are sighted in the area until about mid-July (Frost and Lowry 1990; Frost *et al.*, 1993). Satellite tags attached to eastern Chukchi Sea belugas captured in Kasegaluk Lagoon during the summer showed these whales traveled 593 nm (1,100 km) north of the Alaska coastline, into the Canadian Beaufort Sea within three months (Suydam *et al.*, 2001). Satellite telemetry data from 23 whales tagged during 1998–2007 suggest variation in movement patterns for different age and/or sex classes during July–September (Suydam *et al.*, 2005). Adult males used deeper waters and remained there for the duration of the summer; all belugas that moved into the Arctic Ocean (north of 75° N) were males, and males traveled through 90 percent pack ice cover to reach deeper waters in the Beaufort Sea and Arctic Ocean (79–80° N) by late July/early August. Adult and immature female belugas remained at or near the shelf break in the south through the eastern Bering Strait into the northern Bering Sea, remaining north of Saint Lawrence Island over the winter. A whale tagged in the eastern Chukchi Sea in 2007 overwintered in the waters north of Saint Lawrence Island during 2007/2008 and moved to near King Island in April and May before moving north through the Bering Strait in late May and early June (Suydam 2009).

Bearded Seal

Bearded seals are a boreoarctic species with circumpolar distribution (Burns 1967; Burns 1981; Burns and Frost 1979; Fedoseev 1965; Johnson *et al.*, 1966; Kelly 1988a; Smith 1981). Their normal range extends from the Arctic Ocean (85° N) south to Sakhalin Island (45° N) in the Pacific and south to Hudson Bay (55° N) in the Atlantic (Allen 1880; King 1983; Ognev 1935). Bearded seals are widely distributed

throughout the northern Bering, Chukchi, and Beaufort Seas and are most abundant north of the ice edge zone (MacIntyre *et al.*, 2013). Bearded seals inhabit the seasonally ice-covered seas of the Northern Hemisphere, where they whelp and rear their pups and molt their coats on the ice in the spring and early summer. The overall summer distribution is quite broad, with seals rarely hauled out on land, and some seals, mostly juveniles, may not follow the ice northward but remain near the coasts of Bering and Chukchi seas (Burns 1967; Burns 1981; Heptner *et al.*, Nelson 1981). As the ice forms again in the fall and winter, most seals move south with the advancing ice edge through the Bering Strait into the Bering Sea where they spend the winter (Boveng and Cameron 2013; Burns and Frost 1979; Cameron and Boveng 2007; Cameron and Boveng 2009; Frost *et al.*, 2005; Frost *et al.*, 2008). This southward migration is less noticeable and predictable than the northward movements in late spring and early summer (Burns 1981; Burns and Frost 1979; Kelly 1988a). During winter, the central and northern parts of the Bering Sea shelf have the highest densities of bearded seals (Braham *et al.*, 1981; Burns 1981; Burns and Frost 1979; Fay 1974; Heptner *et al.*, 1976; Nelson *et al.*, 1984). In late winter and early spring, bearded seals are widely but not uniformly distributed in the broken, drifting pack ice ranging from the Chukchi Sea south to the ice front in the Bering Sea. In these areas, they tend to avoid the coasts and areas of fast ice (Burns 1967; Burns and Frost 1979).

Bearded seals along the Alaskan coast tend to prefer areas where sea ice covers 70 to 90 percent of the surface, and are most abundant 20 to 100 nautical miles (nmi) (37 to 185 (km) offshore during the spring season (Bengston *et al.*, 2000; Bengston *et al.*, 2005; Simpkins *et al.*, 2003). In spring, bearded seals may also concentrate in nearshore pack ice habitats, where females give birth on the most stable areas of ice (Reeves *et al.*, 2003) and generally prefer to be near polynyas (areas of open water surrounded by sea ice) and other natural openings in the sea ice for breathing, hauling out, and prey access (Nelson *et al.*, 1984; Stirling 1997). While molting between April and August, bearded seals spend substantially more time hauled out than at other times of the year (Reeves *et al.*, 2002).

In their explorations of the Canada Basin, Harwood *et al.* (2005) observed bearded seals in waters of less than 656 ft (200 m) during the months from August to September. These sightings were east of 140° W. The Bureau of

Ocean Energy Management conducted an aerial survey from June through October that covered the shallow Beaufort and Chukchi Sea shelf waters, and observed bearded seals from Point Barrow to the border of Canada (Clarke *et al.*, 2014). The farthest from shore that bearded seals were observed was the waters of the continental slope.

On December 28, 2012, NMFS listed both the Okhotsk and the Beringia distinct population segments (DPSs) of bearded seals as threatened under the ESA (77 FR 76740). The Alaska stock of bearded seals consists of only Beringia DPS seals.

Ringed Seal

Ringed seals are the most common pinniped in the Study Area and have wide distribution in seasonally and permanently ice-covered waters of the Northern Hemisphere (North Atlantic Marine Mammal Commission 2004). Throughout their range, ringed seals have an affinity for ice-covered waters and are well adapted to occupying both shore-fast and pack ice (Kelly 1988c). Ringed seals can be found further offshore than other pinnipeds since they can maintain breathing holes in ice thickness greater than 6.6 ft (2 m) (Smith and Stirling 1975). Breathing holes are maintained by ringed seals' sharp teeth and claws on their fore flippers. They remain in contact with ice most of the year and use it as a platform for molting in late spring to early summer, for pupping and nursing in late winter to early spring, and for resting at other times of the year (Muto *et al.*, 2017).

Ringed seals have at least two distinct types of subnivean lairs: Haulout lairs and birthing lairs (Smith and Stirling 1975). Haulout lairs are typically single-chambered and offer protection from predators and cold weather. Birthing lairs are larger, multi-chambered areas that are used for pupping in addition to protection from predators. Ringed seals pup on both land-fast ice as well as stable pack ice. Lentfer (1972) found that ringed seals north of Barrow, Alaska build their subnivean lairs on the pack ice near pressure ridges. Since subnivean lairs were found north of Barrow, Alaska, in pack ice, they are also assumed to be found within the sea ice in the Study Area. Ringed seals excavate subnivean lairs in drifts over

their breathing holes in the ice, in which they rest, give birth, and nurse their pups for 5–9 weeks during late winter and spring (Chapskii 1940; McLaren 1958; Smith and Stirling 1975). Snow depths of at least 20–26 in (50–65 cm) are required for functional birth lairs (Kelly 1988b; Lydersen 1998; Lydersen and Gjertz 1986; Smith and Stirling 1975), and such depths typically are found only where 8–12 in (20–30 cm) or more of snow has accumulated on flat ice and then drifted along pressure ridges or ice hummocks (Hammill 2008; Lydersen *et al.*, 1990; Lydersen and Ryg 1991; Smith and Lydersen 1991). Ringed seals are born beginning in March, but the majority of births occur in early April. About a month after parturition, mating begins in late April and early May.

In Alaska waters, during winter and early spring when sea ice is at its maximum extent, ringed seals are abundant in the northern Bering Sea, Norton and Kotzebue Sounds, and throughout the Chukchi and Beaufort seas (Frost 1985; Kelly 1988c). Passive acoustic monitoring of ringed seals from a high frequency recording package deployed at a depth of 787 ft (240 m) in the Chukchi Sea 65 nmi (120 km) north-northwest of Barrow, Alaska detected ringed seals in the area between mid-December and late May over the 4 year study (Jones *et al.*, 2014). With the onset of fall freeze, ringed seal movements become increasingly restricted and seals will either move west and south with the advancing ice pack with many seals dispersing throughout the Chukchi and Bering Seas, or remaining in the Beaufort Sea (Crawford *et al.*, 2012; Frost and Lowry 1984; Harwood *et al.*, 2012). Kelly *et al.* (2010a) tracked home ranges for ringed seals in the subnivean period (using shore-fast ice); the size of the home ranges varied from less than 1 up to 279 km² (median is 0.62 km² for adult males and 0.65 km² for adult females). Most (94 percent) of the home ranges were less than 3 km² during the subnivean period (Kelly *et al.*, 2010a). Near large polynyas, ringed seals maintain ranges, up to 7,000 km² during winter and 2,100 km² during spring (Born *et al.*, 2004). Some adult ringed seals return to the same small home ranges they occupied during the previous winter (Kelly *et al.*, 2010a). The size of winter home ranges can,

however, vary by up to a factor of 10 depending on the amount of fast ice; seal movements were more restricted during winters with extensive fast ice, and were much less restricted where fast ice did not form at high levels (Harwood *et al.*, 2015).

Most taxonomists recognize five subspecies of ringed seals. The Arctic ringed seal subspecies occurs in the Arctic Ocean and Bering Sea and is the only stock that occurs in U.S. waters (referred to as the Alaska stock). NMFS listed the Arctic ringed seal subspecies as threatened under the ESA on December 28, 2012 (77 FR 76706), primarily due to anticipated loss of sea ice through the end of the 21st century.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.

TABLE 4—MARINE MAMMAL HEARING GROUPS—Continued
[NMFS, 2018]

Hearing group	Generalized hearing range *
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Three marine mammal species (one cetacean and two pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Beluga whales are classified as mid-frequency cetaceans.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

Here, we first provide background information on marine mammal hearing before discussing the potential effects of the use of active acoustic sources on marine mammals.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure

waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 μ Pa. One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μ Pa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μ Pa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- *Wind and waves*: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). Under sea ice, noise generated by ice deformation and ice fracturing may be caused by thermal, wind, drift and current stresses (Roth *et al.*, 2012);
- *Precipitation*: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. In the ice-covered study area, precipitation is unlikely to impact ambient sound;

- *Biological*: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and

- *Anthropogenic*: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.*, 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound. Anthropogenic sources are unlikely to significantly contribute to ambient underwater noise during the late winter and early spring in the study area as most anthropogenic activities will not be active due to ice cover (*e.g.*, seismic surveys, shipping) (Roth *et al.*, 2012).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Underwater sounds fall into one of two general sound types: Impulsive and non-impulsive (defined in the following paragraphs). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see

Southall *et al.*, (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI 1995; NIOSH 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar sources that intentionally direct a sound signal at a target that is reflected back in order to discern physical details about the target. These active sources are used in navigation, military training and testing, and other research activities such as the activities planned by ONR as part of the proposed action. Icebreaking is also considered a non-impulsive sound. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Acoustic Impacts

Please refer to the information given previously regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Gotz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. In this section, we first describe specific manifestations of acoustic effects before providing discussion specific to the proposed activities in the next section.

Permanent Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.*, 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.*, 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least six dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level (SEL) thresholds are 15

to 20 dB higher than TTS cumulative SEL thresholds (Southall *et al.*, 2007).

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocaena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted and ringed seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), and Finneran (2015).

Behavioral effects—Behavioral disturbance may include a variety of

effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a “progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,” rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud impulsive sound sources (typically seismic airguns

or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder 2007; Weilgart 2007; NRC 2003). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected

individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2001, 2005b, 2006; Gailey *et al.*, 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*, 1994; Goold, 1996; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of

the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (i.e., when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not

recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

For non-impulsive sounds (i.e., similar to the sources used during the proposed action), data suggest that exposures of pinnipeds to sources between 90 and 140 dB re 1 μ Pa do not elicit strong behavioral responses; no data were available for exposures at higher received levels for Southall *et al.* (2007) to include in the severity scale analysis. Reactions of harbor seals were the only available data for which the responses could be ranked on the severity scale. For reactions that were recorded, the majority (17 of 18 individuals/groups) were ranked on the severity scale as a 4 (defined as moderate change in movement, brief shift in group distribution, or moderate change in vocal behavior) or lower; the remaining response was ranked as a 6 (defined as minor or moderate avoidance of the sound source). Additional data on hooded seals (*Cystophora cristata*) indicate avoidance responses to signals above 160–170 dB re 1 μ Pa (Kvadsheim *et al.*, 2010), and data on grey (*Halichoerus grypus*) and harbor seals indicate avoidance response at received levels of 135–144 dB re 1 μ Pa (Götz *et al.*, 2010). In each instance where food was available, which provided the seals motivation to remain near the source, habituation to the signals occurred rapidly. In the same study, it was noted that habituation was not apparent in wild seals where no food source was available (Götz *et al.*, 2010). This implies that the motivation of the animal is necessary to consider in determining the potential for a reaction. In one study aimed to investigate the under-ice movements and sensory cues associated with under-ice navigation of ice seals, acoustic transmitters (60–69 kHz at 159 dB re 1 μ Pa at 1 m) were attached to ringed seals (Wartzok *et al.*, 1992a; Wartzok *et al.*, 1992b). An acoustic tracking system then was installed in the ice to receive the acoustic signals and provide real-time tracking of ice seal movements. Although the frequencies used in this study are at the upper limit of ringed seal hearing, the ringed seals appeared

unaffected by the acoustic transmissions, as they were able to maintain normal behaviors (e.g., finding breathing holes).

Seals exposed to non-impulsive sources with a received sound pressure level within the range of calculated exposures (142–193 dB re 1 μ Pa), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz *et al.*, 2010; Kvadsheim *et al.*, 2010). Although a minor change to a behavior may occur as a result of exposure to the sources in the proposed action, these changes would be within the normal range of behaviors for the animal (e.g., the use of a breathing hole further from the source, rather than one closer to the source, would be within the normal range of behavior) (Kelly *et al.* 1988).

Some behavioral response studies have been conducted on odontocete responses to sonar. In studies that examined sperm whales (*Physeter macrocephalus*) and false killer whales (*Pseudorca crassidens*) (both in the mid-frequency cetacean hearing group), the marine mammals showed temporary cessation of calling and avoidance of sonar sources (Akamatsu *et al.*, 1993; Watkins and Schevill 1975). Sperm whales resumed calling and communication approximately two minutes after the pings stopped (Watkins and Schevill 1975). False killer whales moved away from the sound source but returned to the area between 0 and 10 minutes after the end of transmissions (Akamatsu *et al.*, 1993). Many of the contextual factors resulting from the behavioral response studies (e.g., close approaches by multiple vessels or tagging) would not occur during the proposed action. Odontocete behavioral responses to acoustic transmissions from non-impulsive sources used during the proposed action would likely be a result of the animal's behavioral state and prior experience rather than external variables such as ship proximity; thus, if significant behavioral responses occur they would likely be short term. In fact, no significant behavioral responses such as panic, stranding, or other severe reactions have been observed during monitoring of actual training exercises (Department of the Navy 2011, 2014; Smultea and Mobley 2009; Watwood *et al.*, 2012).

Icebreaking noise has the potential to disturb marine mammals and elicit an alerting, avoidance, or other behavioral reaction (Huntington *et al.*, 2015; Pirotta *et al.*, 2015; Williams *et al.*, 2014). Icebreaking in fast ice during the spring can cause behavioral reactions in beluga whales. However, icebreaking

associated with the proposed action would only occur from August through October, which lessens the probability of a whale encountering the vessel (in comparison to other sources in the proposed action that would be active year-round).

Ringed seals and bearded seals on pack ice showed various behaviors when approached by an icebreaking vessel. A majority of seals dove underwater when the ship was within 0.5 nautical miles (0.93 km) while others remained on the ice. However, as icebreaking vessels came closer to the seals, most dove underwater. Ringed seals have also been observed foraging in the wake of an icebreaking vessel (Richardson *et al.*, 1995). In studies by Alliston (1980; 1981), there was no observed change in the density of ringed seals in areas that had been subject to icebreaking. Alternatively, ringed seals may have preferentially established breathing holes in the ship tracks after the icebreaker moved through the area. Due to the time of year of the activity (August through October), ringed seals are not expected to be within the subnivean lairs nor pupping (Chapskii 1940; McLaren 1958; Smith and Stirling 1975).

Adult ringed seals spend up to 20 percent of the time in subnivean lairs during the winter season (Kelly *et al.*, 2010a). Ringed seal pups spend about 50 percent of their time in the lair during the nursing period (Lydersen and Hammill 1993). During the warm season both bearded seals and ringed seals haul out on the ice. In a study of ringed seal haulout activity by Born *et al.* (2002), ringed seals spent 25–57 percent of their time hauled out in June which is during their molting season. Bearded seals also spend a large amount of time hauled out during the molting season between April and August (Reeves *et al.*, 2002). Ringed seal lairs are typically used by individual seals (haulout lairs) or by a mother with a pup (birthing lairs); large lairs used by many seals for hauling out are rare (Smith and Stirling 1975). If the non-impulsive acoustic transmissions are heard and are perceived as a threat, ringed seals within subnivean lairs could react to the sound in a similar fashion to their reaction to other threats, such as polar bears (their primary predators), although the type of sound would be novel to them. Responses of ringed seals to a variety of human-induced sounds (e.g., helicopter noise, snowmobiles, dogs, people, and seismic activity) have been variable; some seals entered the water and some seals remained in the lair. However, in all instances in which observed seals departed lairs in response to noise

disturbance, they subsequently reoccupied the lair (Kelly *et al.*, 1988).

Ringed seal mothers have a strong bond with their pups and may physically move their pups from the birth lair to an alternate lair to avoid predation, sometimes risking their lives to defend their pups from potential predators (Smith 1987). If a ringed seal mother perceives the proposed acoustic sources as a threat, the network of multiple birth and haulout lairs allows the mother and pup to move to a new lair (Smith and Hammill 1981; Smith and Stirling 1975). The acoustic sources and icebreaking noise from this proposed action are not likely to impede a ringed seal from finding a breathing hole or lair, as captive seals have been found to primarily use vision to locate breathing holes and no effect to ringed seal vision would occur from the acoustic disturbance (Elsner *et al.*, 1989; Wartzok *et al.*, 1992a). It is anticipated that a ringed seal would be able to relocate to a different breathing hole relatively easily without impacting their normal behavior patterns.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly

replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory masking—Sound can disrupt behavior through masking, or interfering with, an animal’s ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal’s hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is anthropogenic, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (e.g., Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (e.g., Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007b; Di Iorio and Clark, 2009; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (e.g., Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (e.g., Branstetter *et al.*, 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world’s ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (e.g., from vessel traffic),

contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects on Prey—The marine mammal species in the study area feed on marine invertebrates and fish. Studies of sound energy effects on invertebrates are few, and primarily identify behavioral responses. It is expected that most marine invertebrates would not sense the frequencies of the acoustic transmissions from the acoustic sources associated with the proposed action. Although acoustic sources used during the proposed action may briefly impact individuals, intermittent exposures to non-impulsive acoustic sources are not expected to impact survival, growth, recruitment, or reproduction of widespread marine invertebrate populations. Impacts to invertebrates from icebreaking noise is unknown, but it is likely that some species including crustaceans and cephalopods would be able to perceive the low frequency sounds generated from icebreaking. Icebreaking associated with the proposed action would be short-term and temporary as the vessel moves through an area, and it is not anticipated that this short-term noise would result in significant harm, nor is it expected to result in more than a temporary behavioral reaction of marine invertebrates in the vicinity of the icebreaking event.

The fish species residing in the study area include those that are closely associated with the deep ocean habitat of the Beaufort Sea. Nearly 250 marine fish species have been described in the Arctic, excluding the larger parts of the sub-Arctic Bering, Barents, and Norwegian Seas (Mecklenburg *et al.*, 2011). However, only about 30 are known to occur in the Arctic waters of the Beaufort Sea (Christiansen and Reist 2013). Although hearing capability data only exist for fewer than 100 of the 32,000 named fish species, current data suggest that most species of fish detect sounds from 50 to 100 Hz, with few fish hearing sounds above 4 kHz (Popper 2008). It is believed that most fish have the best hearing sensitivity from 100 to 400 Hz (Popper 2003). Fish species in the study area are expected to hear the low-frequency sources associated with the proposed action, but most are not expected to detect sound from the mid-frequency sources. Human generated sound could alter the behavior of a fish in a manner than would affect its way of living, such as where it tries to locate food or how well it could find a mate. Behavioral responses to loud noise could include a startle response, such as the fish swimming away from the source, the fish “freezing” and staying in place, or scattering (Popper 2003).

Icebreaking noise has the potential to expose fish to both sound and general disturbance, which could result in short-term behavioral or physiological responses (e.g., avoidance, stress, increased heart rate). Misund (1997) found that fish ahead of a ship showed avoidance reactions at ranges of 160 to 489 ft (49 to 149 m). Avoidance behavior of vessels, vertically or horizontally in the water column, has been reported for cod and herring, and was attributed to vessel noise. While acoustic sources and icebreaking associated with the proposed action may influence the behavior of some fish species, other fish species may be equally unresponsive. Overall effects to fish from the proposed action would be localized, temporary, and infrequent.

Effects to Physical and Foraging Habitat—Icebreaking activities include the physical pushing or moving of ice to allow vessels to proceed through ice-covered waters. Breaking of pack ice that contains hauled out seals may result in the animals becoming startled and entering the water, but such effects would be brief. Bearded and ringed seals haul out on pack ice during the spring and summer to molt (Reeves *et al.* 2002; Born *et al.*, 2002). Due to the time of year of the icebreaking activity (August through October), ringed seals are not expected to be within the subnivean lairs nor pupping (Chapksii 1940; McLaren 1958; Smith and Stirling 1975). Additionally, studies by Alliston (Alliston 1980; Alliston 1981) suggested that ringed seals may preferentially establish breathing holes in ship tracks after icebreakers move through the area. The amount of ice habitat disturbed by icebreaking activities is small relative to the amount of overall habitat available. There will be no permanent loss or modification of physical ice habitat used by bearded or ringed seals. Icebreaking would have no effect on physical beluga habitat as beluga habitat is solely within the water column.

Testing of towed sources and icebreaking noise would be limited in duration and the deployed sources that would remain in use after the vessels have left the survey area have low duty cycles and lower source levels. There would not be any expected habitat-related effects from non-impulsive acoustic sources or icebreaking noise that could impact the in-water habitat of ringed seal, bearded seal, or beluga whale foraging habitat.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS'

consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines "harassment" as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and TTS for individual marine mammals resulting from exposure to acoustic transmissions and icebreaking noise. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). For the proposed IHA, ONR employed a sophisticated model known as the Navy Acoustic Effects Model (NAEMO) for assessing the impacts of underwater sound. Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B

harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—In coordination with NMFS, the Navy developed behavioral thresholds to support environmental analyses for the Navy's testing and training military readiness activities utilizing active sonar sources; these behavioral harassment thresholds are used here to evaluate the potential effects of the active sonar components of the proposed action. The response of a marine mammal to an anthropogenic sound will depend on the frequency, duration, temporal pattern and amplitude of the sound as well as the animal's prior experience with the sound and the context in which the sound is encountered (*i.e.*, what the animal is doing at the time of the exposure). The distance from the sound source and whether it is perceived as approaching or moving away can also affect the way an animal responds to a sound (Wartzok *et al.* 2003). For marine mammals, a review of responses to anthropogenic sound was first conducted by Richardson *et al.* (1995). Reviews by Nowacek *et al.* (2007) and Southall *et al.* (2007) address studies conducted since 1995 and focus on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated.

Multi-year research efforts have conducted sonar exposure studies for odontocetes and mysticetes (Miller *et al.* 2012; Sivle *et al.* 2012). Several studies with captive animals have provided data under controlled circumstances for odontocetes and pinnipeds (Houser *et al.* 2013a; Houser *et al.* 2013b). Moretti *et al.* (2014) published a beaked whale dose-response curve based on passive acoustic monitoring of beaked whales during U.S. Navy training activity at Atlantic Underwater Test and Evaluation Center during actual Anti-Submarine Warfare exercises. This new information necessitated the update of the behavioral response criteria for the U.S. Navy's environmental analyses.

Southall *et al.* (2007), and more recently Southall *et al.* (2019), synthesized data from many past behavioral studies and observations to determine the likelihood of behavioral reactions at specific sound levels. While in general, the louder the sound source the more intense the behavioral response, it was clear that the proximity of a sound source and the animal's experience, motivation, and conditioning were also critical factors influencing the response (Southall *et al.* 2007; Southall *et al.* 2019). After examining all of the available data, the authors felt that the derivation of

thresholds for behavioral response based solely on exposure level was not supported because context of the animal at the time of sound exposure was an important factor in estimating response. Nonetheless, in some conditions, consistent avoidance reactions were noted at higher sound levels depending on the marine mammal species or group allowing conclusions to be drawn. Phocid seals showed avoidance reactions at or below 190 dB re 1 μ Pa at 1m; thus, seals may actually receive levels adequate to produce TTS before avoiding the source.

Odontocete behavioral criteria for non-impulsive sources were updated based on controlled exposure studies for dolphins and sea mammals, sonar, and safety (3S) studies where odontocete behavioral responses were reported after exposure to sonar (Antunes *et al.*, 2014; Houser *et al.*, 2013b); Miller *et al.*, 2011; Miller *et al.*, 2014; Miller *et al.*, 2012). For the 3S study the sonar outputs included 1–2 kHz up- and down-sweeps and 6–7 kHz up-sweeps; source levels were ramped up from 152–158 dB re 1 μ Pa to a maximum of 198–214 dB re 1 μ Pa at 1 m. Sonar signals were ramped up over several pings while the vessel approached the mammals. The study did include some control passes of ships with the sonar off to discern the behavioral responses of the mammals to vessel presence alone versus active sonar.

The controlled exposure studies included exposing the Navy's trained bottlenose dolphins to mid-frequency sonar while they were in a pen. Mid-frequency sonar was played at 6 different exposure levels from 125–185

dB re 1 μ Pa (rms). The behavioral response function for odontocetes resulting from the studies described above has a 50 percent probability of response at 157 dB re 1 μ Pa.

Additionally, distance cutoffs (20 km for MF cetaceans) were applied to exclude exposures beyond which the potential of significant behavioral responses is considered to be unlikely.

The pinniped behavioral threshold was updated based on controlled exposure experiments on the following captive animals: Hooded seal, gray seal, and California sea lion (Götz *et al.* 2010; Houser *et al.* 2013a; Kvadsheim *et al.* 2010). Hooded seals were exposed to increasing levels of sonar until an avoidance response was observed, while the grey seals were exposed first to a single received level multiple times, then an increasing received level. Each individual California sea lion was exposed to the same received level ten times. These exposure sessions were combined into a single response value, with an overall response assumed if an animal responded in any single session. The resulting behavioral response function for pinnipeds has a 50 percent probability of response at 166 dB re 1 μ Pa. Additionally, distance cutoffs (10 km for pinnipeds) were applied to exclude exposures beyond which the potential of significant behavioral responses is considered to be unlikely.

NMFS is proposing to adopt the Navy's approach to estimating incidental take by Level B harassment from the active acoustic sources for this action, which includes use of these dose response functions. The Navy's dose response functions were developed to

estimate take from sonar and similar transducers and are not applicable to icebreaking. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μ Pa (rms) for continuous (*e.g.*, vibratory pile-driving, drilling, icebreaking) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Thus, take of marine mammals by Level B harassment due to icebreaking has been calculated using the Navy's NAEMO model with a step-function at 120 dB re 1 μ Pa (rms) received level for behavioral response.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). ONR's proposed activities involve only non-impulsive sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing Group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB.	Cell 8: $L_{E,PW,24h}$: 201 dB.
(Underwater)		
Otariid Pinnipeds (OW)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB.	Cell 10: $L_{E,OW,24h}$: 219 dB.
(Underwater)		

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note:—Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Quantitative Modeling

The Navy performed a quantitative analysis to estimate the number of mammals that could be harassed by the underwater acoustic transmissions during the proposed action. Inputs to the quantitative analysis included marine mammal density estimates, marine mammal depth occurrence distributions (Navy 2017a), oceanographic and environmental data, marine mammal hearing data, and criteria and thresholds for levels of potential effects. The quantitative analysis consists of computer modeled estimates and a post-model analysis to determine the number of potential animal exposures. The model calculates sound energy propagation from the proposed non-impulsive acoustic sources and icebreaking, the sound received by animat (virtual animal) dosimeters representing marine mammals distributed in the area around the modeled activity, and whether the sound received by animats exceeds the thresholds for effects.

The Navy developed a set of software tools and compiled data for estimating acoustic effects on marine mammals without consideration of behavioral avoidance or mitigation. These tools and data sets serve as integral components of NAEMO. In NAEMO, animats are distributed non-uniformly based on species-specific density, depth distribution, and group size information and animats record energy received at their location in the water column. A fully three-dimensional environment is used for calculating sound propagation and animat exposure in NAEMO. Site-specific bathymetry, sound speed profiles, wind speed, and bottom properties are incorporated into the propagation modeling process. NAEMO calculates the likely propagation for various levels of energy (sound or pressure) resulting from each source used during the training event.

NAEMO then records the energy received by each animat within the energy footprint of the event and calculates the number of animats having received levels of energy exposures that fall within defined impact thresholds. Predicted effects on the animats within a scenario are then tallied and the highest order effect (based on severity of criteria; e.g., PTS over TTS) predicted for a given animat is assumed. Each scenario, or each 24-hour period for scenarios lasting greater than 24 hours (which NMFS recommends in order to ensure more consistent quantification of take across actions), is independent of all others, and therefore, the same individual marine animal (as

represented by an animat in the model environment) could be impacted during each independent scenario or 24-hour period. In few instances, although the activities themselves all occur within the study area, sound may propagate beyond the boundary of the study area. Any exposures occurring outside the boundary of the study area are counted as if they occurred within the study area boundary. NAEMO provides the initial estimated impacts on marine species with a static horizontal distribution (*i.e.*, animats in the model environment do not move horizontally).

There are limitations to the data used in the acoustic effects model, and the results must be interpreted within this context. While the best available data and appropriate input assumptions have been used in the modeling, when there is a lack of definitive data to support an aspect of the modeling, conservative modeling assumptions have been chosen (*i.e.*, assumptions that may result in an overestimate of acoustic exposures):

- Animats are modeled as being underwater, stationary, and facing the source and therefore always predicted to receive the maximum potential sound level at a given location (*i.e.*, no porpoising or pinnipeds' heads above water);
- Animats do not move horizontally (but change their position vertically within the water column), which may overestimate physiological effects such as hearing loss, especially for slow moving or stationary sound sources in the model;
- Animats are stationary horizontally and therefore do not avoid the sound source, unlike in the wild where animals would most often avoid exposures at higher sound levels, especially those exposures that may result in PTS;
- Multiple exposures within any 24-hour period are considered one continuous exposure for the purposes of calculating potential threshold shift, because there are not sufficient data to estimate a hearing recovery function for the time between exposures; and
- Mitigation measures were not considered in the model. In reality, sound-producing activities would be reduced, stopped, or delayed if marine mammals are detected by visual monitoring.

Because of these inherent model limitations and simplifications, model-estimated results should be further analyzed, considering such factors as the range to specific effects, avoidance, and the likelihood of successfully implementing mitigation measures. This analysis uses a number of factors in

addition to the acoustic model results to predict acoustic effects on marine mammals.

The underwater radiated noise signature for icebreaking in the central Arctic Ocean by CGC HEALY during different types of ice-cover was characterized in Roth *et al.* (2013). The radiated noise signatures were characterized for various fractions of ice cover. For modeling, the 8/10 ice cover was used. Each modeled day of icebreaking consisted of 6 hours of 8/10 ice cover. Icebreaking was modeled for eight days for each of the 2019 and 2020 cruises. For each cruise, this includes four days of icebreaking for the deployment (or recovery) of the VLF source and four days of icebreaking for the deployment (or recovery) of the northernmost navigation sources. Since ice forecasting cannot be predicted more than a few weeks in advance it is unknown if icebreaking would be needed to deploy or retrieve the sources after one year of transmitting. Therefore, icebreaking was conservatively analyzed within this IHA. Figure 5a and 5b in Roth *et al.* (2013) depicts the source spectrum level versus frequency for 8/10 ice cover. The sound signature of the ice coverage level was broken into 1-octave bins (Table 6). In the model, each bin was included as a separate source on the modeled vessel. When these independent sources go active concurrently, they simulate the sound signature of CGC HEALY. The modeled source level summed across these bins was 196.2 dB for the 8/10 signature ice signature. These source levels are a good approximation of the icebreaker's observed source level (provided in Figure 4b of (Roth *et al.* 2013)). Each frequency and source level was modeled as an independent source, and applied simultaneously to all of the animats within NAEMO. Each second was summed across frequency to estimate sound pressure level (root mean square (SPL_{RMS})). For PTS and TTS determinations, sound exposure levels were summed over the duration of the test and the transit to the deployment area. The method of quantitative modeling for icebreaking is considered to be a conservative approach; therefore, the number of takes estimated for icebreaking are likely an over-estimate and would not be expected.

TABLE 6—MODELED BINS FOR ICEBREAKING IN 8/10 ICE COVERAGE ON CGC HEALY

Frequency (Hz)	Source level (dB)
25	189

TABLE 6—MODELED BINS FOR
ICEBREAKING IN 8/10 ICE COVERAGE
ON CGC HEALY—Continued

Frequency (Hz)	Source level (dB)
50	188
100	189
200	190
400	188
800	183
1600	177
3200	176
6400	172
12800	167

For the other non-impulsive sources, NAEMO calculates the SPL and SEL for

each active emission during an event. This is done by taking the following factors into account over the propagation paths: Bathymetric relief and bottom types, sound speed, and attenuation contributors such as absorption, bottom loss, and surface loss. Platforms such as a ship using one or more sound sources are modeled in accordance with relevant vehicle dynamics and time durations by moving them across an area whose size is representative of the testing event's operational area. Table 7 provides range to effects for non-impulsive sources and icebreaking noise proposed for the Arctic research activities to mid-frequency cetacean and pinniped

specific criteria. Marine mammals within these ranges would be predicted to receive the associated effect. Range to effects is important information in not only predicting non-impulsive acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects in marine mammals. Therefore, the ranges in Table 7 provide realistic maximum distances over which the specific effects from the use of non-impulsive sources during the proposed action would be possible.

TABLE 7—RANGE TO PTS, TTS, AND BEHAVIORAL EFFECTS IN THE STUDY AREA

Source	Range to behavioral effects (m)		Range to TTS effects (m)		Range to PTS effects (m)	
	MF	Pinniped cetacean	MF	Pinniped cetacean	MF	Pinniped cetacean
Navigation and real-time sensing sources	20,000 ^a	10,000 ^a	0	6	0	0
Spiral Wave Beacon source	20,000 ^a	10,000 ^a	0	0	0	0
Icebreaking noise	4,275	4,525	3	12	0	0

^a Cutoff distances applied.

A behavioral response study conducted on and around the Navy range in Southern California (SOCAL BRS) observed reactions to sonar and similar sound sources by several marine mammal species, including Risso's dolphins (*Grampus griseus*), a mid-frequency cetacean (DeRuiter *et al.*, 2013; Goldbogen *et al.*, 2013; Southall *et al.*, 2011; Southall *et al.*, 2012; Southall *et al.*, 2013; Southall *et al.*, 2014). In preliminary analysis, none of the Risso's dolphins exposed to simulated or real mid-frequency sonar demonstrated any overt or obvious responses (Southall *et al.*, 2012, Southall *et al.*, 2013). In general, although the responses to the simulated sonar were varied across individuals and species, none of the animals exposed to real Navy sonar responded; these exposures occurred at distances beyond 10 km, and were up to 100 km away (DeRuiter *et al.*, 2013; B. Southall pers. comm.). These data suggest that most odontocetes (not including beaked whales and harbor porpoises) likely do not exhibit significant behavioral reactions to sonar and other transducers beyond approximately 10 km. Therefore, the Navy uses a cutoff distance for odontocetes of 10 km for moderate source level, single platform training and testing events, and 20 km for all other events, including the proposed Arctic Research Activities (Navy 2017a).

Southall *et al.*, (2007) report that pinnipeds do not exhibit strong reactions to SPLs up to 140 dB re 1 μ Pa from non-impulsive sources. While there are limited data on pinniped behavioral responses beyond about 3 km in the water, the Navy uses a distance cutoff of 5 km for moderate source level, single platform training and testing events, and 10 km for all other events, including the proposed Arctic Research Activities (Navy 2017a).

NMFS and the Navy conservatively propose a distance cutoff of 10 km for pinnipeds, and 20 km for mid-frequency cetaceans (Navy 2017a). Regardless of the received level at that distance, take is not estimated to occur beyond 10 and 20 km from the source for pinnipeds and cetaceans, respectively. Sources that show a range of zero do not rise to the specified level of effects (*i.e.*, there is no chance of PTS for either MF cetaceans or pinnipeds from any of the sources). No instances of PTS were modeled for any species or stock; as such, no take by Level A harassment is anticipated or proposed to be authorized.

As discussed above, within NAEMO animals do not move horizontally or react in any way to avoid sound. Furthermore, mitigation measures that reduce the likelihood of physiological impacts are not considered in quantitative analysis. Therefore, the model may overestimate acoustic

impacts, especially physiological impacts near the sound source. The behavioral criteria used as a part of this analysis acknowledges that a behavioral reaction is likely to occur at levels below those required to cause hearing loss. At close ranges and high sound levels approaching those that could cause PTS, avoidance of the area immediately around the sound source is the assumed behavioral response for most cases.

In previous environmental analyses, the Navy has implemented analytical factors to account for avoidance behavior and the implementation of mitigation measures. The application of avoidance and mitigation factors has only been applied to model-estimated PTS exposures given the short distance over which PTS is estimated. Given that no PTS exposures were estimated during the modeling process for this proposed action, the quantitative consideration of avoidance and mitigation factors were not included in this analysis.

The marine mammal density numbers utilized for quantitative modeling are from the Navy Marine Species Density Database (Navy 2014). Density estimates are based on habitat-based modeling by Kaschner *et al.*, (2006) and Kaschner (2004). While density estimates for the two stocks of beluga whales are equal (Kaschner *et al.*, 2006; Kaschner 2004), take has been apportioned to each stock

proportional to the abundance of each stock. Table 8 shows the exposures expected for the beluga whale, bearded

seal, and ringed seal based on NAEMO modeled results.

TABLE 8—QUANTITATIVE MODELING RESULTS OF POTENTIAL EXPOSURES

Species	Density estimate within study area (animals per square km) ^a	Level B harassment from deployed sources	Level B harassment from icebreaking	Level A harassment	Total proposed take	Percentage of stock taken
Beluga Whale (Beaufort Sea Stock)	0.0087	331	32	0	363	0.92
Beluga Whale (Eastern Chukchi Sea stock)	0.0087	178	18	0	196	0.94
Bearded Seal	0.0332	0	0	0	^b 5	<0.01
Ringed Seal	0.3760	6,773	1,072	0	7,845	2.17

^a Kaschner *et al.* (2006); Kaschner (2004)

^b Quantitative modeling yielded zero takes of bearded seals. However, in an abundance of caution, we are proposing to authorize five takes of bearded seals by Level B harassment.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

Subsistence hunting is important for many Alaska Native communities. A study of the North Slope villages of Nuiqsut, Kaktovik, and Barrow identified the primary resources used for subsistence and the locations for harvest (Stephen R. Braund & Associates 2010), including terrestrial mammals (caribou, moose, wolf, and wolverine), birds (geese and eider), fish (Arctic cisco, Arctic char/Dolly Varden trout, and broad whitefish), and marine mammals (bowhead whale, ringed seal, bearded seal, and walrus). Bearded seals, ringed seals, and beluga whales are located within the study area during the proposed action. The permitted sources would be placed outside of the range for subsistence hunting and the study plans have been communicated to the Native communities. The closest active acoustic source within the study area (aside from the *de minimis* sources), is approximately 145 mi (233 km) from land. As stated above, the range to effects for non-impulsive acoustic sources in this experiment is much smaller than the distance from shore. In addition, the proposed action would not remove individuals from the population. Therefore, there would be no impacts caused by this action to the availability of bearded seal, ringed seal, or beluga whale for subsistence hunting. Therefore, subsistence uses of marine mammals are not expected to be impacted by the proposed action.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such

species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)). The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that “least practicable impact” shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation

(probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

Ships operated by or for the Navy have personnel assigned to stand watch at all times, day and night, when moving through the water. While in transit, ships must use extreme caution and proceed at a safe speed such that the ship can take proper and effective action to avoid a collision with any marine mammal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

During navigational source deployments, visual observation would start 30 minutes prior to and continue throughout the deployment within an exclusion zone of 55 m (180 ft, roughly one ship length) around the deployed mooring. Deployment will stop if a marine mammal is visually detected within the exclusion zone. Deployment will re-commence if any one of the following conditions are met: (1) The animal is observed exiting the exclusion zone, (2) the animal is thought to have exited the exclusion zone based on its course and speed, or (3) the exclusion zone has been clear from any additional sightings for a period of 15 minutes for pinnipeds and 30 minutes for cetaceans. Visual monitoring will continue through 30 minutes following the deployment of sources.

Once deployed, the spiral wave beacon would transmit for five days. The ship will maintain position near the moored source and will monitor the surrounding area for marine mammals. Transmission will cease if a marine mammal enters a 55-m (180 ft) exclusion zone. Transmission will recommence if any one of the following conditions are met: (1) The animal is observed exiting the exclusion zone, (2) the animal is thought to have exited the exclusion zone based on its course and speed and relative motion between the animal and the source, or (3) the exclusion zone has been clear from any additional sightings for a period of 15 minutes for pinnipeds and 30 minutes for cetaceans. The spiral wave beacon source will only transmit during daylight hours.

Ships would avoid approaching marine mammals head on and would maneuver to maintain an exclusion zone of 1,500 ft (457 m) around observed mysticete whales, and 600 ft (183 m) around all other marine mammals, provided it is safe to do so in ice free waters.

With the exception of the spiral wave beacon, moored/drifted sources are left in place and cannot be turned off until the following year during ice free months. Once they are programmed they will operate at the specified pulse lengths and duty cycles until they are either turned off the following year or there is failure of the battery and are not able to operate. Due to the ice covered nature of the Arctic is in not possible to recover the sources or interfere with their transmit operations in the middle of the deployment.

These requirements do not apply if a vessel's safety is at risk, such as when a change of course would create an imminent and serious threat to safety, person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. No further action is necessary if a marine mammal other than a whale continues to approach the vessel after there has already been one maneuver and/or speed change to avoid the animal. Avoidance measures should continue for any observed whale in order to maintain an exclusion zone of 1,500 ft (457 m).

All personnel conducting on-ice experiments, as well as all aircraft operating in the study area, are required to maintain a separation distance of 1,000 ft (305 m) from any sighted marine mammal.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable

impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

While underway, the ships (including non-Navy ships operating on behalf of

the Navy) utilizing active acoustics will have at least one watch person during activities. Watch personnel undertake extensive training in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent, including on the job instruction and a formal Personal Qualification Standard program (or equivalent program for supporting contractors or civilians), to certify that they have demonstrated all necessary skills (such as detection and reporting of floating or partially submerged objects). Additionally, watch personnel have taken the Navy's Marine Species Awareness Training. Their duties may be performed in conjunction with other job responsibilities, such as navigating the ship or supervising other personnel. While on watch, personnel employ visual search techniques, including the use of binoculars, using a scanning method in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent. A primary duty of watch personnel is to detect and report all objects and disturbances sighted in the water that may be indicative of a threat to the ship and its crew, such as debris, or surface disturbance. Per safety requirements, watch personnel also report any marine mammals sighted that have the potential to be in the direct path of the ship as a standard collision avoidance procedure.

The U.S. Navy has coordinated with NMFS to develop an overarching program plan in which specific monitoring would occur. This plan is called the Integrated Comprehensive Monitoring Program (ICMP) (Navy 2011). The ICMP has been developed in direct response to Navy permitting requirements established through various environmental compliance efforts. As a framework document, the ICMP applies by regulation to those activities on ranges and operating areas for which the Navy is seeking or has sought incidental take authorizations. The ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort based on a set of standardized research goals, and in acknowledgement of regional scientific value and resource availability.

The ICMP is focused on Navy training and testing ranges where the majority of Navy activities occur regularly as those areas have the greatest potential for being impacted. ONR's Arctic Research Activities in comparison is a less intensive test with little human activity present in the Arctic. Human presence is limited to a minimal amount of days for source operations and source deployments, in contrast to the large majority (>95%) of time that the sources

will be left behind and operate autonomously. Therefore, a dedicated monitoring project is not warranted. However, ONR will record all observations of marine mammals, including the marine mammal's location (latitude and longitude), behavior, and distance from project activities, including icebreaking.

The Navy is committed to documenting and reporting relevant aspects of research and testing activities to verify implementation of mitigation, comply with permits, and improve future environmental assessments. If any injury or death of a marine mammal is observed during the 2019–20 Arctic Research Activities, the Navy will immediately halt the activity and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The following information must be provided:

- Time, date, and location of the discovery;
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal(s) was discovered (e.g., during use of towed acoustic sources, deployment of moored or drifting sources, during on-ice experiments, or by transiting vessel).

ONR will provide NMFS with a draft exercise monitoring report within 90 days of the conclusion of the proposed activity. The draft exercise monitoring report will include data regarding acoustic source use and any mammal sightings or detection will be documented. The report will include the estimated number of marine mammals taken during the activity. The report will also include information on the number of shutdowns recorded. If no comments are received from NMFS within 30 days of submission of the draft final report, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on

annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Underwater acoustic transmissions associated with the Arctic Research Activities, as outlined previously, have the potential to result in Level B harassment of beluga whales, ringed seals, and bearded seals in the form of TTS and behavioral disturbance. No serious injury, mortality, or Level A harassment are anticipated to result from this activity.

Minimal takes of marine mammals by Level B harassment would be due to TTS since the range to TTS effects is small at only 12 m or less while the behavioral effects range is significantly larger extending up to 20 km (Table 7). TTS is a temporary impairment of hearing and can last from minutes or hours to days (in cases of strong TTS). In many cases, however, hearing sensitivity recovers rapidly after exposure to the sound ends. No takes from TTS were modeled, but if TTS did occur, the overall fitness of the individual is unlikely to be affected and negative impacts to the relevant stock are not anticipated.

Effects on individuals that are taken by Level B harassment could include alteration of dive behavior, alteration of foraging behavior, effects to breathing rates, interference with or alteration of vocalization, avoidance, and flight. More severe behavioral responses are not anticipated due to the localized,

intermittent use of active acoustic sources. Most likely, individuals will simply be temporarily displaced by moving away from the sound source. As described previously in the behavioral effects section, seals exposed to non-impulsive sources with a received sound pressure level within the range of calculated exposures (142–193 dB re 1 μ Pa), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz *et al.*, 2010; Kvadsheim *et al.*, 2010). Although a minor change to a behavior may occur as a result of exposure to the sound sources associated with the proposed action, these changes would be within the normal range of behaviors for the animal (*e.g.*, the use of a breathing hole further from the source, rather than one closer to the source, would be within the normal range of behavior). Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and would not result in any adverse impact to the stock as a whole.

The project is not expected to have significant adverse effects on marine mammal habitat. While the activities may cause some fish to leave the area of disturbance, temporarily impacting marine mammals' foraging opportunities, this would encompass a relatively small area of habitat leaving large areas of existing fish and marine mammal foraging habitat unaffected. Icebreaking may temporarily affect the availability of pack ice for seals to haul out but the proportion of ice disturbed is small relative to the overall amount of available ice habitat. Icebreaking will not occur during the time of year when ringed seals are expected to be within subnivean lairs or pupping (Chapksii 1940; McLaren 1958; Smith and Stirling 1975). As such, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Impacts will be limited to Level B harassment;
- Takes by Level B harassment will primarily be in the form of behavioral disturbance; and
- There will be no permanent or significant loss or modification of marine mammal prey or habitat.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

Impacts to subsistence uses of marine mammals resulting from the proposed action are not anticipated. The closest active acoustic source within the study area is approximately 145 mi (233 km) from land, outside of known subsistence use areas. Based on this information, NMFS has preliminarily determined that there will be no unmitigable adverse impact on subsistence uses from ONR's proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Alaska Regional Office (AKR), whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of ringed seals and bearded seals, which are listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with the Protected Resources Division of AKR for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ONR for conducting Arctic Research Activities in the Beaufort and Chukchi Seas, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed action. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 26, 2019.

Catherine Marzin,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2019-16318 Filed 7-30-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XV009

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Advisory Panel (AP) will meet to review recent fishery performance and develop a Fishery Performance Report and/or other recommendations in preparation for review of the annual specifications that commence May 1, 2020. Potential federal trip limit modifications will also be discussed.

DATES: The meeting will be held Monday, August 19, 2019, from 1 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: <http://mafmc.adobeconnect.com/dogfishap2019/>. Please call the Council at least 24 hours in advance if you wish to attend at the Council office.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526-5255. The Council's website, www.mafmc.org also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create a Fishery Performance Report by the Council's Spiny Dogfish Advisory Panel. The report facilitates structured input from the Advisory Panel members into the specification's development process. Potential federal trip limit modifications will also be discussed.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526-5251, at least 5 days prior to the meeting date.

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

Dated: July 26, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019-16251 Filed 7-30-19; 8:45 am]

BILLING CODE 3510-22-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2019-0041]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew with changes the Office of Management and Budget (OMB) approval for an existing information collection, titled, Trial Disclosure Policy.

DATES: Written comments are encouraged and must be received on or before August 30, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* OIRA_submission@omb.eop.gov.

- *Fax:* (202) 395-5806.

- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at www.reginfo.gov (this link becomes active on the day following publication of this notice). Select "Information Collection Review," under "Currently under review, use the dropdown menu "Select Agency" and select "Consumer Financial Protection

Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also available at <http://www.regulations.gov>. Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435-9575, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Trial Disclosure Policy.

OMB Control Number: 3170-0039.

Type of Review: Extension with change of a currently approved collection.

Affected Public: Business or other for profit institutions.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 100.

Abstract: In subsection 1032(e) of the Dodd-Frank Act, 12 U.S.C. 5532(e), Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs. This authority can be used to help further the Bureau's statutory objective, stated in subsection 1021(b)(5) of the Act, to "facilitate access and innovation" in the "markets for consumer financial products and services." More specifically, under section 1032(e), the Bureau may permit covered persons to conduct trial disclosure programs, limited in time and scope, for the purpose of providing trial disclosures designed to improve upon required disclosures. Such permission may include providing a legal safe harbor; *i.e.*, the Bureau may deem a covered person conducting such a program to be in compliance with, or exempt from, a requirement of a rule or enumerated consumer law. Such trial disclosure programs must be subject to standards and procedures that are designed to encourage covered persons to conduct such programs. The requested information will provide a basis for assessing eligibility to conduct trial disclosure programs. The information will also serve to identify trial disclosure programs that carry the potential for developing and verifying disclosure improvements, while controlling for risks to consumers.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on May 13, 2019 (84 FR 20864), Docket Number: CFPB-2019-0026. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (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 reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: July 25, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019-16239 Filed 7-30-19; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2019-0042]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, "Applications for Advisory Committees."

DATES: Written comments are encouraged and must be received on or before September 30, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB-2019-0042 in the subject line of the message.

- *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial

Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435-9575, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Applications for Advisory Committees.

OMB Control Number: 3170-0037.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 425.

Estimated Total Annual Burden Hours: 503.

Abstract: The Director of the Bureau may invite individuals with special expertise to serve on the Bureau's advisory committees. The selection-related material will allow the Bureau to obtain information on the qualifications of individuals nominated to an advisory committee and will aid the Bureau in selecting members for service on an advisory committee. The selection-related information will also aid the Bureau in determining the appropriateness of participation in particular matters. The information collected from applicants will aid the Bureau in the exercise of its functions. The feedback collected will allow the Bureau to evaluate and improve its advisory committee program. Information collected will be used for vetting candidates, issue travel orders, or provide reimbursement for travel expenses, as applicable. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (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. All comments will become a matter of public record.

Dated: July 25, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019-16304 Filed 7-30-19; 8:45 am]

BILLING CODE 4810-AM-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; President's Volunteer Service Awards (PVSA), Parts A, B, C, D and E

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 proposing to renew an information collection. CNCS is soliciting comments concerning its proposed renewal of Parts A, B, C, D, and E of the President's Volunteer Service Awards (PVSA) nomination form, which are used to collect information that allows CNCS and its contractor to verify that individuals, schools, and organizations have fulfilled requirements for the award.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by September 30, 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, Office of External Affairs, Attention David

Premo, Room 2119D, 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 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through www.regulations.gov.

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:

David Premo, 202-606-6717 or by email at dpremo@cns.gov.

SUPPLEMENTARY INFORMATION:

Title of Collection: President's Volunteer Service Awards, Parts A, B, C, D, and E.

OMB Control Number: 3045-0086.

Type of Review: Renewal.

Respondents/Affected Public: All citizens of the United States.

Total Estimated Number of Annual Responses: 200,000.

Total Estimated Number of Annual Burden Hours: 66,666 Hours (average 20 minutes per response).

Abstract: The President's Volunteer Service Awards are administered by CNCS per Executive Order 13285 and were established to recognize individuals, schools, and organizations that excel in efforts to support volunteer service and civic participation, especially with respect to students in primary schools, secondary schools, and institutions of higher learning. The information collected will be used to identify recipients of the President's Volunteer Service Awards. The information is collected electronically using a web-based system administered by contractor to CNCS. CNCS seeks to renew the current information collection.

The administering organization uses the collected information to review nominations of individuals and organization for compliance, and

awards are made on that basis. The collected information is also used to ensure the integrity of the program (so that, for example, an individual or organization does not receive an award twice for the same project), to gather data and report on the accomplishments of the program, for public awareness campaigns (such as press releases and website information on winning projects), and to further the purposes of Executive Order 13285, such as fostering partnerships, coordination of projects, and promoting civic engagement.

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](http://www.regulations.gov).

Dated: July 18, 2019.

Rhonda Taylor,

Director of Partnerships and Program Engagement.

[FR Doc. 2019-16285 Filed 7-30-19; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2019-OS-0061]

Submission for OMB Review; Comment Request

AGENCY: Chief Management Officer, Diversity, Disability, and Recruitment Division, Washington Headquarters Services, Human Resources Directorate, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 30, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at oir_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT:

Angela James, 571-372-7574, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Confirmation of Request for Reasonable Accommodation; SD Form 827; OMB Control Number 0704-0498.

Type of Request: Extension.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 5.

Needs and Uses: The information collection requirement is necessary to obtain and record requests for reasonable accommodation, with the intent to measure and ensure Agency compliance with Rehabilitation Act of 1973, Public Law 93-112; Rehabilitation Act Amendments of 1992, Public Law 102-569; Americans with Disabilities Act Amendments Act of 2008, Public Law 110-325.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: July 26, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-16266 Filed 7-30-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2019-ICCD-0091]

Agency Information Collection Activities; Comment Request; Early Childhood Longitudinal Study, Kindergarten Class of 2022-23 (ECLS-K:2023) Preschool Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before September 30, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2019-ICCD-0091. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the

docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202-0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202-245-7377 or email NCES.Information.Collections@ed.gov.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Early Childhood Longitudinal Study, Kindergarten Class of 2022-23 (ECLS-K:2023) Preschool Field Test.

OMB Control Number: 1850-0750.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 46,033.

Total Estimated Number of Annual Burden Hours: 8,655.

Abstract: The Early Childhood Longitudinal Study (ECLS) program, conducted by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), draws together information from multiple sources to provide rich, descriptive data on child development, early learning, and school progress. The ECLS program studies deliver national data on children's status at birth and at various points thereafter; children's transitions to nonparental care, early care and education programs, and school; and children's experiences and growth through the elementary grades. The Early Childhood Longitudinal Study, Kindergarten Class of 2022-23 (ECLS-K:2023) is the fourth cohort in the series of early childhood longitudinal studies. The study will advance research in child development and early learning by providing a detailed and comprehensive source of current information on children's early learning and development, transitions into kindergarten and beyond, and progress through school. The ECLS-K:2023 will provide data about the population of children who will be kindergartners in the 2022-23 school year, and will go beyond its predecessor kindergarten cohort studies by adding a round of data collection in the spring prior to children's kindergarten year, known as the "preschool round." Collecting parent data beginning in preschool will enable the study to measure influences on children's development before entry into formal schooling, including children's home environments and access to early care and education. The ECLS-K:2023 will focus on children's early school experiences continuing through the fifth grade, and will include collection of data from parents, teachers, and school administrators, as well as direct child assessments. This request is to conduct a field test of the ECLS-K:2023 preschool data collection activities from January through October 2020, to field test the preschool data collection materials and procedures. This ECLS-K:2023 preschool field test will be followed by the kindergarten-first grade field test (planned for August-December 2021), the spring preschool national data collection (January-June 2022), and the fall (August-December 2022) and spring (March-July 2023) kindergarten national data collections—which will be requested under separate clearance submissions.

Dated: July 26, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019-16309 Filed 7-30-19; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION

Meeting: Technical Guidelines Development Committee; "Voluntary Voting Systems Guidelines and Usability Requirements"

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of conference call meeting.

DATES: Monday, August 5, 2019, 1:00-3:00 p.m. (EDT).

ADDRESSES: EAC Technical Guidelines Development Committee Conference Call. To listen and monitor the event as an attendee:

1. Go to: <https://eacmeetings.webex.com/eacmeetings/j.php?MTID=m388e84ca98f38c6640917f10083917dc>.
2. Click "Join Now". To join the audio conference only: 1. Call the number below and enter the access code. US TOLL FREE: +1-855-892-3345, US TOLL: +1-415-527-5035, Access code: 901 222 488.

(See toll-free dialing restrictions at https://www.webex.com/pdf/tollfree_restrictions.pdf.)

For assistance, contact the host, Jerome Lovato at <https://www.eac.gov/contact/>.

FOR FURTHER INFORMATION CONTACT: Jerome Lovato, Telephone: (301) 563-3929.

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92-463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Technical Guidelines Development Committee will conduct a conference call to discuss Voluntary Voting System Guidelines and Usability Requirements.

Agenda: The Technical Guidelines Development Committee (TGDC) will discuss the Voluntary Voting System Guidelines 2.0 (VMSG 2.0) Usability and Accessibility Requirements. The TGDC will discuss the next TGDC meeting dates and the continuing steps to develop the Requirements. There may be votes conducted on this call.

The TGDC will discuss the Usability and Accessibility Requirements of the VVSG 2.0. Draft VVSG Requirements can be found at the TWiki page link: <https://collaborate.nist.gov/voting/bin/view/Voting/VVSG20DraftRequirements>. The most current version of the draft VVSG 2.0 Requirements is clearly marked at the top of the page to ensure the latest version is the topic of discussion at the time of the meetings. As stated in the disclaimer (and in each document), the Requirements are in a draft state and are not yet ready for final posting in their current form. These are provided "as is" for facilitating our ongoing discussions, but do not yet represent an official or final version. Members of the public may submit relevant written statements to about the meeting's content the TGDC with no later than 3:00 p.m. EDT on Friday, August 2, 2019.

Statements may be sent electronically via <https://www.eac.gov/contact/>, via standard mail addressed to the U.S. Election Assistance Commission, TGDC, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301-734-3108. Notice of this meeting is being published less than 15 days prior to the meeting date and time because the TGDC was unable to establish a

quorum prior to the 15 day publication requirement.

This conference call will be open to the public.

Dated: July 25, 2019.

Clifford D. Tatum,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2019-16263 Filed 7-30-19; 8:45 am]

BILLING CODE 6820-KF-P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During June 2019

	FE Docket Nos.
CHEVRON U.S.A. INC	19-28-LNG
REPSOL ENERGY NORTH AMERICA CORPORATION ..	19-43-NG
EMERA ENERGY SERVICES	19-63-NG
HUDSON ENERGY SERVICES, LLC	19-66-NG
CITY OF PASADENA	19-67-NG
BIG SKY GAS LLC	19-73-NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2019, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and vacating prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at <https://www.energy.gov/fe/listing-doe-fe-authorizations-orders-issued-2019>.

They are also available for inspection and copying in the U.S. Department of Energy (FE-34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on July 25, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4396	06/11/19	19-28-LNG	Chevron U.S.A. Inc	Order 4396 granting blanket authority to export previously imported LNG by vessel to Free Trade Agreement Nations and Non-Free Trade Agreement Nations.
4397	06/11/19	19-43-NG	Repsol Energy North America Corporation.	Order 4397 granting blanket authority to import/export natural gas from/to Mexico, to import/export LNG from/to Mexico by truck/vessel, to export natural gas to Canada, and vacating prior authorization, Order 4074.
4398	06/11/19	19-63-NG	Emera Energy Services	Order 4398 granting blanket authority to import/export natural gas from/to Canada.
4399	06/11/19	19-66-NG	Hudson Energy Services, LLC.	Order 4399 granting blanket authority to import/export natural gas from/to Canada.
4400	06/11/19	19-67-NG	City of Pasadena	Order 4400 granting blanket authority to import/export natural gas from/to Canada.
4401	06/18/19	19-73-NG	Big Sky Gas LLC	Order 4401 granting blanket authority to import natural gas from Canada.

[FR Doc. 2019-16261 Filed 7-30-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-2437-000]

Emmons-Logan Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Emmons-Logan Wind, LLC's application for market-based rate

authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 14, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-16275 Filed 7-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt

of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable

proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. CP15-554-000	7-12-2019	Janet K. Speare.
2. CP17-495-000	7-12-2019	Sally Wells.
3. P-199-205	7-12-2019	National Oceanic and Atmospheric Administration.
4. ER19-570-000	7-16-2019	Conservation Law Foundation.
5. ER18-619-001	7-16-2019	Conservation Law Foundation.
6. ER19-1166-000	7-16-2019	Conservation Law Foundation.
7. P-1494-405	7-23-2019	U.S. Fish and Wildlife Service.
Exempt		
1. CP18-137-000; CP17-495-000	7-10-2019	FERC Staff. ¹
2. CP17-494-000	7-10-2019	Wyoming State Senator Eli Bebout.
3. CP17-494-000; CP17-495-000	7-12-2019	Utah House Representative Christine Watkins.
4. CP17-494-000; CP17-495-000	7-12-2019	Colorado State Senate. ²
5. CP17-494-000; CP17-495-000	7-12-2019	Utah House Representative Phillip Lyman.
6. CP17-494-000; CP17-495-000	7-12-2019	Utah House Representative Keven Stratton.
7. CP17-494-000; CP17-495-000	7-12-2019	Utah State Senator Evan Vickers.
8. CP17-494-000; CP17-495-000	7-12-2019	Utah House Representative Derrin Owens.
9. CP17-494-000; CP17-495-000	7-12-2019	Utah State Senator David Hinkins.
10. CP17-494-000, CP17-495-000	7-12-2019	Utah State Senator Ralph Okerlund.
11. CP17-494-000, CP17-495-000	7-12-2019	Utah House Representative Daniel Johnson.
12. CP17-494-000; CP17-495-000	7-12-2019	Utah State Senator Ronald Winterton.
13. CP17-494-000, CP17-495-000	7-12-2019	Wyoming State Governor Mark Gordon.
14. CP17-494-000, CP17-495-000	7-12-2019	Utah House Representative Phillip Lyman.

¹ Email forwarding concerns from Herb Beamer.

² Senators John Cooke, Don Coram, Larry Crowder, Bob Gardner, Owen Hill, Dennis Hissey, Chris Holbert, Paul Lundeen, Vicki Marble, Kevin Piola, Bob Rankin, Ray Scott, Jerry Sonnenberg, Jack Tate, and Rob Woodward.

Dated: July 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-16278 Filed 7-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19-475-000]

Gulfstream Natural Gas System, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Phase VI Expansion Project; 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 proposed Phase VI Expansion Project involving construction and operation of facilities by Gulfstream Natural Gas System (Gulfstream) in Mobile County, Alabama and Manatee County, Florida. 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 5:00 p.m. Eastern Time on August 26, 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 June 3, 2019 you will need to file those comments in Docket No. CP19-475-000 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.

Gulfstream provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. 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 (CP19-475-000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Gulfstream proposes to construct and operate a compressor unit and metering equipment in Mobile County, Alabama and metering equipment and related auxiliary facilities and appurtenances in Manatee County, Florida. The Phase VI Expansion Project would provide about 78,000 Dekatherms per day (Dth/d) of natural gas. According to Gulfstream its project would supply firm transportation of natural gas to its mainline system in order to supply the Big Bend Power Station in Hillsborough County, Florida.

Facilities for The Phase VI Expansion Project would include:

- A new 16,000 horsepower (HP) compressor unit at Gulfstream's existing Compressor Station 410 located in Mobile County;
- abandonment in place of approximately 4 miles of existing 36-inch-diameter pipeline in Mobile County;¹

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of 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.

- approximately 4 miles of new 36-inch-diameter pipeline with increased wall thickness in Mobile County;
- new metering equipment at Gulfstream's existing Compressor Station 420 located in Manatee County; and
- related auxiliary facilities and appurtenances in Manatee County.

Gulfstream also plans to request a special permit from The U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration to increase their maximum allowable operating pressure (MAOP) for approximately 59 miles of its 36-inch-diameter offshore pipeline. The increase in MAOP would require no construction offshore.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction of the proposed facilities would disturb about 50 acres of land. Following construction, Gulfstream would maintain about 1.5 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. One hundred percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

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;
- 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 eLibrary² 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.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

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.

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 Offices, 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.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers.

This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related

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.

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 2).

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.*, CP19-475). 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 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-16276 Filed 7-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2622-013]

Notice Soliciting Scoping Comments: Turners Falls Hydro, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2622-013.

c. *Date filed:* February 4, 2019.

d. *Applicant:* Turners Falls Hydro, LLC (Turners Falls Hydro).

e. *Name of Project:* Turners Falls Project.

f. *Location:* On the Connecticut River, in the power canal of the Turners Falls Hydroelectric Project No. 1889, in Franklin County, Massachusetts. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael Scarzello, Director, Eagle Creek Renewable Energy, LLC, 65 Madison Avenue, Suite 500, Morristown, NJ 07960; Phone at (973) 998–8400, or email at michael.scarzello@eaglecreekre.com.

i. *FERC Contact:* Amanda Gill, (202) 502–6773 or amanda.gill@ferc.gov.

j. *Deadline for filing scoping comments:* August 24, 2019.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2622–013.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Project Description:* The Turners Falls Project consists of: (1) An existing 10-foot-long, 20-foot-wide, 12- to 22-foot-high forebay; (2) a 20-foot-wide, 22-foot-high trashrack with 1.5-inch clear-bar spacing; (3) two 9.75-foot-wide, 10.3-foot-high headgates; (4) an 8.5-foot-diameter, 50-foot-long steel penstock; (5) a 77-foot-long, 42-foot-wide powerhouse containing one 937-kilowatt vertical Francis-type turbine-generator unit; (6) a 50-foot-long, 10-

foot-diameter draft tube; (7) an 80-foot-long, 10-foot-wide tailrace; (8) a 280-foot-long, 2.3-kilovolt generator lead line that connects the generator to a step-up transformer; (9) and appurtenant facilities.

When generating, the project withdraws up to 289 cubic feet per second from FirstLight Hydro Generating Company's (FirstLight) power canal for the Turners Falls Hydroelectric Project No. 1889, and discharges directly into the Connecticut River. Turners Falls Hydro coordinates project operation with FirstLight via an off-license Water Use Agreement, which allows Turners Falls Hydro to generate only when flows within the power canal are greater than 15,000 cubic feet per second (cfs) and the needs of FirstLight's Turners Falls Hydroelectric Project No. 1889 are met. When operating the project, Turners Falls Hydro uses the 289-cfs maximum hydraulic capacity of the turbine for hydroelectric generation and does not fluctuate its water use. The average annual generation of the project is approximately 1,512 megawatt-hours.

Turners Falls Hydro proposes to operate the project either: (1) On a continuous basis between the project's minimum and maximum hydraulic capacities (60 cfs and 289 cfs, respectively), without the operating constraints of the off-license Water Use Agreement with FirstLight; (2) pursuant to the same provisions of the existing Water Use Agreement with FirstLight; or (3) pursuant to a modified Water Use Agreement with FirstLight.

m. 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 available for inspection and reproduction at the Montague Public Library, Carnegie Library Branch located at 201 Avenue A, Turners Falls, MA 01376.

n. 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.

o. Scoping Process.

Commission staff intend to prepare a single Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and

reasonable alternatives to the proposed action.

At this time, we do not anticipate holding on-site public or agency scoping meetings. Instead, we are soliciting your comments and suggestions on the preliminary list of issues and alternatives to be addressed in the EA, as described in scoping document 1 (SD1), issued July 25, 2019.

Copies of the SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: July 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019–16274 Filed 7–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–116–000.

Applicants: Black River Hydroelectric, LLC, Cube Yadkin Generation LLC, Cube Yadkin Transmission LLC, Lake Lynn Generation, LLC, PE Hydro Generation, LLC, OPG Eagle Creek Holdings LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Black River Hydroelectric, LLC, et al.

Filed Date: 7/24/19.

Accession Number: 20190724–5145.

Comments Due: 5 p.m. ET 8/14/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1836–015; ER10–2005–014; ER11–26–014; ER10–1841–014; ER10–1845–014; ER10–1852–028; ER10–1897–014; ER10–1905–014; ER10–1907–013; ER10–1918–014; ER10–1925–014; ER10–1927–014; ER10–1950–014; ER10–2006–015; ER18–2246–003; ER10–1964–014; ER18–1771–004; ER16–1872–005; ER10–1970–014; ER10–1972–014; ER16–2506–006; ER10–1983–014; ER10–1984–014; ER18–2224–004;

ER13-2461-009; ER10-1991-014;
ER17-2270-006; ER12-1660-014;
ER13-2458-009; ER10-2078-015;
ER11-4462-035; ER10-1951-014;
ER17-838-010.

Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Butler Ridge Wind Energy Center, LLC, Crystal Lake Wind III, LLC, Florida Power & Light Company, FPL Energy Hancock County Wind, LLC, FPL Energy Mower County, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, Garden Wind, LLC, Hawkeye Power Partners, LLC, Heartland Divide Wind Project, LLC, Lake Benton Power Partners II, LLC, Langdon Renewables, LLC, Marshall Solar, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Point Beach, LLC, Oliver Wind III, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Pegasus Wind, LLC, Pheasant Run Wind, LLC, Story Wind, LLC, Stuttgart Solar, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, White Oak Energy LLC, NEPM II, LLC, NextEra Energy Services Massachusetts, LLC, NextEra Energy Marketing, LLC.

Description: Notification of Change in Status of NextEra Resources Entities, et al.

Filed Date: 7/24/19.

Accession Number: 20190724-5162.

Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: ER17-2059-005.

Applicants: Puget Sound Energy, Inc.

Description: Notice of Non-Material Change in Status of Puget Sound Energy, Inc.

Filed Date: 7/24/19.

Accession Number: 20190724-5153.

Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: ER18-2085-003.

Applicants: Cambria CoGen Company.

Description: Notification of Change in Status of Cambria CoGen Company.

Filed Date: 7/25/19.

Accession Number: 20190725-5061.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-1213-001.

Applicants: Wabash Valley Power Association, Inc.

Description: Tariff Amendment: ER19-1213-000 Supplemental Information to be effective 7/25/2019.

Filed Date: 7/25/19.

Accession Number: 20190725-5021.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-1680-001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 2236R11 Golden Spread Electric Cooperative, Inc. NITSA NOA

Deficiency Respo to be effective 4/1/2019.

Filed Date: 7/25/19.

Accession Number: 20190725-5066.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-1964-001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1518R17 Arkansas Electric Cooperative Corp NITSA NOA)—Amended Filing and Defi to be effective 7/1/2019.

Filed Date: 7/25/19.

Accession Number: 20190725-5024.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-2077-001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: OATT—Att O—PSCo Deprec—TCJA Amendment Filing to be effective 1/1/2018.

Filed Date: 7/25/19.

Accession Number: 20190725-5046.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-2084-001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2019-7-25 Depreciation Rates & TCJA to be effective 1/1/2018.

Filed Date: 7/25/19.

Accession Number: 20190725-5043.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-2453-000.

Applicants: Lake Lynn Generation, LLC.

Description: § 205(d) Rate Filing: Info. Filing Pursuant to Schedule 2 of the PJM OATT & Baseline Reactive Tariff to be effective 9/23/2019.

Filed Date: 7/24/19.

Accession Number: 20190724-5126.

Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: ER19-2454-000.

Applicants: York Haven Power Company, LLC.

Description: Baseline eTariff Filing: Info. Filing Pursuant to Schedule 2 of the PJM OATT & Baseline Reactive Tariff to be effective 9/23/2019.

Filed Date: 7/24/19.

Accession Number: 20190724-5129.

Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: ER19-2455-000.

Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP submits ILDSA, Service Agreement No. 1575 with City of Westerville to be effective 7/1/2019.

Filed Date: 7/24/19.

Accession Number: 20190724-5136.

Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: ER19-2456-000.

Applicants: Nevada Power Company.

Description: Notice of Cancellation of Coordination Power Service Agreement No. 5 of Nevada Power Company.

Filed Date: 7/24/19.

Accession Number: 20190724-5147.

Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: ER19-2457-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-07-25 SA 3333 ITC-DTE Electric (J793) to be effective 7/11/2019.

Filed Date: 7/25/19.

Accession Number: 20190725-5022.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-2458-000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Guernsey Holdings LGIA Filing to be effective 7/12/2019.

Filed Date: 7/25/19.

Accession Number: 20190725-5040.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-2459-000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-NCCEM NITSA (SA No. 210) Arlington Tap to be effective 7/3/2019.

Filed Date: 7/25/19.

Accession Number: 20190725-5057.

Comments Due: 5 p.m. ET 8/15/19.

Docket Numbers: ER19-2460-000.

Applicants: DWW Solar II, LLC.

Description: Baseline eTariff Filing: MBR Application and Requests for Waivers, et al. to be effective 9/23/2019.

Filed Date: 7/25/19.

Accession Number: 20190725-5063.

Comments Due: 5 p.m. ET 8/15/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-16277 Filed 7-30-19; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0669; FRL-9997-39-OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Oil and Natural Gas Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Oil and Natural Gas Production (EPA ICR Number 1788.12, OMB Control Number 2060-0417), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2012-0669, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Oil and Natural Gas Production (40 CFR part 63, subpart HH) were proposed on February 06, 1998, and promulgated on June 17, 1999, only for major sources. On July 8, 2005, a supplemental proposal was proposed for area sources with the final rule, effective date on January 03, 2007. The rule was subsequently amended on August 16, 2012 to include emission sources for which standards were not previously developed. These regulations apply to emission points located at both new and existing oil and natural gas production facilities that are both major and area sources. A major source of hazardous air pollutants (HAP) is one that has the potential to emit 10 tons or more of any single HAP or 25 tons or more of total HAP per year; an area source is one with the potential to emit less than this. New facilities include those that commenced either construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart HH.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: New and existing area source and major source facilities that produce oil and natural gas (new facilities include those that commenced construction,

modification or reconstruction after the date of proposal).

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

Estimated number of respondents: 4,669 (total).

Frequency of response: Initially, semiannually.

Total estimated burden: 54,400 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$7,340,000 (per year), which includes \$1,040,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: This ICR reflects an increase in burden from the most recently-approved ICR. This increase is not due to any program changes. The adjustment increase in burden from the most recently approved ICR is due to an increase in the number of new and modified sources. The industry growth rate from the prior ICRs was adjusted to more accurately reflect current estimates of affected facilities from data reported to EPA's ECHO database. There is a projected industry growth; an additional 18 new major sources and 141 new area sources are expected to become subject to these rules each year. The adjustment to burden also corrects an error in the calculations for the number of respondents from the prior ICR, which double-counted existing respondents that became 'new respondents' due to construction, reconstruction, and/or modification. The number of respondents required to perform O&M on CMS monitoring equipment has been increased to include area sources with monitoring requirements. Overall, there is an increase in the number of respondents, resulting in an estimated increase in the respondent labor hours, O&M costs, and number of responses. Finally, the burden to develop a startup, shutdown and malfunction (SS&M) plan has been removed, consistent with the vacatur of those provisions (*Sierra Club v. EPA*, 551 F.3d 1019) (D.C. Cir. 2008). Items which were previously reported under the SS&M provisions are now reported under the affirmative defense and malfunction reports, so that burden has not changed.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-16226 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0665; FRL-9997-37-OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Magnetic Tape Manufacturing Operations (Renewal)**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Magnetic Tape Manufacturing Operations (EPA ICR Number 1678.10, OMB Control Number 2060-0326), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2012-0665, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Magnetic Tape Manufacturing Operations (40 CFR part 63, subpart EE) were proposed on March 11, 1994, promulgated on December 15, 1994 and amended on both April 9, 1999 and April 7, 2006. These regulations apply to new and existing magnetic tape manufacturing operations located at major sources of hazardous air pollutants (HAP). These magnetic tape manufacturing operations include solvent storage tanks, mix preparation equipment, coating operations, waste handling devices, and condenser vents in solvent recovery. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart EE.

In general, all NESHAP standards require initial notification reports, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities:

Magnetic tape manufacturing facilities.

Respondent's obligation to respond:

Mandatory (40 CFR part 63, subpart EE). **Estimated number of respondents:** 4 (total).

Frequency of response: Initially, quarterly, and semiannually.

Total estimated burden: 2,710 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$344,000 (per year), which includes \$35,000 in

annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The decrease in burden is due to the more accurate estimates of existing based on the information in ECHO. Therefore, this ICR adjusts the total number of respondents to 4. The decrease in respondents also results in a decrease in responses and operation and maintenance costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-16227 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0750; FRL-9997-17]

Registration Review Proposed Interim Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: 2,4-DB, 3-Methyl-2-cyclohexen-1-one, alkyl imidazolines, bromoxynil, dikegulac sodium, fluthiacet-methyl, imazalil, inorganic polysulfides (also known as lime sulfur), IR3535, linuron, octenol, o-benzyl-p-chlorophenol, p-Menthane-3,8-diol (PMD), pyridaben, starlicide, uniconazole-P, tri-n butyl tetradecyl phosphonium chloride, zinc and zinc salts, and zoxamide. This notice also announces the availability of EPA's human health and ecological risk assessments for the pesticides alkyl imidazolines, uniconazole-P, dikegulac sodium (ecological risk assessment only), and zoxamide, and opens a 60-day public comment period on the risk assessments.

DATES: Comments must be received on or before September 30, 2019.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV., by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 305-7106; email address: biscoe.melanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected

by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's

registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in the following table, and opens a 60-day public comment period on the proposed interim decisions. This notice also announces the availability of EPA's human health and ecological risk assessments for the pesticides alkyl imidazolines, uniconazole-P, dikegulac sodium (ecological risk assessment only), and zoxamide, and opens a 60-day public comment period on the risk assessments.

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2,4-DB. Case 0196	EPA-HQ-OPP-2013-0661	Samantha Thomas, thomas.samantha@epa.gov , (703) 347-0514.
3-Methyl-2-cyclohexen-1-one. Case Number 6074	EPA-HQ-OPP-2014-0671	Joseph Mabon, mabon.joseph@epa.gov , (703) 347-0177.
Alkyl Imidazolines. Case 3010	EPA-HQ-OPP-2011-0620	Kim Wilson, wilson.kimberly@epa.gov , (703) 347-0495.
Bromoxynil and Bromoxynil Esters. Case 2070	EPA-HQ-OPP-2012-0896	Tiffany Green, green.tiffany@epa.gov , (703) 347-0314.
Dikegulac Sodium. Case 3061	EPA-HQ-OPP-2014-0771	Jonathan Williams, williams.jonathanr@epa.gov , (703) 347-0670.
Fluthiacet-methyl. Case Number 7280	EPA-HQ-OPP-2013-0285	Eric Fox, fox.eric@epa.gov , (703) 347-0104.
Imazalil and Imazalil Sulfate. Case Number 2325	EPA-HQ-OPP-2013-0305	Michelle Nolan, nolan.michelle@epa.gov , (703) 347-0258.
Inorganic Polysulfides. (also known as Lime Sulfur). Case Number 4054.	EPA-HQ-OPP-2016-0102	Katherine St. Clair, stclair.katherine@epa.gov , (703) 347-8778.
IR3535. Case Number 6046	EPA-HQ-OPP-2014-0106	Alexandra Boukedes, boukedes.alexandra@epa.gov , (703) 347-0305.
Linuron. Case Number 0047	EPA-HQ-OPP-2010-0228	Katherine St. Clair, stclair.katherine@epa.gov , (703) 347-8778.

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
o-benzyl-p-chlorophenol. Case Number 2045	EPA-HQ-OPP-2011-0423	Erin Dandridge, dandridge.erin@epa.gov , (703) 347-0185.
Octenol. Case Number 6033	EPA-HQ-OPP-2012-0940	Joseph Mabon, mabon.joseph@epa.gov , (703) 347-0177.
p-Menthane-3,8-diol (PMD). Case Number 6017	EPA-HQ-OPP-2015-0693	Susanne Cerrelli, cerrelli.susanne@epa.gov , (703) 308-8077.
Pyridaben. Case Number 7417	EPA-HQ-OPP-2010-0214	Steven R. Peterson, peterston.stevenr@epa.gov , (703) 347-0755.
Starlicide. Case Number 2610	EPA-HQ-OPP-2011-0696	Nathan Sell, sell.nathan@epa.gov , (703) 347-8020.
Tri-N Butyl Tetradecyl Phosphonium Chloride (TTPC). Case Number 5111.	EPA-HQ-OPP-2011-0952	Daniel Halpert, halpert.daniel@epa.gov , (703) 347-0133.
Uniconazole-P. Case 7007	EPA-HQ-OPP-2015-0729	Susan Bartow, bartow.susan@epa.gov , (703) 603-0065.
Zinc and Zinc Salts. Case Number 4099	EPA-HQ-OPP-2009-0011	Michael McCarroll, mccarroll.michael@epa.gov , (703) 347-0147.
Zoxamide. Case Number 7032	EPA-HQ-OPP-2014-0391	Jocelyn Hospital, hospital.jocelyn@epa.gov , (703) 347-0756.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the table in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in the table in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Table in Unit IV. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a "Response to Comments Memorandum" in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision

and provide the Agency's response to significant comments.

Background on the registration review program is provided at: <http://www.epa.gov/pesticide-reevaluation>.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 24, 2019.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019-16315 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0678; FRL-9996-87-OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Mineral Wool Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Mineral Wool Production (EPA ICR Number 1799.10, OMB Control Number 2060-0362), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may

neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2012-0678, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number

for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mineral Wool Production were proposed on May 8, 1997, promulgated on June 1, 1999, and amended on July 29, 2015. These regulations apply to both new and existing mineral wool production facilities with cupolas and/or curing ovens. These standards apply to owners or operators located at a plant site that is a major source of hazardous air pollutant (HAP) emissions. This signifies that the plant has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAPs at a rate of 22.68 megagrams (25 tons) or more per year. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart DDD.

In general, all NESHAP standards require initial notification reports, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Mineral wool production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DDD).

Estimated number of respondents: 8 (total).

Frequency of response: Initially, semiannually.

Total estimated burden: 2,130 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$308,000 (per year), which includes \$6,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in the burden in this ICR compared to the previous ICR, however, there is an adjustment increase in the labor costs in this ICR compared to the previous ICR. This adjustment is due to a labor rate change in the calculation of labor costs. There are no changes to the

capital and operation and maintenance costs.

Courtney Kerwin,

Director, Regulator Support Division.

[FR Doc. 2019–16228 Filed 7–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2019–0210; FRL–9997–56–OAR]

Proposed Determinations of Light-Duty Vehicle Alternative Greenhouse Gas Emissions Standards for Small Volume Manufacturers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is requesting comment on proposed determinations of alternative light-duty vehicle greenhouse gas emissions standards for small volume manufacturers. The alternative standards are proposed pursuant to small volume manufacturer provisions in EPA's light-duty vehicle greenhouse gas regulations. Four small volume manufacturers have applied for alternative standards: Aston Martin, Ferrari, Lotus and McLaren. The alternative standards in these determinations cover model years 2017–2021.

DATES: Comments must be received on or before August 30, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2019–0210, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- **Email:** a-and-r-Docket@epa.gov. Include Docket ID No. EPA–HQ–OAR–2019–0210 in the subject line of the message.

- **Fax:** (202) 566–9744 Include Docket ID No. EPA–HQ–OAR–2019–0210 on the cover of the fax.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, OAR, Docket EPA–HQ–OAR–2019–0210, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand Delivery/Courier:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Christopher Lieske, Office of Transportation and Air Quality, Assessment and Standards Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4584. Fax: (734) 214–4816. Email address: lieske.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0210, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Background

EPA's light-duty vehicle greenhouse gas (GHG) program for model years (MYs) 2012–2016 provided a conditional exemption for small volume manufacturers (SVMs) with annual U.S. sales of less than 5,000 vehicles due to unique feasibility issues faced by these SVMs.¹ The exemption was conditioned on the manufacturer making a good faith effort to obtain credits from larger

¹ 75 FR 25419–25421, May 7, 2010.

volume manufacturers. For the MY 2017–2025 light-duty vehicle GHG program, EPA proposed, took public comment on, and finalized specific regulations allowing SVMs to petition EPA for alternative standards, again recognizing that the primary program standards may not be feasible for SVMs and could drive these manufacturers from the U.S. market.² EPA acknowledged that SVMs may face a greater challenge in meeting CO₂ standards compared to large manufacturers because they only produce a few vehicle models, mostly focused on high performance sports cars and luxury vehicles. SVMs have limited product lines across which to average emissions, and the few vehicles they produce often have very high CO₂ levels on a per vehicle basis. EPA also noted that the total U.S. annual vehicle sales of SVMs are much less than 1 percent of total sales of all manufacturers and contribute minimally to total vehicular GHG emissions, and foregone GHG reductions from SVMs likewise are a small percentage of total industry-wide reductions. EPA received only supportive public comments on allowing alternative standards for SVMs, including from SVMs, their trade associations, and dealers.³ EPA adopted a regulatory pathway for SVMs to apply for alternative GHG emissions standards for MYs 2017 and later, based on information provided by each SVM on factors such as technical feasibility, cost, and lead time.⁴

The regulations outline eligibility criteria and a framework for establishing SVM alternative standards. Manufacturer average annual U.S. sales must remain below 5,000 vehicles to be eligible for SVM alternative standards.⁵ The regulations specify the requirements for supporting technical data and information that a manufacturer must submit to EPA as part of its application.⁶

The regulations specify that an SVM applying for an alternative standard provide the following technical information:

- The CO₂ reduction technologies employed by the manufacturer on each vehicle model, or projected to be employed, including information regarding the cost and CO₂-reducing effectiveness. Include technologies that improve air conditioning efficiency and reduce air conditioning system leakage, and any “off-cycle” technologies that

potentially provide benefits outside the operation represented by the Federal Test Procedure (FTP) and the Highway Fuel Economy Test (HFET).

- An evaluation of comparable models from other manufacturers, including CO₂ results and air conditioning credits generated by the models.
- A discussion of the CO₂-reducing technologies employed on vehicles offered outside of the U.S. market but not available in the U.S., including a discussion as to why those vehicles and/or technologies are not being used to achieve CO₂ reductions for vehicles in the U.S. market.
- An evaluation, at a minimum, of the technologies projected by the EPA in a final rulemaking as those technologies likely to be used to meet greenhouse gas emission standards and the extent to which those technologies are employed or projected to be employed by the manufacturer.
- The most stringent CO₂ level estimated to be feasible for each model, in each model year, and the technological basis for this estimate.
- For each model year, a projection of the lowest feasible sales-weighted fleet average CO₂ value, separately for passenger automobiles and light trucks, and an explanation demonstrating that these projections are reasonable.
- A copy of any application, data, and related information submitted to the National Highway Traffic Safety Administration (NHTSA) in support of a request for alternative Corporate Average Fuel Economy standards filed under 49 CFR part 525.

SVMs may apply for alternative standards for up to five model years at a time. The GHG standards that EPA establishes for MY 2017 may optionally be met by the manufacturers in MYs 2015–2016.⁷ SVMs may use the averaging, banking, and trading provisions to meet the alternative standards, but may not trade credits to another manufacturer.⁸ The process for approving an SVM application includes a public comment period of 30 days after which EPA will issue a final determination establishing alternative standards for the manufacturer, as appropriate.⁹

SVMs have applied for alternative standards due to continued concern regarding their abilities to meet the primary program GHG standards. Given

that the current production MY for most manufacturers is 2019, with MY 2020 starting soon, these alternative standards, if adopted, will provide immediate relief for SVMs as authorized under the regulation. The GHG program also allows for a 3-year carry-back provision, which is within the timeframe of this notice and the MYs under consideration.

The Energy Policy and Conservation Act (EPCA), governing the establishment of Corporate Average Fuel Economy (CAFE) standards, contains separate small volume manufacturer alternative standards provisions that are administered by the National Highway Traffic Safety Administration (NHTSA) independent of EPA’s SVM alternative standards provisions.¹⁰ Under EPCA’s CAFE provisions, SVMs meeting the CAFE eligibility criteria may petition NHTSA for less stringent alternative CAFE standards. Manufacturers generally are also able to pay fines in lieu of meeting the CAFE standards, which is not an option in EPA’s GHG program under the Clean Air Act. While eligible SVMs may apply for alternative standards under the CAFE program, and some of the SVMs covered by this decision document have applied for alternative CAFE standards, none of those SVMs have been granted alternative CAFE standards for MYs 2017–2021.¹¹

III. Manufacturer Requested GHG Standards

Four manufacturers have applied for SVM alternative standards: Aston Martin, Ferrari, Lotus and McLaren.¹² Each manufacturer provided an application to EPA that contains confidential business information (CBI). Each manufacturer also provided a public version of its application with the CBI removed, which EPA has placed in the public docket established for this proceeding. As part of their applications, the SVMs requested specific alternative GHG standards for five model years starting with MY 2017 based on their unique projected product mix. Table 1 below provides the

¹⁰ 49 U.S.C. 32902(d). Implementing regulations may be found in 49 CFR part 525. EISA limits eligibility to manufacturers with worldwide production of fewer than 10,000 passenger cars.

¹¹ See https://one.nhtsa.gov/cafe_pic/CAFE_PIC_Mfr_LIVE.html.

¹² Ferrari was previously owned by Fiat Chrysler Automobiles (FCA) and petitioned EPA for operationally independent status under 40 CFR 86.1838–01(d). In a separate decision EPA granted this status to Ferrari starting with the 2012 model year, allowing Ferrari to be treated as an SVM under EPA’s GHG program. Ferrari has since become an independent company and is no longer owned by FCA.

² 77 FR 62789–62795, October 15, 2012.

³ Docket No. EPA–HQ–OAR–2010–0799.

⁴ 40 CFR 86.1818–12(g).

⁵ 40 CFR 86.1818–12(g)(1).

⁶ 40 CFR 86.1818–12(g)(4).

⁷ See 40 CFR 86.1818–12(g). Manufacturers may opt to comply with their MY 2017 standard in MYs 2015 and 2016 retroactively in lieu of the Temporary Leadtime Alternative Allowance Standards used in these model years.

⁸ 40 CFR 86.1818–12(g)(6).

⁹ 40 CFR 86.1818–12(g)(5).

standards requested by the manufacturers.

TABLE 1—MANUFACTURER REQUESTED GHG STANDARDS
[g/mile]

Manufacturer	MY 2017 *	MY 2018	MY 2019	MY 2020	MY 2021
Aston Martin	431	396	380	374	376
Ferrari	421	408	395	386	377
Lotus	361	361	344	341	308
McLaren	372	372	368	360	334

* Manufacturers may optionally meet MY 2017 standards in MYs 2015–2016 (40 CFR 86.1818–12(g)).

In May 2017, subsequent to submitting a request for SVM alternative standards, Lotus was acquired by Zhejiang Geely Holding Group (Geely) which also owns Volvo Car Company. Under the SVM regulations regarding eligibility,¹³ Lotus remains eligible for alternative standards for MY 2017. However, it is possible that Lotus will no longer be eligible for SVM standards starting in MY 2018 as Lotus may exceed the 5,000 vehicles eligibility threshold under the aggregation provisions of the regulations, based upon sales volume figures and other information provided by the manufacturer for MY 2018 which has not yet been finalized. While EPA is proposing alternative standards for Lotus through MY 2021, in order to use the alternative standards for MYs 2018–2021 Lotus would need to either demonstrate that they remain eligible for SVM alternative standards under the aggregation provisions or apply and be granted operational independence status.¹⁴ EPA is not including any determination of SVM eligibility for Lotus for MY 2018 and beyond in this proposed determination notice.

The regulations require SVMs to submit information, including cost information, to EPA as part of their applications, as detailed above. Each SVM provided its technical basis for the requested standards including a discussion of technologies that could and could not be feasibly applied to their vehicles in the time frame of the standards. As noted above, the non-CBI information provided by the SVMs is included in the docket for this proceeding. However, much of the data and information provided by the manufacturers regarding future vehicles and technology projections is claimed as CBI and not included in the public versions of the applications.¹⁵

The MY 2017–2025 light-duty GHG program includes opportunities to generate air conditioning and off-cycle emissions reduction credits that can be used as part of a manufacturer's strategy in meeting standards. Each SVM provided EPA with an estimate of its plans for use of air conditioning and off-cycle credits in addition to their CO₂ emissions measured over the 2-cycle compliance test (FTP and HFET) for each model year and these credits are reflected in the performance levels each manufacturer has projected. The breakdown of each manufacturer's use of credits was submitted as CBI by the manufacturers and not included in the public materials.

The alternative standards would be unique for each manufacturer and the regulations providing for 5-year credit carry-forward and 3-year credit carry-back provisions would apply. As noted above, SVMs would not be able to trade (*i.e.*, sell) credits to other manufacturers but would be able to purchase credits from other manufacturers not in the SVM alternative standards program. The standards would be manufacturer fleet averages, but not footprint based, as manufacturers did not request footprint-based standards and EPA believes the level of complexity added by making the unique SVM standards footprint based is not warranted given the manufacturers' limited product offerings. For example, the number of base vehicle models in SVMs' fleets range from one to four models. Also, in setting unique standards for SVMs, the product plans of each manufacturer are necessarily considered by EPA in the standard setting and so footprint-based standards are unnecessary.

IV. EPA Proposed Determinations of SVM Alternative Standards

The SVM alternative standards provisions in the MY 2017–2025 rule provide for a case-by-case approach reflecting the unique product offerings of each manufacturer. The preamble to the 2012 final rule discusses how EPA would set SVM standards, including

several factors to consider in determining what CO₂ standards are appropriate for a given SVM's fleet. These factors include the level of technology applied to date by the manufacturer, the manufacturer's projections for the application of additional technology, CO₂ reducing technologies being employed by other manufacturers including on vehicles with which the SVM competes directly and the CO₂ levels of those vehicles, cost information, and the technological feasibility and reasonableness of employing additional technology not projected by the manufacturer in the time-frame for which standards are being established. EPA also considers opportunities to generate A/C and off-cycle credits that are available to the manufacturer. Lead time is a key consideration both for the initial years of the SVM standard, where lead time would be shorter (or in fact has passed, as discussed below), and for the later years where manufacturers would have more time to achieve additional CO₂ reductions.¹⁶

The goal of the program is to ensure that SVMs make continued improvements to reduce GHG emissions, while recognizing that they might not be able to meet the primary program standards due to their limited product lines and the types of vehicles they produce.¹⁷ With this program goal in mind, EPA has considered the technical, cost, and other information provided by each SVM regarding its unique product plan strategy, and the alternative standards requested by the SVMs.

The CO₂ emissions for vehicles produced by SVMs are currently well above their primary program GHG targets but they are not out of step with some other vehicles produced by large volume manufacturers, as shown in Figure 1 below. As we discussed above, although emissions may be comparable in some cases to vehicles produced by

¹³ 40 CFR 86.1818–12(g)(1)(i).

¹⁴ 40 CFR 86.1838–01(d).

¹⁵ For more information about how EPA addresses claims of Confidential Business Information, see 40 CFR part 2, subpart B.

¹⁶ 77 FR 62792, October 15, 2012.

¹⁷ 77 FR 62790, October 15, 2012.

other manufacturers, SVMs have the additional challenge of not being able to average emissions across a diverse product line, as is the case for larger manufacturers. The SVM alternative standards help provide a level playing

field between the SVMs and large manufacturers that produce vehicles in the same market segments. The SVM models are indicated by the “+” markers. Given their higher baseline CO₂ emissions, these high performance

and luxury vehicles are likely to continue to have higher CO₂ levels relative to the industry-wide fleet average as the fleetwide standards become more stringent.

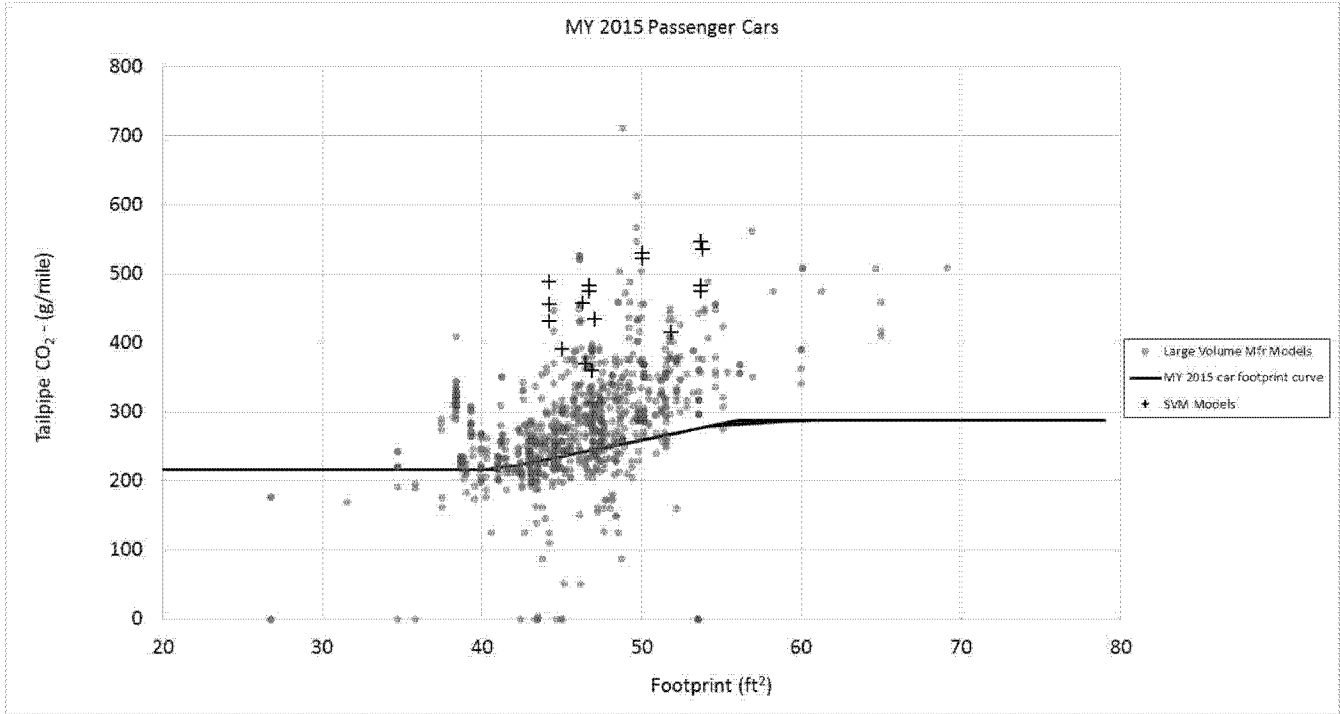


Figure 1: Model Year 2015 Tailpipe CO₂ Emissions Levels for Passenger Cars

For the first four model years of the program, MYs 2017–2020, EPA is proposing to adopt the manufacturers’ requested alternative standards. These model years are completed, underway, or close to underway (MY 2020 can start as early as January 2, 2019) and therefore lead-time is a primary consideration. Based on the absence of or very minimal lead-time available for these model years and EPA’s review of the manufacturers’ submissions and assessment of the capability of each product and its associated technology adoption, EPA believes this approach is appropriate for MYs 2017–2020.

For MY 2021, EPA considered the levels requested by the manufacturers and compared them to levels each SVM would achieve under an approach where the manufacturers achieved year-over-year reductions from their MY 2017 baseline through MY 2021, analogous to the overall declining fleetwide standards in the primary program. The primary program standards for passenger cars are equivalent to approximately five percent year-over-year improvements. Although the regulations do not mandate a specific year-over-year percent reduction for SVMs, EPA considered an approach based on a minimum level of steady improvement of three percent year-over-year emissions reduction from each SVM’s baseline CO₂ levels. This

pace of change is not as aggressive as the annual improvement in the passenger car standards in the primary program, but EPA believes it represents a reasonable minimum pace of meaningful improvements for SVMs, given the SVMs’ limited product lines and limited ability to average among high and low emitting vehicle models. Historically, EPA has set standards designed to reduce emissions while providing vehicle manufacturers compliance flexibility through averaging. Table 2 below provides the projected CO₂ levels for each manufacturer based on three percent annual improvements, using MY 2017 as the baseline or starting model year.

TABLE 2—THREE PERCENT ANNUAL IMPROVEMENT FROM MY 2017 BASELINE
[g/mile]

Model year	Aston Martin	Ferrari	Lotus	McLaren
2017 Baseline	431	421	361	372
2018	418	408	350	361
2019	406	396	340	350
2020	393	384	329	340
2021	382	373	320	329

Table 3 below compares the levels projected for MY 2021 under the three percent per year reductions with the levels requested by the manufacturers. For Aston Martin and Lotus, their requested standards for MY 2021 are more stringent than the levels represented by the three percent year-over-year reductions, as shown in Table 3. EPA believes that the requested MY 2021 standards for Aston Martin and Lotus are appropriate, and no adjustment is needed.

For Ferrari and McLaren, EPA believes that the MY 2021 standards

should reflect the 3 percent year-over-year reductions shown in Table 3. This approach would require Ferrari and McLaren to achieve a MY 2021 standard that is minimally more stringent than that requested by the manufacturers. The differences are small, 5 g/mile or less, and based on EPA's review of the information provided by the manufacturers, EPA believes this additional emissions reduction can be achieved through the use of credits, including air conditioning and off-cycle credits, and the use of program flexibilities including credit carry-

forward and credit carry-back within the lead-time available. EPA believes that MY 2021 standards based on 3 percent year-over-year reductions represent reasonable progress over time for SVMs as discussed above and a reasonable balance between the program goal of GHG reductions and the degree of challenge the standards pose to SVMs, based on EPA's assessment of the information, including cost information, provided to the agency.

TABLE 3—COMPARISON OF THREE PERCENT PER YEAR REDUCTIONS WITH SVM'S PROJECTIONS FOR MY 2021
[g/mile]

Model year	Aston Martin requested standards	Aston Martin 3% per year reduction	Ferrari requested standards	Ferrari 3% per year reduction	Lotus requested standards	Lotus 3% per year reduction	McLaren requested standards	McLaren 3% per year reduction
2021	376	382	377	373	308	320	334	329

In the proposed “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks” issued by EPA and the National Highway Traffic Safety Administration, EPA proposed revised less stringent GHG standards for MYs 2021–2026; the agencies also took public comment on a wide range of alternative stringencies.¹⁸ EPA recognizes that the three percent annual improvement approach for SVM alternative standards for MY 2021 described above differs from the approach for the primary program for MY 2021 in the SAFE Vehicles proposed rule where EPA has proposed to retain the MY 2020 standards for MYs 2021–2026. However, the proposed SVM alternative standards for MY 2021 would remain significantly less stringent than the primary program standards the SVMs would be required to meet under the proposed SAFE

Vehicles standards and represent significant relief for the SVMs even if the SAFE Vehicles proposal is adopted. EPA acknowledges that the standard requested by Aston Martin for MY 2021 is 2 g/mile less stringent than the standard requested for MY 2020, but believes the standard requested for MY 2021 is appropriate since the MYs 2017–2021 standards represent steady progress overall for Aston Martin with total reductions of 55 g/mile over those five model years. For Aston Martin, similar to the SAFE proposal, we are not proposing more stringent standards, or even flatlined standards for MY 2021, because of the significant reductions projected by Aston Martin to occur prior to MY 2021.

V. Summary of Draft Alternative SVM Standards

A summary of the draft case-by-case alternative SVM standards and

associated per-manufacturer GHG reductions is provided in Table 4. As discussed above, the draft MY 2017–2020 standards are the manufacturers' requested alternative standards due to lead time concerns. For Aston Martin and Lotus, the draft MY 2021 standards also are their requested standards. The MY 2018–2021 standards for Lotus are conditional based on its ability to either demonstrate that it remains eligible for SVM alternative standards under the program's aggregation provisions or apply and be granted operational independence status, as discussed in Section III above. For Ferrari and McLaren, the draft MY 2021 standards are based on three percent year-over-year reductions from their respective MY 2017 baseline. EPA requests comment on the draft standards shown in Table 4 and the approach used to derive the standards discussed in Section IV above.

TABLE 4—SUMMARY OF DRAFT STANDARDS AND PER-MANUFACTURER GHG REDUCTIONS
[g/mile]

	Aston Martin	Ferrari	Lotus	McLaren
MY 2017	431	421	361	372
MY 2018	396	408	361	372
MY 2019	380	395	344	368
MY 2020	374	386	341	360
MY 2021	376	373	308	329
g/mile Reduction	55	48	53	43
% Reduction (MY2017 to MY2021)	12.8%	11.4%	14.7%	11.6%

EPA notes that in the SAFE Vehicles proposed rule referenced above, the agencies proposed to eliminate credits

based on air conditioning refrigerant controls and requested comment on eliminating off-cycle credits beginning

in MY 2021. If EPA finalizes any program changes that would restrict the use of those credits in MY 2021 where

¹⁸ 83 FR 42986, August 24, 2018.

the SVM compliance is predicated on the use of those credit provisions, SVMs would have the option of applying for a further revised alternative standard for MY 2021.

Dated: July 24, 2019.

Andrew R. Wheeler,
Administrator.

[FR Doc. 2019-16319 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0660; FRL-9996-88-OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (EPA ICR Number 1652.10, OMB Control Number 2060-0273), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2012-0660, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov.

Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants were proposed on November 29, 1993, and promulgated on December 2, 1994. The NESHAP was amended on the following dates: June 5, 1995; December 11, 1998; July 13, 1999; August 19, 1999; and May 3, 2007. These regulations apply to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, 1,1,1-trichloroethane, trichloroethylene, carbon tetrachloride, chloroform, or any combination of these halogenated HAP solvents, in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent. New facilities include those that commenced construction or reconstruction on or after December 2, 1994. This information is being collected to assure compliance with 40 CFR part 63, subpart T.

In general, all NESHAP standards require initial notification reports, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and

duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities:

Halogenated Solvent Cleaners.

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

Estimated number of respondents: 931 (total).

Frequency of response: Semiannual.

Total estimated burden: 31,300 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$4,230,000 (per year), which includes \$660,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The decrease in burden from the most recently-approved ICR is due to an adjustment. The adjustment decrease in burden is due to more accurate estimates of existing and anticipated new sources. The estimates in this ICR reflect a decrease in the universe of respondents that is the result of changes within the industry to use alternative solvents and solvent machines that do not contain the HAP subject to the NESHAP. These estimates also more accurately reflect the number of respondents identified in EPA's ECHO database. The decrease in the number of respondents also results in a decrease in the operation and maintenance costs. There are no changes to the capital and startup costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019-16225 Filed 7-30-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1022]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public

and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 30, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of

information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060-1022.

Title: Sections 101.1403, 101.103(f), 101.1413, 101.1440, 101.1417 and 25.139 (MVDDS reporting, recordkeeping and third-party disclosures; NGSO FSS and DBS recordkeeping and third-party disclosures)

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 18 respondents; 2,238 responses.

Estimated Time per Response: 0.25 hour-40 hours.

Frequency of Response: Annual and on occasion reporting requirements; 5- and 10-years reporting requirements; third party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

Total Annual Burden: 5,316 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality:

There is no need for confidentiality with this collection of information.

Needs and Uses: The collection is being revised because, the Commission consolidated the information collection requirements currently contained in collection 3060-1021 (§ 25.139) into 3060-1022; therefore, OMB Control Number 3060-1021 will be discontinued once the consolidation is approved by OMB. The Commission is also revising estimates based on updated licensing activity with no programmatic changes. This collection includes a Part 25 rule and various rules in Part 101 that govern record retention, reporting, and third-party disclosure requirements related to satellite and terrestrial sharing of the 12.2-12.7 GHz band. The satellite operators are Non-Geostationary Orbit Fixed Satellite Service (NGSO FSS) and Direct Broadcast Satellite (DBS) Service. The terrestrial operators are Multichannel Video Distribution and Data Service (MVDDS). The following information collected will assist the Commission in analyzing trends and competition in the marketplace. Section 25.139 requires NGSO FSS licensees to maintain a subscriber database in a format that can be readily shared to enable MVDDS licensees to determine whether a proposed MVDDS transmitting antenna

meets the minimum spacing requirement relative to qualifying, existing NGSO FSS subscriber receivers (set forth in § 101.129, FCC Rules). Section 101.1403 requires certain MVDDS licensees that meet the statutory definition of Multichannel Video Programming Distributor (MVPD) to comply with the broadcast carriage requirements located 47 U.S.C. 325(b)(1). Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in § 325(b)(2) of the Communications Act of 1934. Section 101.103(f) requires MVDDS licensees to provide notice of intent to construct a proposed antenna to NGSO FSS licensees operating in the 12.2-12.7 GHz frequency band and to establish and maintain an internet website of all existing transmitting sites and transmitting antenna that are scheduled for operation within one year including the "in service" dates. Section 101.1413, as a construction requirement, requires MVDDS licensees to file a showing of substantial service at five and ten years into the initial license term. Substantial service is defined as a "service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal." The Commission set forth a safe harbor to serve as a guide to licensees in satisfying the substantial service requirement, as well as additional factors that it would take into consideration in determining whether a licensee satisfies the substantial service standard. Section 101.1440 requires MVDDS licensees to collect information and disclose information to third parties. Therefore, the reporting and disclosure requirements are as follows: Section 101.1440 requires MVDDS licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers of record that may potentially be affected by the introduction of its MVDDS service. At least 90 days prior to the planned date of MVDDS commencement of operations, the MVDDS licensee must then provide specific information to the DBS licensee(s). Alternatively, MVDDS licensees may obtain a signed, written agreement from DBS customers of record stating that they are aware of and agree to their DBS system receiving MVDDS signal levels in excess of the appropriate Equivalent Power Flux Density (EPFD) limits. The DBS licensee must thereafter provide the MVDDS licensee with a list of only those new DBS customer locations that have been

installed in the 30-day period following the MVDDS notification that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmitter site. Section 101.1417 requires MVDDS licensees to file an annual report. The MVDDS licensees must file with the Commission two copies of a "licensee information report" by March 1st of each year for the preceding calendar year. This "licensee information report" must include name and address of licensee; station(s) call letters and primary geographic service area(s); and statistical data for the licensee's station.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019-16207 Filed 7-30-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1148]

Information Collection Requirement Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information

collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 30, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1148.

Title: Section 79.3, Video Description of Video Programming.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not for profit entities and Individual or households.

Number of Respondents and

Responses: 50 respondents, 54 responses.

Estimated Time per Response: 1-5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 115 hours.

Total Annual Costs: \$22,140.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 303 and 613.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 3, 2011, the Commission released a Notice of Proposed Rulemaking (NPRM), FCC 11-36, in the Communications and Video Accessibility Act (CVAA) Video Description proceeding, MB Docket No. 11-43. The NPRM proposed to reinstate the Commission's video description rules adopted in 2000. On April 22, 2011, the Office of Management and

Budget (OMB) pre-approved the information collection requirements contained in the proposed rules. On August 25, 2011, the Commission released a Report and Order, FCC 11-126, in the CVAA Video Description proceeding, MB Docket No. 11-43. The Report and Order adopted the proposed information collection requirements without change. The final rules were codified at 47 CFR 79.3. On September 8, 2011, OMB issued its final approval for the information collection requirements. As discussed below, the information collection requirements include (1) video programming provider petitions for exemption based on "economic burden" and (2) non-form consumer complaints alleging violations of the video description rules. On June 25, 2012, the Commission received OMB approval for the removal of a portion of the burden hours and costs that were approved under 3060-1148 and placed into collection 3060-0874 (relating to the FCC Form 2000). This modification was due to the filing of complaints alleging violations of the video description rules now being filed via FCC Form 2000C.

Video description is the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue, makes video programming more accessible to individuals who are blind or visually impaired. In 2000, the Commission adopted rules requiring certain broadcasters and MVPDs to carry programming with video description. The United States Court of Appeals for the District of Columbia Circuit vacated the rules due to insufficient authority soon after their initial adoption. As directed by the CVAA, the Commission's Report and Order reinstated the video description rules, with certain modifications, effective October 8, 2011. The reinstated rules require large-market broadcast affiliates of the top four national networks and multichannel video programming distributor ("MVPD") systems with more than 50,000 subscribers to provide video description.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019-16208 Filed 7-30-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**[OMB 3060–0178]****Information Collection Requirement Being Reviewed by the Federal Communications Commission Under Delegated Authority****AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 30, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:*OMB Control Number:* 3060–0178.*Title:* Section 73.1560, Operating Power and Mode Tolerances.*Form Number:* N/A.*Type of Review:* Extension of a currently approved collection.*Respondents:* Business or other for-profit entities.*Number of Respondents and Responses:* 80 respondents; 80 responses.*Estimated Time per Response:* 1 hour.*Frequency of Response:* On occasion reporting requirement.*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.*Total Annual Burden:* 80 hours.*Total Annual Cost:* None.*Privacy Impact Assessment:* No impact(s).*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in 47 CFR 73.1560(d) require that licensees of AM, FM or TV stations file a notification with the FCC when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30-day period, an informal written request must be made for any additional time as may be necessary to restore normal operations.

Federal Communications Commission.

Marlene Dortch,*Secretary.*

[FR Doc. 2019–16206 Filed 7–30–19; 8:45 am]

BILLING CODE 6712–01–P**FEDERAL RESERVE SYSTEM****Proposed Agency Information Collection Activities; Comment Request****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Capital Assessments and Stress Testing Reports (FR Y–14A/Q/M; OMB No. 7100–0341). Please note that the Board is publishing a separate notice for comment focusing

on incorporating non-Current Expected Credit Loss (CECL) methodology revisions into the FR Y–14A/Q/M reports.

DATES: Comments must be submitted on or before September 30, 2019.

ADDRESSES: You may submit comments, identified by FR Y–14A, FR Y–14Q, or FR Y–14M, by any of the following methods:

- *Agency website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* regs.comments@federalreserve.gov. Include OMB number in the subject line of the message.

- *FAX:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board

authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;
- b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal.

Proposal under OMB Delegated Authority to Extend for Three Years, With Revision, the Following Information Collection:

Report title: Capital Assessments and Stress Testing Reports.

Agency form number: FR Y-14A/Q/M.

OMB control number: 7100-0341.

Frequency: Annually, semi-annually, quarterly, and monthly.

Estimated number of respondents: 36.

*Estimated average hours per response:*¹ FR Y-14A: 1,027 hours; FR Y-14Q: 1,923 hours; FR Y-14M: 1,086

hours; FR Y-14 On-going Automation Revisions: 480 hours. One-time Current Expected Credit Loss (CECL) Implementation: 60 hours; FR Y-14 Attestation On-going Audit and Review: 2,560 hours.

Estimated annual burden hours: FR Y-14A: 73,944 hours; FR Y-14Q: 276,912 hours; FR Y-14M: 443,088 hours; FR Y-14 On-going Automation Revisions, 17,280 hours. One-time CECL Implementation, 2,160 hours; FR Y-14 Attestation On-going Audit and Review, 33,280 hours.

General description of report: These collections of information are applicable to top-tier bank holding companies with total consolidated assets of \$100 billion² or more and U.S. intermediate holding companies with \$50 billion or more in assets that are subsidiaries of foreign banking organizations.³ This family of information collections is composed of the following three reports:

- The semi-annual FR Y-14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.
- The quarterly FR Y-14Q collects granular data on various asset classes, including loans, securities, trading assets, and PPNR for the reporting period.
- The monthly FR Y-14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

² On July 6, 2018, the Board issued a public statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act. See <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf>. The Board announced that it will not take action to require bank holding companies (BHCs) with greater than or equal to \$50 billion but less than \$100 billion in total consolidated assets to file the FR Y-14 reports.

³ The Board has separately proposed to revise the respondent panel for the FR Y-14 reports in connection with the Board's proposed rule regarding Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies (the "Tailoring Proposal"). See 83 FR 61408 (November 29, 2018). Under the Tailoring Proposal, the respondent panel for the FR Y-14 reports would be BHCs with total consolidated assets of \$100 billion or more, U.S. intermediate holding companies of foreign banking organizations (IHCs) with total consolidated assets of \$50 billion or more that are subsidiaries of an FBO, and covered savings and loan holding companies (SLHCs) with \$100 billion or more in total consolidated assets. See 12 CFR 217.2 (defining "covered savings and loan holding company"). If the Tailoring Proposal is finalized before this proposal, the respondent panel for the FR Y-14 reports would be updated to reflect the respondent panel adopted in the Tailoring Proposal.

The data collected through the FR Y-14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual Comprehensive Capital Analysis and Review (CCAR) exercise, which complements other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Respondent firms are currently required to complete and submit up to 18 filings each year: Two semi-annual FR Y-14A filings, four quarterly FR Y-14Q filings, and 12 monthly FR Y-14M filings. Compliance with the information collection is mandatory.

Proposed revisions: The Board is proposing to address the revised accounting for credit losses under the Financial Accounting Standards Board's (FASB) Accounting Standards Update (ASU) No. 2016-13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" (ASU 2016-13) and implement the current expected credit loss (CECL) accounting methodology across all of the FR Y-14 reports. The proposed changes to the FR Y-14 reports mirror the related changes to the Consolidated Financial Statements for Holding Companies (FR Y-9C) for CECL, as appropriate.⁴ The proposed reporting changes related to CECL also are consistent with the revisions indicated in the final CECL rule.⁵

In June 2016, the FASB issued ASU 2016-13, which introduced the CECL methodology for estimating allowances for credit losses and added Topic 326, Credit Losses, to the Accounting Standards Codification (ASC). The new credit losses standard changed several aspects of existing U.S. generally accepted accounting principles (U.S. GAAP), such as by introducing a new credit loss methodology, reducing the number of credit impairment models, replacing the concept of purchased

⁴ See 84 FR 11783 (March 28, 2019).

⁵ See 84 FR 4222 (February 14, 2019).

¹ The burden hours presented in this notice include the changes proposed in a notice for comment regarding the FR Y-14 reports concurrently published with this notice.

credit-impaired (PCI) assets with that of purchased credit-deteriorated (PCD) financial assets, and changing the period over which firms should estimate expected credit losses on off-balance sheet exposures. CECL will be applicable to all financial instruments carried at amortized cost (including loans held for investment (HFI) and held-to-maturity (HTM) debt securities, as well as trade and reinsurance receivables and receivables that relate to repurchase agreements and securities lending agreements), net investments in leases, and off-balance sheet credit exposures not accounted for as insurance, including loan commitments, standby letters of credit, and financial guarantees.

Under ASU 2016–13, institutions will record credit losses through an allowance for credit losses for available-for-sale (AFS) debt securities rather than as a write-down through earnings for other-than-temporary impairment (OTTI). The broader scope of financial assets for which allowances must be estimated under ASU 2016–13 results in the proposed reporting of additional allowances, related charge-off and recovery data, and proposed changes to the terminology used to describe allowances for credit losses. To address the broader scope of assets that will have allowances under ASU 2016–13, the Board proposes to change the allowance nomenclature to consistently use “allowance for credit losses” followed by the relevant specific asset type, *e.g.*, “allowance for credit losses on loans and leases” and “allowance for credit losses on HTM debt securities.”

By broadening the scope of financial assets for which the need for allowances for credit losses must be assessed to include HTM and AFS debt securities, the new standard eliminates the existing OTTI model for such securities. Subsequent to a firm’s adoption of ASU 2016–13, the concept of OTTI will not be relevant and information on OTTI would no longer be captured.

The new accounting standard also eliminates the separate impairment model for PCI loans and debt securities. Under CECL, credit losses on PCD financial assets are subject to the same credit loss measurement standard as all other financial assets carried at amortized cost. Subsequent to an institution’s adoption of ASU 2016–13, information on PCI loans would no longer be captured.

While the standard generally does not change the scope of off-balance sheet credit exposures subject to an allowance for credit loss assessment, the standard does change the period over which the firm should estimate expected credit

losses. For off-balance sheet credit exposures, a firm will estimate expected credit losses over the contractual period in which they are exposed to credit risk. For the period of exposure, the estimate of expected credit losses should consider both the likelihood that funding will occur and the amount expected to be funded over the estimated remaining life of the commitment or other off-balance sheet exposure. In contrast to the existing practices, the FASB decided that no credit losses should be recognized for off-balance sheet credit exposures that are unconditionally cancellable by the issuer. The exclusion of unconditionally cancellable commitments from the allowance for credit losses assessment on off-balance sheet credit exposures requires clarification to applicable reporting instructions.

In December 2018, the Federal Reserve amended its stress testing rules to require a banking organization that has adopted CECL to incorporate CECL in its stress testing methodologies, data, and disclosure beginning in the cycle coinciding with its first full year of CECL adoption. For example, as stated in the final CECL rule, firms that have adopted CECL in or before 2020, are required to reflect their CECL provision for credit losses beginning in the 2020 stress test cycle. The effective date for adopting CECL varies depending on whether a firm is a public business entity (PBE), a Securities and Exchange Commission (SEC) report filer, or an early adopter.⁶ Due to the different effective dates for ASU 2016–13, the period over which institutions may be implementing this ASU ranges from 2019 through 2022.⁷

The Board is proposing revisions to the FR Y–14 reports in response to ASU 2016–13 to align the information reported with the new standard as it relates to the credit losses for loans and leases, including off-balance sheet credit exposures. These revisions would address the broadening of the scope of financial assets for which an allowance for credit losses assessment must be established and maintained, along with

the elimination of the existing model for PCI assets.

Generally, institutions subject to filing the FR Y–14 reports would reflect the standard in data reported on the FR Y–14A, FR Y–14Q, and FR Y–14M, with as-of dates following the start of the firm’s fiscal year and the adoption of the standard, beginning with the FR Y–14 reports as-of December 31, 2019. Certain items, as described in the Collection of Supplemental CECL Information section, may require balances to be reported as of December 31 prior to CECL adoption. Firms should refer to the final CECL rule for specifics surrounding inclusion of credit losses in a given stress test cycle.

The proposed changes to the FR Y–14 are designed to accommodate differences in implementation dates for different firms. Specifically, although new items would be added to the report form and instructions, the proposed revisions to schedule titles or specific data item captions resulting from the change in nomenclature upon the adoption of CECL would not be reflected in the FR Y–14 report forms until full adoption by all FR Y–14 filers, or March 31, 2022, at the latest. With the reports as-of March 31, 2022, the FR Y–14 reporting forms and instructions for each impacted schedule title or data item would be updated to fully incorporate CECL nomenclature and reporting. This would include, unless otherwise indicated, revising the schedule titles or specific data item captions referencing the “provision for loan and lease losses” and the “allowance for loan and lease losses” to be changed to the “provision for credit losses” and the “allowance for credit losses,” respectively. For these items, to address the period from December 31, 2019, to March 31, 2022, the reporting form and instructions for each schedule title or data item impacted by the change in nomenclature would include guidance stating how institutions that have adopted the standard would report the data items related to the “provision for credit losses” and “allowance for credit losses,” as applicable.

Items where the FR Y–14 instructions state, “to report as defined in the FR Y–9C” (*i.e.*, there is no deviation from the FR Y–9C item definition), should always conform with the reporting as defined on the FR Y–9C unless otherwise noted. This includes as it pertains to reporting under ASU 2016–13 on the FR Y–14 after the proposed implementation date in December 31, 2019.

The revisions for the FR Y–14 reports are described below in detail, mostly on a schedule-by-schedule basis.

⁶ For institutions that are PBEs and also are SEC filers, as both terms are defined in U.S. GAAP, the new credit losses standard is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. For a PBE that is not an SEC filer, the credit losses standard is effective for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. For an institution that is not a PBE, the credit losses standard is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years.

⁷ It is expected that the majority of FR Y–14 filing institutions will implement the standard by the first or fourth quarter of 2021.

*FR Y-14A, Schedule A (Summary)**Schedule A.1.a (Income Statement)*

To address the broader scope of financial assets for which a provision will be calculated under ASU 2016-13, the Board proposes to revise Schedule A.1.a (Income Statement) to capture changes in allowances for credit losses on loans and leases (ALLL), HTM, and AFS debt securities. This change would be comparable to the breakout on the FR Y-9C, Schedule HI-B, Part II (Charge-Offs and Recoveries on Loans and Leases and Changes in Allowance).

Specifically, to accommodate the collection of the additional financial assets, item 68, "ALLL, prior quarter"; item 91, "Provisions for loan and lease losses during the quarter"; item 114, "Net Charge-offs during the quarter"; item 115, "Other ALLL Changes"; and item 116, "ALLL, current quarter," would be updated. First, as-of December 31, 2019, the existing items, would be re-numbered to items 68a, 91a, 114a, 115a, and 116a, and would continue to capture allowances, provisions, or charge-offs for loan and lease losses for institutions that have not yet adopted ASU 2016-13. Guidance would be added to the FR Y-14A, Schedule A.1.a (Income Statement) forms and instructions indicating that institutions that have adopted ASU 2016-13 should report allowances for credit losses on loans and leases, provisions for loans and leases, or net charge-offs on loans and leases in items 68a, 91a, 114a, 115a, and 116a. In addition, the title of item 114a would be revised to "Net charge-offs during the quarter on loans and leases." Second, as-of December 31, 2019, two additional items (noted as b. and c.) would be added to items 68, 91, 114, 115, and 116 to capture amounts associated with HTM and AFS debt securities. A footnote would indicate that these items are only to be reported by institutions that have adopted ASU 2016-13. Third, a total item would be added to derive the sum of the components of item 68, "Total ALLL prior quarter"; item 91, "Total provisions for loan and lease losses during the quarter"; item 114, "Total Net Charge-offs during the quarter"; item 115, "Other ALLL Changes"; and item 116, "Total Allowances, current quarter." For institutions that have not adopted ASU 2016-13, this total line item would represent the allowance for loan and lease losses.

As previously noted, as-of December 31, 2019, the Board would add guidance to all other references in the FR Y-14A, Schedule A.1.a (Income Statement) to "provision for loan and lease losses" and the "allowance for loan and lease

losses" to indicate that institutions that have adopted ASU 2016-13 should report the "provision for credit losses" and the "allowance for credit losses." Upon full adoption, all applicable captions and descriptions would be updated to reflect adoption of the new credit loss terminology and footnoted guidance would be eliminated.

To address the elimination of the concept of OTTI by ASU 2016-13, upon full adoption or as-of March 31, 2022, at the latest, the Board proposes eliminating references to OTTI from item 126, "Realized Gains (Losses) on available-for-sale securities, including OTTI," and item 127, "Realized Gains (Losses) on held to maturity securities, including OTTI." From December 31, 2019, through March 31, 2022, a footnote would indicate that the inclusion of OTTI in these items does not apply to institutions that have adopted ASU 2016-13.

Schedule A.1.b (Balance Sheet)

To address the broader scope of financial assets for which allowances will be estimated under ASU 2016-13, the Board proposes revisions to the FR Y-14A report form and instructions to specify which assets should be reported net of an allowance for credit losses. As-of December 31, 2019, the Board proposes adding a footnote to item 1, "Held to Maturity"; item 120, "Securities Purchased Under Agreements to Resell"; and item 129, "Other Assets", on Schedule A.1.b. (Balance Sheet) to note that, in line with reporting on Schedule HC (Balance Sheet) of the FR Y-9C, institutions that have adopted ASU 2016-13 would report these amounts net of any applicable allowance for credit losses.

The Board proposes to keep the derivation of allowances on the FR Y-14A, Schedule A.1.b (Balance Sheet) specific to loans and leases. Therefore, as-of December 31, 2019, footnotes would be added to item 110, "Allowance for Loan and Lease Losses", and item 111, "Net of Unearned Income and Allowance for Loan and Leases Losses", indicating that for institutions that have adopted ASU 2016-13, the value would reflect allowance for credit losses on loans and leases in these items, and the item references would be updated. Upon full adoption, with the reports as-of March 31, 2022, at the latest, the caption would be updated to reflect the new credit loss terminology.

Schedule A.1.d (Capital)

The proposed reporting changes to Schedule A.1.d (Capital) align with the revisions described in the final CECL rule and the FR Y-9C.

Specifically, the Board is proposing to revise the instructions for Schedule A.1.d to indicate that institutions that have adopted CECL should use the adjusted allowances for credit losses instead of allowance for loan and lease losses in calculating regulatory capital. Language would be added as-of December 31, 2019, indicating this guidance on Schedule A.1.d, item 54, "Allowance for loan and lease losses includable in tier 2 capital." Upon full adoption, with the reports as-of March 31, 2022, at the latest, the caption would be updated to reflect the new credit loss terminology.

To address the potential election of the CECL transition provision as described in the final CECL rule, the Board also proposes to add guidance to the FR Y-14A, Schedule A.1.d, item 20, "Retained earnings," item 39, "DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs, that exceed the 10 percent common equity tier 1 capital deduction threshold," item 54, "Allowance for loan and lease losses includable in tier 2 capital," item 77, "DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs," and item 85, "Average total consolidated assets," indicating that institutions that have adopted ASU 2016-13 and have elected to apply the transition provision should include or exclude, as outlined in the FR Y-9C, the applicable portion of the CECL transitional amount.

Schedule A.2.a (Retail Balance and Loss Projections)

To address the elimination of PCI assets under ASU 2016-13, the Board proposes to revise the instructions to indicate that institutions that have adopted ASU 2016-13 would not need to file item 7, "Cumulative Interim Loan Losses—Non-PCI," or item 8, "Cumulative Interim Loan Losses, PCI." Upon full adoption of ASU 2016-13, or as of March 31, 2022, at the latest, the Board proposes to eliminate items 7 and 8. Finally, since the projected fields are not currently reported for items 7 and 8, the Board proposes to move these fields to FR Y-14Q, Schedule M (Balances), effective December 31, 2019. These items would continue to be reported for each applicable mortgage type.

Schedule A.3 (AFS/HTM Securities)

Currently, three sub-schedules on the FR Y-14A, Schedule A.3 (AFS/HTM Securities) collect detailed information on projected OTTI by individual

security (A.3.a), high level OTTI methodology and assumptions by portfolio (A.3.b), and projected OTTI by portfolio (A.3.c). By broadening the scope of financial assets for which the need for allowances for credit losses must be assessed to include HTM and AFS debt securities, the new credit loss standard eliminates the existing OTTI model for such securities. Subsequent to an institution's adoption of ASU 2016–13, the concept of OTTI will no longer be relevant and information on OTTI would no longer be captured. Therefore as-of December 31, 2019, the Board proposes that institutions that have adopted ASU 2016–13 would not report sub-schedules A.3.a, A.3.b, and A.3.c. Furthermore, sub-schedule A.3.a would also be eliminated as-of December 31, 2019, as this information is of limited value and use. A footnote and instructions would indicate that institutions that have adopted ASU 2016–13 do not need to file sub-schedules A.3.b and A.3.c starting as-of December 31, 2019, and the sub-schedules would be eliminated upon full adoption, as-of March 31, 2022, at the latest.

With the proposed removal of FR Y–14A, Schedule A.3 sub-schedules related to OTTI, the Board proposes replacing the three sub-schedules with two new sub-schedules, A.3.f (Expected Credit Loss and Provision for Credit Loss—HTM securities) and A.3.g (Expected Credit Loss and Provision for Credit Loss—AFS securities) to be filed by all institutions that have adopted ASU 2016–13 beginning as December 31, 2019. These sub-schedules would provide another source of information regarding impairment of securities. The new sub-schedules, A.3.f and A.3.g, would aim to collect basic credit loss and reserve information on HTM, and AFS securities, respectively, that is crucial to assess whether institutions properly estimate credit risk exposures and set aside adequate reserves to cover expected losses from their securities portfolios under CECL. The collected information would include the security asset class, accounting intent, amortized cost, total allowance for credit losses, and cumulative expected lifetime loss and provision for credit loss across the projection horizon.

In line with the above changes, the Board also proposes modifying the supporting documentation associated with AFS/HTM securities outlined in Appendix A.5 of the FR Y–14A as-of December 31, 2019. A statement would be added to the instructions indicating that institutions that have adopted ASU 2016–13 should submit supporting documentation on their other

comprehensive income, expected credit loss, and provision projections as outlined in the instructions. Upon full adoption of CECL by all FR Y–14 filers, references to OTTI in the instructions for Appendix A would be eliminated.

Finally, given the changes in methodology for HTM securities under ASU 2016–13, the Board also proposes changing the scope of the FR Y–14A, sub-schedules A.3.d and A.3.e to include data related to only AFS and Equity securities. Institutions reporting under CECL methodology would no longer report impaired HTM securities in these sub-schedules beginning with the reports as-of December 31, 2019. Guidance would be added to the instructions indicating this. Upon full adoption of ASU 2016–13, the title and description of the sub-schedules would be updated.

Schedule A.7 (Pre-Provision Net Revenue (PPNR))

Currently, the instructions for the FR Y–14A, Schedule A.7 (PPNR), specify that gains and losses on AFS and HTM securities, including OTTI estimates, should not be reported as a component of PPNR. To reflect the elimination of the existing OTTI model under CECL, the Board proposes that the instructions for the FR Y–14A, sub-schedules A.7.a, A.7.b, and A.7.c be updated to indicate that institutions that have adopted ASU 2016–13 should not report gains and losses on AFS and HTM securities, including changes in credit loss provisioning, as a component of PPNR. A footnote would be added throughout the FR Y–14A, Schedule A.7 (PPNR) sub-schedules (including, but not limited to, items 11 and 24) as-of December 31, 2019, and would be incorporated in line with the instructions upon full adoption of CECL by all institutions.

In addition, references to PCI in the FR Y–14A, Schedule A.7.c, would not be applicable for institutions that have adopted ASU 2016–13 and would be eliminated upon full adoption of ASU 2016–13 by all institutions, or as-of March 31, 2022, at the latest. Specifically, as-of December 31, 2019, the Board proposes to add a footnote to item 50, “Carrying Value of Purchased Credit Impaired Loans,” to indicate that institutions that have adopted ASU 2016–13 should report the carrying value of PCD loans in this item. Upon full adoption, the item caption and instructions would be updated. Because the net accretion of discount on loans is still necessary for modeling purposes, the Board proposes to add a footnote to item 51 indicating that institutions that have adopted ASU 2016–13 should

report the net accretion of discount on loans included in interest revenues on item 51. The caption would be updated and the footnote removed upon full adoption of CECL by all institutions.

FR Y–14A, Schedule F (Business Plan Changes)

The FR Y–14A, Schedule F (Business Plan Changes) mirrors the structure of the FR Y–14A, Schedule A (Summary) schedule. Therefore, reporting guidance related to the adoption of ASU 2016–13 provided for the FR Y–14A, Schedule A, applies to comparable items reported on the FR Y–14A, Schedule F. Certain items that are derived on the FR Y–14A, Schedule A may need to be reported on the FR Y–14A, Schedule F and would be listed in the instructions and technical documentation, as necessary.

Collection of Supplemental CECL Information

As indicated in the final CECL rule and as outlined in the effective date description above, institutions would first reflect proposed amendments related to the adoption of ASU 2016–13 in the 2020 stress test cycle. For institutions that adopt ASU 2016–13, the CECL methodology may be reflected in the projection horizon of the FR Y–14A reports as-of December 31. However, actual data reported as-of December 31 may not reflect the adoption of CECL. Reporting in this manner would not allow for comparability of data across the actual and projected data for the annual cycle used in producing Dodd-Frank Act Stress Tests (DFAST) results and for the CCAR qualitative review. Furthermore, the Board needs to be able to identify the effect and timing of the adoption of CECL and the associated transition provision. Therefore, the Board proposes to add items to be reported by institutions that adopt ASU 2016–13 to capture the timing and impact of CECL adoption as of December 31. Upon full CECL adoption, or with the reports as-of March 31, 2022, at the latest, these items would be deleted from the report. This would include items related to:

- The first quarter in which a firm expects to incorporate CECL;
- The impact of the CECL transition provision on certain regulatory capital components;
- The cumulative-effect adjustment for changes in the allowance for credit losses;
- Allowances for credit losses recognized upon the acquisition of PCD assets;
- Initial effect of CECL methodology on loans and leases and HTM debt securities;

- Total allowance for credit losses;
- Allowance for credit losses on loans and leases held for investment; and
- Allowance for credit losses on debt securities.

The reporting form and instructions would note that, unless otherwise specified, these items are to be completed only by holding companies that have adopted ASU 2016–13 in the stress test cycle year of adoption.

FR Y–14Q, Schedule B (Securities)

Under CECL, certain concepts will no longer apply, including but not limited to PCI, OTTI, ASC 310–10, and ASC 310–30. The Board proposes eliminating or replacing references to these concepts throughout the FR Y–14Q, Schedule B.1 (Securities—Main Schedule). As-of December 31, 2019, a footnote would be added to the general instructions for this schedule indicating that these concepts do not apply to institutions that have adopted ASU 2016–13. Upon full adoption of CECL by all institutions, the references would be eliminated or updated with CECL terminology.

Similarly, the instructions for book yield and purchase date on the FR Y–14Q, Schedule B.1, include references to OTTI and ASC Topics that do not apply to institutions that have adopted ASU 2016–13. As-of December 31, 2019, a footnote would be added to those two items indicating that institutions that have adopted ASU 2016–13 should report based on the new credit loss methodology and in accordance with ASC Topic 326. Upon full adoption of CECL by all institutions, the item definitions would be updated in accordance with the footnote and the footnotes would be eliminated.

To further address the elimination of the concept of OTTI by ASU 2016–13, the Board proposes to remove the “OTTI Taken” item from the FR Y–14Q, Schedule B upon full adoption of CECL by all institutions. As-of December 31, 2019, the report form and instructions for this field would include guidance stating that it is to be completed only by institutions that have not adopted ASU 2016–13.

Due to the expanded scope of credit losses under CECL, the Board proposes collecting additional information on the FR Y–14Q, Schedule B.1 from institutions that have adopted ASU 2016–13, to properly assess the allowance established and maintained on applicable securities. To facilitate the collection of these data, as-of December 31, 2019, the Board proposes adding two items to the FR Y–14Q, Schedule B.1 that would be filed by institutions that have adopted ASU 2016–13: (1) “Amount of Allowance for Credit

Losses” and (2) “Writeoffs.” A footnote would be added indicating that only institutions that have adopted ASU 2016–13 would report these items. The footnote would be removed upon full adoption of CECL by all institutions.

FR Y–14Q, Schedule D (Regulatory Capital Transitions)⁸

The FR Y–14Q, Schedule D (Regulatory Capital Transitions) reflects the revised regulatory capital and supplementary leverage ratio rules on a fully phased-in basis for the reporting quarter. In consideration of the final CECL rule, the Board proposes adding guidance to the General Instructions of the FR Y–14Q, Schedule D, to indicate that this schedule should not reflect any election of the CECL transition provision. Where applicable, institutions would continue to reference the methodology descriptions outlined within the FR Y–9C, Schedule HC–R (Regulatory Capital). However, the numbers would not necessarily tie to the FR Y–9C reports, given that the FR Y–14Q, Schedule D requires calculations on a fully phased-in basis.

Consistent with the final CECL rule, institutions that have adopted ASU 2016–13 would report adjusted allowances for credit losses instead of allowance for loan and lease losses in calculating regulatory capital. Therefore, as-of December 31, 2019, the Board proposes to add guidance in FR Y–14Q, Schedule D.4, indicating the reporting of adjusted allowances for credit losses by institutions that have adopted ASU 2016–13 in item 23, “RWA for purposes of calculating the allowance for loan and lease losses (ALLL) 1.25 percent threshold,” and item 38, “Excess allowance for loan and lease losses.” Upon full adoption of CECL by all institutions, the data item captions for both items would be updated to reflect adjusted allowance for credit loss methodology.

FR Y–14Q, Schedule G (PPNR)

The Board proposes changes to the FR Y–14Q, Schedule G (PPNR) that would mirror those outlined for the FR Y–14A, Schedule A.7 (Summary—PPNR), as applicable.

FR Y–14Q, Schedule H (Wholesale)

Since ASU 2016–13 supersedes ASC 310–30 and ASC 310–10, the Board proposes to revise Schedules H.1 and H.2 (Wholesale) to indicate that references and items related to ASC 310–30 and ASC 310–10 do not apply to institutions that have adopted ASU

2016–13, and to add items to accommodate reporting under ASU 2016–13. The changes are detailed below. The Board is proposing the changes to the FR Y–14Q, Schedules H.1 and H.2, with the intent that FR Y–9C and FR Y–14 reporting of the affected items by CECL and non-CECL filers align across the reports. The proposed revisions also aim to simplify the instructions for line items affected or eliminated by the change in credit loss methodology and to reduce necessary changes to the schedule over the CECL adoption period.

First, as-of December 31, 2019, the Board proposes updating the instructions for Committed Exposure Global (H.1, item 24, and H.2, item 5), Utilized Exposure Global (H.1, item 25), and Outstanding Balance (H.2, item 3) by eliminating references in the instructions to ASC 310–30 and ASC 310–10, and clarifying that all institutions should report these items consistent with the guidance in the FR Y–9C instructions, whether or not they have adopted ASU 2016–13.

Second, the existing items on Schedule H (Wholesale) that collect information on the reserve or adjustment applied to the credit facility according to ASC 310–10 (H.1, item 30 and H.2, item 46) or ASC 310–30 (H.1, item 31, and H.2, item 47) would no longer be filed by institutions that have adopted ASU 2016–13 given those impairment models are replaced by CECL. To accommodate reporting under ASU 2016–13, as-of December 31, 2019, the Board proposes adding two items to each of Schedule H.1 and H.2 for the reporting of applicable allowances for credit losses under ASC 326–20 (H.1, item 102, and H.2, item 63) and applicable purchased credit deteriorated noncredit discount (or premium) (H.1, item 103 and H.2, item 64). As-of December 31, 2019, guidance would also be added to the instructions for existing items 30 and 31 on Schedule H.1 and items 46 and 47 on Schedule H.2, indicating that these items would be reported as “0” by institutions that have adopted ASU 2016–13. The guidance would direct firms to report under the proposed new items (H.1, items 102 and 103, and H.2, items 63 and 64). Upon full adoption of ASU 2016–13 by all institutions, the Board proposes to eliminate all four items related to ASC 310–10 (H.1, item 30 and H.2, item 46) and ASU 310–30 (H.1, item 31 and H.2, item 47).

Third, to calculate the expected life of a loan, a field for current maturity date would be added to both the FR Y–14Q, Schedules H.1 and H.2 (items 104 and 65, respectively) as-of December 31,

⁸ Additional revisions to Schedule D are being proposed in a separate notice.

2019. Under ASU 2016–13, the maturity date used in calculating lifetime losses does not allow for the inclusion of extension options (extension options are currently included in the existing maturity date field). A footnote would indicate that only institutions that have adopted ASU 2016–13 would report this field.

Finally, consistent with the above changes, as-of December 31, 2019, the Board is proposing to simplify the instructions in the “Reporting Specifications” section of both Schedules H.1 and H.2 to indicate that institutions should report all loan and lease financing receivables consistent with the FR Y–9C instructions and to remove certain references to ASC 310–10 and ASC 310–30. For the remaining references to ASC 310–10 and ASC 310–30, a footnote would be added as-of December 31, 2019, indicating that institutions that have adopted ASU 2016–13 should report charge-offs, fair value adjustments, ASC 326–20 allowance for credit losses, and PCD noncredit discount (or premium) separately in the designated fields. Upon full adoption of CECL by all institutions, the remaining references to ASC 310–10, ASC 310–30, and Statement of Position (SOP) 03–3 would be eliminated or replaced with footnoted language and updated ASC references applicable under CECL.

FR Y–14Q, Schedule K (Supplemental)

Due to the elimination of PCI assets under ASU 2016–13, as-of December 31, 2019, the Board proposes adding a footnote to the FR Y–14Q, Schedule K (Supplemental) instructions and report form, indicating that institutions that have adopted ASU 2016–13 do not need to report information for Column C, “Cumulative Lifetime Purchase Impairments and Fair Value Adjustments.” The Board determined this information would no longer be needed following the implementation of CECL, and Column C would be eliminated upon full adoption by all institutions.

FR Y–14Q, Schedule M (Balances)

Currently, Schedule M.3, Unpaid Principal Balance of Retail Loans in Domestic Offices Held for Investment at Amortized Cost by Purchased Credit Impairment, collects the book value and unpaid principal balance (UPB) of all retail loans and leases held for investment at amortized cost (HFI at AC) in domestic offices by purchased credit impairment status. To capture comparable information under ASU 2016–13 and retain the ability to determine the book value and UPB of

loans by impairment status for modeling purposes, the Board proposes to modify Schedule M.3 to collect the book value and UPB of loans by purchased credit deterioration from institutions that have adopted ASU 2016–13.

As-of December 31, 2019, the Board proposes adding guidance to the instructions for Schedule M.3 indicating that institutions that have adopted ASU 2016–13 should report the book value of non-PCD loans in column A, the UPB of non-PCD loans in column B, the book value of PCD loans in column C and the UPB of PCD loans in column D. A similar footnote would be added to the report form.

In addition, to allow for reporting of cumulative interim loan losses (previously captured in items 7 and 8 of FR Y–14A, Schedule A.2.a) by institutions that have adopted ASU 2016–13, the Board proposes, as-of December 31, 2019, to require institutions that have adopted ASU 2016–13 to report the cumulative interim loan losses in a new item, “Cumulative Interim Loan Losses” in Schedule M.3, reported for each applicable mortgage type. This new item would be included in a new section of Schedule M.3 that would also include the Cumulative Interim Loan Losses—Non-PCI,” and “Cumulative Interim Loan Losses, PCI,” items that the Board is proposing to move from FR Y–14A, Schedule A.2.a.

Upon full adoption of CECL by all institutions, the existing guidance, schedule title, and column titles, would be updated to reflect PCD and non-PCD terminology and references to PCI would be eliminated.

FR Y–14M, Schedule A (First Lien), Schedule B (Home Equity), Schedule D (Credit Card)

Effective as-of December 31, 2019, unless otherwise indicated in the draft forms and instructions, the Board proposes adding guidance to the FR Y–14M data item captions and instructions for Schedules A (First Lien), B (Home Equity), and D (Credit Card) that reference the “provision for loan and lease losses” or the “allowance for loan and lease losses” to indicate that institutions that have adopted ASU 2016–13 should report the “provision for credit losses” and the “allowance for credit losses,” respectively. Upon full adoption of CECL by all institutions, the data item captions and instructions would be updated to reflect the CECL terminology. This update would result in modifications to the following items:

- Schedule A.1, item 96, “Troubled Debt Restructure Flag,” and Schedule A.1, item 119 “Loss/Write-down

Amount,” and Schedule A.2, item 3 “Loss/Write-down Amount”

- Schedule B.1, item 93 “Loss/Write-down Amount,” and Schedule B.2, item 3 “Loss/Write-down Amount”
- Schedule D.1, item 107 “Principal Charge-off Amount—Current Month,” Schedule D.2, item 9, “ALLL Managed Balance,” item 10 “ALLL Booked Balance,” item 18 “Booked Recoveries,” item 23 “Interest and Fees Charge-off/Reversal Amount,” item 26 “Loan Loss Provision Build,” item 35 “Interest Income,” and item 36 “Fee Income”

In addition, CECL introduces the concept of PCD financial assets, which replaces PCI assets under existing U.S. GAAP. To continue to differentiate PCD from non-PCD loans, references and items in the FR Y–14M to PCI or non-PCI would be modified to refer to PCD or non-PCD for institutions that have adopted ASU 2016–13.

Specifically, as-of December 31, 2019, the Board proposes adding guidance to the SOP 03–3 Status/Flag field (Schedule A.1, item 92; Schedule B.1, item 60; and Schedule D.1, item 14) indicating that institutions that have adopted ASU 2016–13 would report in this field whether loans are accounted for as purchased credit deteriorated. Upon full adoption, the existing PCI and SOP 03–3 terminology would be eliminated and the item captions would change to “Purchased Credit Deteriorated (PCD) Status”.

Currently, institutions segment portfolio level data in Schedules A (First Lien) and B (Home Equity) based on certain characteristics, including a segment for portfolio loans that are held for investment and purchased impaired. Consistent with other changes to the FR Y–14M report, as-of December 31, 2019, the Board proposes indicating in the FR Y–14M instructions that institutions that have adopted ASU 2016–13 should report PCD Loans in the existing “HFI Purchased Credit Impaired” segment. Upon full adoption, the name of the segment would be updated to “HFI Purchased Credit Deteriorated.” The allowable values for the corresponding Portfolio Segment ID field (Schedule A.2, item 1 and Schedule B.2, item 1) would contain the same guidance and, upon full adoption of ASU 2016–13, would be updated accordingly.

Finally, the Board proposes updating the instructions for Unpaid Principal Balance (Net) (item 95) on Schedule B.1, to indicate that references to PCI in the definition for this item do not apply to institutions that have adopted ASU 2016–13. The Board would remove these references in the definition upon full adoption.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y-14 reports pursuant to section 5 of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1844), and to require the U.S. intermediate holding companies of foreign banking organizations to file the FR Y-14 reports pursuant to section 5 of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106). The Board also has the authority to require BHCs and the U.S. IHCs of FBOs to file the FR Y-14 reports pursuant to section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(i)). The FR Y-14 reports are mandatory.

The information collected in these reports is collected as part of the Board's supervisory process, and therefore is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act ("FOIA") (5 U.S.C. 552(b)(8)). In addition, individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of FOIA if the data has not previously been publically disclosed and the release of the data would likely cause substantial harm to the competitive position of the respondent (5 U.S.C. 552(b)(4)). Determinations of confidentiality based on exemption 4 of FOIA would be made on a case-by-case basis.

Consultation outside the agency: There has been no consultation outside the agency.

Board of Governors of the Federal Reserve System, July 26, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019-16341 Filed 7-30-19; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Capital Assessments and Stress Testing Reports (FR Y-14A/Q/M; OMB No. 7100-0341). Please note that the Board is publishing a separate notice for comment focusing on incorporating the Current Expected Credit Loss (CECL) methodology into the FR Y-14A/Q/M reports.

DATES: Comments must be submitted on or before September 30, 2019.

ADDRESSES: You may submit comments, identified by FR Y-14A, FR Y-14Q, or FR Y-14M, by any of the following methods:

- **Agency Website:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- **Email:** regs.comments@federalreserve.gov. Include OMB number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons.

Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and

requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

- b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- c. Ways to enhance the quality, utility, and clarity of the information to be collected;

- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Capital Assessments and Stress Testing Reports.

Agency form number: FR Y-14A/Q/M.

OMB control number: 7100-0341.

Frequency: Annually, semi-annually, quarterly, and monthly.

Estimated number of respondents: 36.

Estimated average hours per response: FR Y-14A: 985 hours; FR Y-14Q: 1,920 hours; FR Y-14M: 1,086 hours; FR Y-14 On-going Automation Revisions: 480 hours; FR Y-14 Attestation On-going Audit and Review: 2,560 hours.

Estimated annual burden hours: FR Y-14A: 70,920 hours; FR Y-14Q: 276,480 hours; FR Y-14M: 443,088 hours; FR Y-14 On-going Automation Revisions: 17,280 hours; FR Y-14

Attestation On-going Audit and Review: 33,280 hours.

General description of report: These collections of information are applicable to top-tier bank holding companies with total consolidated assets of \$100 billion¹ or more and U.S. intermediate holding companies with \$50 billion or more in total consolidated assets that are subsidiaries of foreign banking organizations (FBOs).² This family of information collections is composed of the following three reports:

- The semi-annual FR Y-14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.

- The quarterly FR Y-14Q collects granular data on various asset classes, including loans, securities, trading assets, and PPNR for the reporting period.

- The monthly FR Y-14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y-14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual Comprehensive Capital

Analysis and Review (CCAR) exercise, which complements other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Respondent firms are currently required to complete and submit up to 18 filings each year: Two semi-annual FR Y-14A filings, four quarterly FR Y-14Q filings, and 12 monthly FR Y-14M filings. Compliance with the information collection is mandatory.

Proposed revisions: The Board proposes to implement a number of changes to schedules of the FR Y-14A, FR Y-14Q, and FR Y-14M reports. The proposed revisions consist of deleting or adding items, adding or expanding schedules or sub-schedules, and modifying or clarifying the instructions for existing data items, primarily on the FR Y-14Q and FR Y-14M reports. The Board is proposing most of these changes in an effort to reduce reporting burden for firms, clarify reporting instructions and requirements, address inconsistencies between the FR Y-14 reports and other regulatory reports, and to account for revised rules and accounting principles. A limited number of proposed revisions would modify the reporting requirements and add or expand sub-schedules to improve the availability and quality of data to enhance supervisory modeling and for use in the Dodd-Frank Act Stress Test (DFAST). The Board proposes to implement the revisions with the FR Y-14 reports as of September 30, 2019.

The Board is proposing most of the changes in an effort to bring the reports in alignment with current accounting standards, rules, and other regulatory reports. This includes modifications to existing items and the addition of items in conformance with:

- The Financial Accounting Standards Board's (FASB) Accounting Standards Update (ASU) 2016-01 (Recognition and Measurement of Financial Assets and Financial Liabilities);
- ASU 2017-12 (Targeted Improvements to Accounting for Hedging Activities);
- Revisions made to the Consolidated Financial Statements for Holding Companies (FR Y-9C);
- Changes to the regulatory capital rules;

- The Tax Cuts and Jobs Act (TCJA); and
- The new U.S. London Interbank Offered Rate (LIBOR) alternative.

Introducing these changes would resolve questions from filing firms regarding the expectations for FR Y-14 reporting in light of inconsistencies with updated standards, and would reduce confusion and reliance on workarounds.

Many of the proposed revisions are intended to reduce inconsistent reporting due to ambiguous, contradictory, or unclear instructions. The proposal would also incorporate editorial or technical edits.

The Board is proposing revisions in order to more accurately capture the data needed for running the stress tests and in support of DFAST and CCAR. This includes the proposed elimination of certain items from the FR Y-14M that are no longer needed because they are available from alternative data sources or are not necessary for stress tests, DFAST, or CCAR. Other proposed revisions, for example on FR Y-14Q, Schedule L (Counterparty), would modify the reporting requirements to collect more accurate, consistent, or comprehensive information. Similarly, the proposal would incorporate and formalize on the FR Y-14 several collections the Board currently collects from a limited number of firms directly in support of running the supervisory stress test. Given the ongoing use of these data in the supervisory stress test, the Board is proposing to collect them on the FR Y-14 reports on new or existing schedules in order to reduce operational challenges with data submission and processing and improve data quality.

Finally, the Board is proposing modifications to how burden estimates are displayed and seeks further comment on burden estimates.

Onboarding of New Firms

The Board proposes to expand and clarify the instructions regarding the onboarding requirements in each of the FR Y-14 reports. Based on the experience of firms that have met the FR Y-14 reporting threshold and went through the process of beginning to file, the Board has identified certain aspects of the current FR Y-14 onboarding instructions that could be interpreted in different ways. The proposal would add language to the general instructions for each of the FR Y-14A/Q/M reports to clarify the onboarding requirements for first-time filers.

First, the Board proposes adding a statement to the instructions for the FR Y-14A/Q/M to indicate that firms do

¹ On July 6, 2018, the Board issued a public statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act. See <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf>. The Board announced that it will not take action to require bank holding companies (BHCs) with greater than or equal to \$50 billion but less than \$100 billion in total consolidated assets to file the FR Y-14 reports.

² The Board has separately proposed to revise the respondent panel for the FR Y-14 reports in connection with the Board's proposed rule regarding Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies (the "Tailoring Proposal"). See 83 FR 61408 (November 29, 2018). Under the Tailoring Proposal, the respondent panel for the FR Y-14 reports would be BHCs with total consolidated assets of \$100 billion or more, U.S. intermediate holding companies of foreign banking organizations (IHCs) with total consolidated assets of \$50 billion or more that are subsidiaries of an FBO, and covered savings and loan holding companies (SLHCs) with \$100 billion or more in total consolidated assets. See 12 CFR 217.2 (defining "covered savings and loan holding company"). If the Tailoring Proposal is finalized before this proposal, the respondent panel for the FR Y-14 reports would be updated to reflect the respondent panel adopted in the Tailoring Proposal.

not need to begin filing the FR Y-14 reports until the reporting period after the end of the quarter in which they met the threshold, unless otherwise directed by the Board. For example, if a BHC crossed the \$100 billion threshold on July 25 of a given year, and met the threshold based on their FR Y-9C submission as of the end of the third quarter, the firm would be required to first report the FR Y-14Q and FR Y-14A reports as of December 31 of that year, and the FR Y-14M report as of December of that year.³

Second, the Board proposes to modify the current instructions in the FR Y-14Q and FR Y-14M pertaining to onboarding delays that extend the initial report due dates for new filers. The modification would clarify that these onboarding delays can be used only by firms that have not previously filed the FR Y-14 reports. The purpose of these onboarding delays is to provide applicable firms additional time to acquire, establish, and acclimate to the FR Y-14 reports submission process, systems, and requirements. A firm that has previously filed any portion of the FR Y-14 reports cannot use onboarding delays when the firm first meets the requirements to file a new schedule or component of the FR Y-14 reports.

Secured Overnight Financing Rate (SOFR)

LIBOR may cease as a benchmark in 2022, and a new standard, SOFR, began trading in the second quarter of 2018. To accommodate this change, the Board proposes updating the FR Y-14Q and FR Y-14M reports to capture this new index. Not adding this code would result in various types of indices mixed in the default code category or “other,” limiting possible uses of the data for supervisory purposes. The following updates to FR Y-14Q/M schedules would bring the FR Y-14 in line with industry used indices.

In the FR Y-14M, Schedules A (First Lien), B (Home Equity), and D (Credit Cards) the Board proposes adding codes to capture the new SOFR rates in the ARM Index field (Schedule A, Line item 32, and Schedule B, Line item 29), and Variable Rate Index field (Schedule D, Line item 77). The additional codes would include 1 month, 3 month, 6 month, 1 year, Unknown, and SOFR Other, similar to the structure of the existing LIBOR codes.

Similarly, in the FR Y-14Q, Schedule H, the Board proposes adding an option to the Interest Rate Index fields

(Schedule H.1, Line item 39, and Schedule H.2, Line item 28) for firms to report SOFR.

ASU 2016-01

In January 2016, the FASB issued ASU 2016-01, “Recognition and Measurement of Financial Assets and Financial Liabilities.” This ASU requires investments in equity securities to be measured at fair value, with changes in fair value recognized in net income. This effectively eliminates the concept of available-for-sale (AFS) equity securities, which are measured at fair value with changes in fair value generally recognized in other comprehensive income.

The Board proposes to revise the FR Y-14 report forms and instructions to account for the changes to U.S. generally accepted accounting principles (GAAP) set forth in ASU 2016-01. These changes are consistent with previous modifications to other regulatory reports that were made to allow for reporting under ASU 2016-01, in particular the FR Y-9C. The changes to the accounting for equity investments under ASU 2016-01 affect several existing data items in the FR Y-14A and FR Y-14Q, and result in the following proposed revisions:

- Addition of a line item to the FR Y-14A, Schedule A.1.a (Income Statement) to capture unrealized holdings gains (losses) on equity securities not held for trading as defined on the FR Y-9C, HI (Income Statement), Line item 8.b (Unrealized holding gains (losses) on equity securities not held for trading);

- Addition of a line item to the FR Y-14A, Schedule A.1.b (Balance Sheet) for equity securities with readily determinable fair values not held for trading to be reported as defined in the FR Y-9C, Schedule HC (Balance Sheet), Line item 2.c (Equity securities with readily determinable fair values not held for trading);

- Modification of Line item 2.b (Securities (excluding securitizations): Available-for-sale) on the FR Y-14A, Schedule A.1.c (Standardized RWA) to also include equity securities with readily determinable fair values not held for trading as defined in the FR Y-9C, Schedule HC-R (Regulatory Capital), Part II (Risk-Weighted Assets), Line item 2.b (Available-for-sale debt securities and equity securities with readily determinable fair values not held for trading);

- Modification of reporting for certain fields on all sub-schedules of the FR Y-14A, Schedule A.3 (AFS/(held-to-maturity (HTM) Securities) for equity securities;

- Clarification that in the average assets section of the FR Y-14A, Schedule A.7.b (PPNR Net Interest Income) and FR Y-14Q, Schedule G (PPNR), the average balance of these equity securities should be reported as Other Interest/Dividend Bearing Assets; and

- Modification of instructions for the FR Y-14Q, Schedule B (Securities) to clarify that firms must also report equity securities with readily determinable fair values under 2016-01 on this schedule.

Loans in U.S. Territories

On the FR Y-9C, loans in U.S. territories for categories reported by office are treated as international, but the instructions for reporting loans in U.S. territories on the FR Y-14 reports are inconsistent or unclear across schedules. The Board proposes the following changes to confirm the Board’s intent to align the FR Y-14 definition and reporting for loans in U.S. territories with the FR Y-9C. The Board proposes to revise the instructions for the FR Y-14A, sub-schedule A.7 (PPNR), FR Y-14Q, Schedule A (International Retail schedules), and FR Y-14Q, Schedule G to include loans in U.S. territories and associated revenues as international. On the FR Y-14A, sub-schedule A.7 and FR Y-14Q, Schedule G, the Board proposes to revise the definitions of ‘Domestic Revenue’ and ‘International Revenue,’ as well as to update references to Puerto Rican loan revenues throughout both schedules (loans in other U.S. territories are already reported as international on these schedules). On the FR Y-14Q, Schedule A, the Board proposes to remove the exception for loans in U.S. territories from the international loan-reporting requirement. Specifically, the portion of the FR Y-14Q, Schedule A instructions indicating that “international” is ‘not U.S. or U.S. territories and possessions’ would be removed from sub-schedules A.1 (International Auto), A.3 (International Credit Card), A.4 (International Home Equity), and A.5 (International First Lien Mortgage). Similarly, references to the reporting of loans in U.S. territories and possessions in retail sub-schedules for U.S. loans would be eliminated. The FR Y-14Q, Schedule A instructions would continue to reference the applicable FR Y-9C definitions. The impact of this change would clarify the treatment of Puerto Rican loans that have been reported inconsistently. These changes would result in firms reporting loans in U.S. territories and associated revenues on the FR Y-14A and FR Y-14Q as international.

³ Firms onboarding to the FR Y-14 reports submit their initial FR Y-14Q and FR Y-14M reports with delays outlined in the report instructions.

FR Y-14A, Schedule A (Summary)*Schedule A.1.b (Balance Sheet)*

The Board adopted several burden-reducing revisions to the FR Y-9C effective for the June 30, 2018 as of date.⁴ The burden-reducing revisions eliminated or combined various items throughout the report. The FR Y-14 series references FR Y-9C items where applicable to streamline the collections. In response to these FR Y-9C revisions, the Board proposes to update any applicable FR Y-9C references on the FR Y-14 reports so that they can remain in sync. In addition to updating referenced items, the only other proposed revision to the FR Y-14 reports in line with these FR Y-9C revisions is to combine existing FR Y-14A, Schedule A.1.b item 115, “Purchased Credit Card Relationships and Nonmortgage Servicing Rights” into existing item 116, “All Other Identifiable Intangible Assets.”

Schedule A.1.d (Capital)

In response to observed reporting by the firms and due to certain provisions in the TCJA, the Board proposes to clarify certain line items in the Y-14A Summary—Capital Schedule (Schedule A.1.d) under the TCJA. The TCJA eliminated net operating loss carrybacks. In order to properly quantify a firm’s tax expense, data need to be collected on current period taxes paid. Therefore, the Board proposes to rename Line item 109 “Potential net operating loss carrybacks” to “Taxes previously paid that the bank holding company could recover if the bank holding company’s temporary differences (both deductible and taxable) fully reverse at the report date.” The instructions for the item would state that firms should report the amount of taxes previously paid that the bank holding company could recover through loss carrybacks if the bank holding company’s temporary differences (both deductible and taxable) fully reverse at the report date.

In addition, the Board is proposing to modify the FR Y-14A, Schedule A.1.d to require the reporting of certain line items at a federal, state, and other jurisdictions level. Collecting these line items by three jurisdictions would allow the Board to project a firm’s tax expense, deferred tax assets, and valuation allowance using more granular data, which should lead to a more accurate projection of capital. The affected items would include “Taxes previously paid that the bank holding company could recover if the bank holding company’s temporary

differences (both deductible and taxable) fully reverse at the report date” (Line item 109); “Valuation allowances related to deferred tax assets that arise from net operating loss and tax credit carryforwards” (Line item 111); “Deferred tax assets arising from temporary differences, net of DTLs” (Line item 112); and “Valuation allowances related to DTAs arising from temporary differences” (Line item 113).

Finally, the instructions would be clarified to indicate where firms should include items associated with the global market shock DFAST component,⁵ including in their projections. This clarification would provide guidance on how firms should reflect the impact of the global market shock on items subject to adjustment or deduction from capital. Specifically, if a firm were to adjust its projection of an item to reflect the impact of the global market shock, the instructions will indicate that the firm must also report an adjusted starting value that reflects the global market shock.

Schedule A.2.a (Retail Balance and Loss Projections)

Currently, the balance line items for home equity loans reflect total outstanding balances, including both purchased credit-impaired (PCI) and non-PCI portfolios, while the loan loss items reflect losses only for non-PCI portfolios. Under the Current Expected Credit Loss (CECL) methodology, financial assets classified as PCI assets prior to the effective date of the new standard will be classified as purchased credit-deteriorated (PCD) assets. The definition of PCD in ASU 2016-13 is broader than that of PCI, and so the Board expects more balances would be classified as PCD under CECL than were classified as PCI under previous accounting rules. This makes it more important to accurately capture the value of PCD exposures as compared to item totals. Therefore, to allow for the ability to accurately assess a firm’s projections and to compare loss rates, the Board proposes to collect PCD balances and loan losses across the mortgage line items on the FR Y-14A, Schedule A.2.a (proposed Balances line items 1, 9, 17, 26, 27, 28, 35, and 43, and proposed Losses items 6, 14, 22, 32, 40, 48). These items would first be effective September 30, 2019, and there would be guidance on the form and instructions indicating that only firms

that have adopted ASU 2016-13 should report these items.⁶

Schedule A.4 (Trading)

Currently, the FR Y-14Q, Schedule A.4 (Summary—Trading) collects firm-wide trading profit and loss (P&L) results in high-level categories. These aggregated categories make it difficult to identify the underlying drivers of the P&L results. As a result, the Board has had to regularly follow up with firms regarding the decomposition of P&L results into more granular risk and product sub-components to inform the supervisory modeling process.

To make the data collection process operationally more efficient and allow for timely receipt of the granular information necessary to inform supervisory modeling, the Board proposes to expand the current FR Y-14A, Schedule A.4 to require firms to report risk and product level sub-component categories for P&L estimates. The Board also proposes that firms provide any additional detail regarding their trading P&L submission, including a description of items included in other categories within each asset class, as supporting documentation associated with FR Y-14A, Schedule A.4. Firms would submit the trading and credit valuation adjustment (CVA) hedges P&L breakdowns and associated supporting documentation on the same timeline as the current FR Y-14A, Schedule A.4 (data as of the market shock date for a given year are submitted on April 5).

The collection of this information on the FR Y-14 would formalize the previously ad-hoc and informal collection of the same data. The additional data the Board proposes to collect on this sub-schedule would support data quality assurance activities and would provide essential information regarding the drivers of reported P&L results.

Schedule A.7 (Pre-Provision Net Revenue (PPNR))

The Board proposes eliminating the deposit-funding threshold for the FR Y-14A, Schedule A.7 (PPNR), in particular the net interest income sub-schedule (A.7.b), which is currently optional for firms with deposits comprising less than 25 percent of total liabilities for any period reported in any of the four most recent FR Y-14Q reports. Currently, nearly all respondents are required to submit this schedule and the change would require net interest income submissions from all respondents. For

⁵ Firms with significant trading operations are required to include a global market shock component as part of the supervisory adverse and severely adverse scenarios.

⁶ Since the FR Y-14A is not filed as of September 30, 2019, firms would not report the proposed PCD items until December 31, 2019.

⁴ See 83 FR 36935 (July 31, 2018).

the reports as of June 30, 2016, the deposit funding threshold was eliminated from the FR Y-14Q, Schedule G (PPNR). This modification would create consistency across the FR Y-14A/Q, and collecting this information will enhance the comparability of assets and liabilities across BHCs and promote greater consistency in supervisory evaluations.

The Board has received questions regarding the appropriate place to report dividends on equity products on the FR Y-14 reports. Currently, dividend income on equity products associated with sales and trades is reported as either interest income in "Other [sales and trading net interest income]" (Item 5B) on the FR Y-14A, Schedule A.7.a and the FR Y-14Q, Schedule G.1 (PPNR Submission Worksheet), or as noninterest income in "Commissions and Fees" (Item 18B) on the FR Y-14A, Schedule A.7.a and the FR Y-14Q, Schedule G.1. However, the current instructions do not clarify as to when dividend income on equity products should be reported as interest income and when it should be reported as noninterest income. In addition, the Board believes it is more appropriate for dividend income on equity products to be reported as "Other [sales and trading net interest income]" in item 18C on the FR Y-14A, Schedule A.7.a and the FR Y-14Q, Schedule G.1, as opposed to being included in item 18B on both reports. Therefore, the Board proposes four revisions regarding dividend income on equity products.

First, the Board proposes to revise the instructions for item 5B on the FR Y-14A, Schedule A.7.a and the FR Y-14Q, Schedule G.1 to include dividend income on equity products with readily determinable fair values not held for trading. This treatment would be consistent with the treatment of dividend income on equity securities with readily determinable fair values not held for trading on the FR Y-9C. Second, the Board proposes to revise the instructions for item 18B on the FR Y-14A, Schedule A.7.a and the FR Y-14Q, Schedule G.1 to remove references to dividends on equity products. Third, the Board proposes to revise the instructions for item 18C on the FR Y-14A, Schedule A.7.a and the FR Y-14Q, Schedule G.1 to include dividend income on equity products held for trading. Finally, the Board proposes to streamline the instructions for Item 5B on both the FR Y-14A, Schedule A.7.a and the FR Y-14Q, Schedule G.1 by removing redundant language.

In regard to the supporting documentation requirements associated with the FR Y-14A, Schedule A.7,

outlined in section A.9 (PPNR) of the FR Y-14A, Appendix, the Board proposes adding additional specification surrounding the requirements for supporting information provided by IHCs. Specifically, the proposal would add instructions to the supporting documentation clarifying that IHCs with material transfer pricing or cost allocation items with related entities should report these revenues and expenses in the appropriate business-line category, rather than the "other" category. In addition, the proposal would request supporting documentation from IHCs that disaggregates the impact of transfer pricing and cost allocations on revenue and expense projections to allow the Board to understand the revenue impact of these arrangements. This information is not available from other sources and is important to understanding drivers of revenue, particularly with respect to IHCs.

FR Y-14A, Schedule B (Scenario)

In December 2017, the Board transitioned submission of FR Y-14A, Schedule B to extensible markup language (XML) format. As a result, some technical details in the general instructions for Schedule B regarding submissions were no longer applicable. Therefore, the Board proposes to update the general instructions of this schedule to accurately reflect the requirements associated with XML submissions.

FR Y-14A, Schedule E (Operational Risk)

In December 2016, the Board adopted a proposal that implemented two new sub-schedules to the FR Y-14A, Schedule E (Operational Risk), which collect information surrounding material operational risk and operational risk scenarios.⁷ Following the initial collection of these sub-schedules, the Board assessed the information received and observed inconsistencies in reporting. It appeared unclear to reporters, based on the existing instructions and column names, what should be reported in each sub-schedule and how that information should be reported. This resulted in the identification of potential refinements and clarifications to the schedule form and instructions.

The Board intends to collect substantively the same information on these sub-schedules, but proposes to rename and reorganize columns on the FR Y-14A, Schedules E.2 (Material Operational Risk Identification) and E.3 (Operational Risk Scenarios) to make it

clearer what is to be reported on these sub-schedules, and how. For example, in Schedule E.2, the columns titled Material Operational Risk and Risk Name would be combined and renamed "Material Operational Risk Name and Brief Description," and the Risk Segment column would be renamed "Business Line(s)/Firm-wide." In addition, the column for reporting methodology would be removed from Schedule E.3, and a column would be added on Schedule E.2 to capture the loss estimation methodology used to estimate the operational risk losses. Clarifying changes would also be made to certain column titles in Schedule E.3.

To enhance the instructions and clarify the intended reporting on these sub-schedules, the Board also proposes to add definitions to the instructions for Schedules E.2 and E.3. In line with these definitions, the Board proposes adding comparable text to the high-level explanation of each sub-schedule currently provided in the instructions. The Board also proposes to make formatting and other minor changes to the report form, as shown in the associated drafts. This includes adding sections, numbering the reported scenarios, and specifying that dollar values should be reported in millions.

FR Y-14Q, Schedule A (Retail)

The Board proposes adding a new category segment to the existing Original Commercially Available Credit Bureau Score or Equivalent field (Segment Variable 4) on the FR Y-14Q, Schedule A.2 (U.S. Auto). The addition of a category for "<=560" (Proposed code 00) would allow the Board to separately capture information regarding the deep subprime population to inform supervisory modeling. These loans are currently captured as part of the "<=620" segment (current code 01), which would be changed to ">560 and <=620". Although firms would need to update systems to reallocate the reported information to the new segment, the Board does not expect the reporting of any new or additional loans as a consequence of this change.

In addition, the Board proposes to add a segment-level summary variable to the FR Y-14Q, Schedules A.1-A.10 (Retail) to collect information on the weighted average life of loans. This field would reflect the current position, impact of new business activity, and impact of behavior assumptions based on the expected remaining life of the loan. The life of the loan is necessary for calculating losses under CECL and because the mix of loans on the retail sub-schedules would make calculating the weighted average life challenging.

⁷ See 81 FR 93917 (December 22, 2016).

FR Y-14Q, Schedule B (Securities)

In August 2017, FASB issued ASU 2017-12, "Targeted Improvements to Accounting for Hedging Activities." This ASU amended ASC 815, Derivatives and Hedging. The amendments changed the hedge accounting recognition and presentation requirements. To accommodate ASU 2017-12, the Board proposes to add a column to the securities hedge schedule (FR Y-14Q, Schedule B.2) to identify partial term hedges, if applicable, as allowed under the new hedge accounting standard (ASU 2017-12). The field, ASU 2017-12 Hedge Designations (proposed line item 15) would require firms to indicate if any of the ASU 2017-12 hedge designations allowed in conjunction with partial-term hedging election in ASC 815-20-25-12b(2)(ii) are applicable. Adding this field to the FR Y-14Q, Schedule B.2 (Securities 2) would allow the Board to identify relevant new hedge designations under ASU 2017-12 and track these hedges in addition to, and separately from, other types of hedges. In addition, the instructions for Line item 6, Type of Hedge, and Line item 9, Hedge Percentage, would be updated to reference the amendments in conjunction with partial-term hedging election allowed under ASU 2017-12. Finally, the Board proposes eliminating existing Line item 15, Ineffective Portion of Cumulative Gains and Losses, as the ineffective portion of cash flow hedges is no longer required to be reported separately under ASU 2017-12.

In addition, the Board is proposing other changes to the FR Y-14Q, Schedule B, including (1) adding a clause regarding acceptable use of CUSIP⁸ or CINS⁹ numbers for the Identifier Type and Value and (2) eliminating the requirement to report the sector in the Security description for corporate bonds.

FR Y-14Q, Schedule C (Regulatory Capital Instruments (RCI))

Currently, firms must make a one-time submission of all subordinated debt as of quarter end that includes all the information required in Schedule C.3, Regulatory Capital and Subordinated Debt Instruments Issuances During the Quarter, for each subordinated debt instrument outstanding as of quarter end. Firms must also report changes in subordinated debt positions in Schedules C.2, Repurchases/

Redemptions, and C.3. The current structure includes unused fields and complicates the collection process by requiring flows (issuances and redemptions) to obtain the stock at quarter end. The Board also receives questions as part of the FR Y-14 Question and Answer (Q&A) process¹⁰ seeking clarification on the intended reporting on these sub-schedules. The proposed changes would address those questions and remove several variables that are unnecessary in order to reduce reporting burden.

To improve the value of collected data, the Board proposes moving six items from Schedule C.3 to Schedule C.1, Regulatory Capital and Subordinated Debt Instruments as of Quarter End. These proposed Columns I through N on Schedule C.1 would apply to subordinated debt instruments and related interest rate hedges, as well as any new interest rate hedges associated with outstanding subordinated debt instruments.¹¹ The instructions for Schedule C.1 would subsequently indicate that firms should report the total interest rate hedges rather than individual swaps for their subordinated debt instruments as of the end of the most recent quarter to include new hedges issued during the quarter and described in Schedule C.3.

The Board also proposes revisions to: (1) Redefine Column JJ, Interest Rate Swap Payment Spread (bps) in Schedule C.3 to specify that firms should report the effective spread (which is currently unclear); (2) eliminate Column EE, Interest Rate Swap Issue Date, FF, Interest Rate Swap Maturity Date, and HH, Interest Rate Swap Fixed Payment Rate, from Schedule C.3, as they do not materially contribute to the stress tests; and (3) remove a sentence that indicated how to report duplicate records with the same CUSIP, as Schedule C.1 does not collect information on individual swaps.

FR Y-14Q, Schedule D (Regulatory Capital Transitions)

The capital rules contained transition provisions that phased in certain requirements over several years in order to allow sufficient time for

implementation. Effective January 1, 2018, the agencies adopted changes to the regulatory capital rules that extended the regulatory capital treatment applicable during 2017 for certain items for firms that are not subject to the capital rules' advanced approaches.¹² For all other firms, the transition provisions ended in 2018.

In response to the end of the transition provisions for non-advanced approaches firms, the Board is proposing to eliminate most sub-schedules and data items on the FR Y-14Q, Schedule D, as they are duplicative of reporting elsewhere now that the common equity tier 1 deductions are fully phased in. The proposed schedule would include a limited number of items that are not reported elsewhere, including, but not limited to, items related to:

- Significant and non-significant investments in the capital of unconsolidated financial institutions in the form of common stock;
- Mortgage servicing assets;
- Deferred tax assets due to temporary differences;
- Aggregate items subject to the 15 percent limit;¹³ and
- Other quarterly changes.

Additionally, the Board proposes to add four items relating to non-significant investments subject to a threshold deduction from common equity tier 1 (CET1) capital to the schedule:

- Aggregate amount of non-significant investments in the capital of unconsolidated financial institutions;
- Non-significant investments in the capital of unconsolidated financial institutions in the form of common stock;
- 10 percent threshold for non-significant investments;¹⁴ and

¹² See 82 FR 55309 (November 21, 2017).

¹³ Per the agencies' regulatory capital rules, the aggregate amount of the threshold items, that is significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs; mortgage servicing assets (MSAs), net of associated DTLs; and DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs must be deducted from a Board-regulated institution's common equity tier 1 capital, if the aggregate amount exceeds the 15 percent common equity tier 1 capital deduction threshold.

¹⁴ Per the agencies' regulatory capital rules, a Board-regulated institution must deduct its non-significant investments in the capital of unconsolidated financial institutions that, in the aggregate, exceed 10 percent of the sum of the Board-regulated institution's common equity tier 1 capital minus applicable deductions.

¹⁰ Non-confidential questions regarding the FR Y-14 reports submitted by FR Y-14 filing firms are responded to by the Board and published in a monthly Q&A report available on the Board's public website: www.federalreserve.gov/publications/y-14-qas.htm.

¹¹ Currently columns BB, carrying value, as of quarter end; CC, unamortized discounts/premiums, fees, and foreign exchange translation impacts as of quarter end; DD, fair value of swaps, as of quarter end; GG, notional amount of interest rate swap; KK, currency denomination of the instrument; and OO, Y-9C BHCK 4062 reconciliation on Schedule C.3.

⁸ A number assigned by The Committee on Uniform Securities Identification Procedures.

⁹ CUSIP International Numbering System.

- Amount to be deducted from common equity tier 1 due to 10 percent deduction threshold.¹⁵

These items are necessary to retain as they are not collected on the FR Y-9C report and are needed in order to calculate CET1 capital. In total, these changes would significantly reduce the burden associated with the schedule.

In addition, the Board proposes making conforming revisions to the general instructions of Schedule D in line with the aforementioned changes. In light of the modifications, the schedule would be renamed the “Regulatory Capital” schedule and would consist of a single schedule with no sub-schedules. Certain items on the remaining sub-schedule would be reported by firms (instead of derived by the Board) due to the elimination of items that were previously used to calculate the data value.

FR Y-14Q, Schedule F (Trading)

Currently, the Board collects additional information regarding fair value option (FVO) loan hedges from fewer than 10 FR Y-14 filing firms to support supervisory modeling during DFAST. The collection captures profit and loss sensitivity of transactions used to hedge loans for which companies have adopted fair value accounting, excluding forward contracts with federal agencies. The collected data are critical to the modeling process.

The Board proposes to formalize the collection of this information by creating a new submission type for the FR Y-14Q, Schedule F dedicated to FVO loan hedges that would be submitted by firms that are subject to the global market shock and are required to complete the trading schedule. The submission type would mirror the other submission types of the trading schedule, and firms would complete the submission type in the same manner as outlined in the FR Y-14Q, Schedule F instructions, unless otherwise indicated. Firms would report the data quarterly, as of the last day of each quarter. Collecting these data with a quarterly frequency would be consistent with the other trading submission types and would allow for trend analysis and performance monitoring throughout the year. Firms would be required to submit the data 47 calendar days after the calendar quarter-end for March, June, and September, and 52 calendar days after the calendar quarter-end for December.

To ensure that the Board is receiving the universe of material FVO loan hedge

exposures and that the transition to reporting this information on the FR Y-14 is clear and efficient, the following questions are included in this **Federal Register** Notice:

- Is there anything else that the Federal Reserve should consider in requiring firms to report FVO loan hedges on the FR Y-14Q Trading schedule, separately from trading book positions and CVA hedges?

- Should this requirement be limited to global market shock firms already required to submit the FR Y-14Q Trading form (as proposed), or should it also include other firms?

- If it includes other firms, should it be limited to firms with material exposure to FVO loans or FVO loan hedges?

- If a firm does not ordinarily submit the FR Y-14Q Trading schedule, but does have FVO loan hedges to report, are there appropriate simplifications to the reporting requirements of the Trading form that could be applied?

Through the FR Y-14 Q&A process, the Board has identified opportunities to define the intended scope of and clarify the method of reporting exposures on the FR Y-14Q, Schedule F. The revised instructions align with prior Board feedback to respondents, and would encourage consistent reporting across firms. With this objective, the Board proposes the following modifications to the forms and instructions:

- Adding a sentence to the General Instructions, Section A (Purpose of Schedule) to indicate that mandated investments should be excluded from Schedule F.

- Specifying that on the FR Y-14Q, Schedule F.18 (Corporate Credit-Advanced) and F.19 (Corporate Credit-Emerging Markets), firms must report tenor exposures based on the option maturity for index options.

- Revising the instructions for the FR Y-14Q, Schedule F.6 (Rates DV01) to clarify that agency mortgage-backed securities (MBS) exposures should be reported in the Swaps row of the Trading schedule, while agency debt should be reported in the Agency row.

- Describing the scope of sub-schedule F.24 (Private Equity) to include both fair value and non-fair value private equity (PE) investments. To distinguish these types of PE investments, the proposal would break this sub-schedule out into two sections, one for fair value and one for non-fair value PE investments.

- Revising the forms and instructions for sub-schedule F.24 and F.25 (Other Fair Value Assets) to reflect changes made to the Global Industry

Classification Standards (GICS) structure. Examples of these revisions include consolidating the various Real Estate industry groups into one group, as well as moving the Media industry group from the Consumer Discretionary sector to the new Communication Services sector.

FR Y-14Q, Schedule H (Wholesale)

Several FR Y-14 Q&As have highlighted inconsistent, unclear, and potentially burdensome language in the wholesale schedules. The Board proposes the following changes to Schedule H with the objective of remediating these issues and clarifying reporting for firms.

The Line of Business (LOB) field (Field Number (No.) 27 in Schedule H.1 and Field No. 22 in Schedule H.2) currently requires firms to report the “internal line of business that originated the credit facility using the institution’s own department descriptions.” Analysis of submitted data has shown that the LOB values change over time, making the value of the LOB at origination less valuable. To reduce burden of reporting in cases where the facility changes LOB or is acquired, the Board proposes updating the instructions to eliminate the “at origination” requirement.

The Board proposes modifying the maturity date field (Field No. 19 in Schedule H.1 and H.2) to eliminate the implied requirement to test compliance with the terms of the credit agreement each quarter. The current wholesale schedules (Schedules H.1 and H.2) permit the inclusion of extensions at the borrowers’ discretion in calculating the maturity date only “when such conditions are in compliance with the credit agreement,” which implies that firms must assess compliance quarterly. This is not consistent with business practice and causes unintended burden that would be reduced with this modification.

The Board is aware of an unintentional discrepancy between the definition of “country” on the FR Y-14Q Schedule H.1 (Corporate) and the definition of “domicile” on the FR Y-9C report. The general instructions for Schedule H.1 reference the FR Y-9C definition, but the instructions for Field No. 6, Country, are not consistent. The Board proposes modifying the definition of Field No. 6, Country, in Schedule H.1 to eliminate this discrepancy by referring to the FR Y-9C instructions.

In addition, the Board proposes adding two additional sub-schedules to the FR Y-14Q, Schedule H: Schedule H.3, Line of Business and Schedule H.4, Internal Risk Rating Scale. Schedule H.3 would collect (1) each firm’s universe of

¹⁵ This item would be derived from other items reported in this schedule.

LOB's as reported on schedules H.1 and H.2 and (2) a free text description of each LOB. Schedule H.4 would collect (1) each firm's universe of internal risk ratings as reported on Schedules H.1 and H.2 and (2) a free text description of each rating. The addition of Schedules H.3 and H.4 would allow for the mapping of each firm's ratings and LOB values to a consistent benchmark for use in modeling.

The current process for defining LOB and internal risk ratings is manual and facilitated through periodic communication with firms outside of the FR Y-14 report. The process has significant operational risk. Sub-schedules H.3 and H.4 would define sets of allowable values for the Line of Business and Internal Risk Rating fields in the H.1 and H.2 collections to improve quality control on the facility-level sub-schedules. Although the collection would add reporting burden, this would replace the burden of the current unstructured collection process. Introducing two new sub-schedules to collect this information would formalize the reporting process while also significantly improving data quality and consistency of reporting.

Finally, the Board proposes reconciling terminology related to reporting requirements for commitments and utilized (outstanding) balances for held-for-investment (HFI) and held-for-sale (HFS) loans reported under different accounting treatments across the H.1 and H.2 schedules to improve clarity, enhance reporting accuracy, and to align more closely with FR Y-9C Schedule HC-C, Loans and Lease Financing Receivables. In addition, the Board proposes to add four new fields that would replace two existing fields on Schedules H.1 and H.2. The wholesale schedules collect information on both HFI and HFS loans that are reported at fair value under a FVO. Measuring these exposures accurately is critical for supervisory modeling. However, due to conflicting descriptions, outdated language, and references to various applicable accounting references within Schedule H, the reported data for these fields are often unreliable. The Board also proposes adding fields for committed and utilized (outstanding) par value balance, and to replace the existing fair value adjustments fields (which would be eliminated) with new fair value balance fields on Schedules H.1 and H.2. The Board expects that these changes would improve the instructions and reporting structure to ultimately increase the quality of reported data for use in supervisory modeling. This would result in the following changes:

- Modification of the H.1 and H.2 schedule reporting specifications and the instructions for Committed Exposure Global (Field No. 24 in Schedule H.1 and Field No. 5 in Schedule H.2), Utilized Exposure Global (Field No. 25 in Schedule H.1), and Outstanding Balance (Field No. 3 in Schedule H.2).
- Elimination of the Fair Value Adjustment Committed Exposure (Field No. 84 on Schedule H.1 and Field No. 50 on Schedule H.2), and Fair Value Adjustment Drawn (Field No. 85 on Schedule H.1 and Field No. 51 on Schedule H.2).
- Addition of fields for Committed Exposure Global Par Value, Utilized Exposure Global (Outstanding Balance) Par Value, Committed Exposure Global Fair Value, and Utilized Exposure Global (Outstanding Balance) Fair Value to Schedule H.1 and H.2.

FR Y-14Q, Schedule I (Mortgage Servicing Rights, "MSR")

In an effort to reduce burden, the Board proposes to eliminate the FR Y-14Q, Schedule I. The ongoing collection of these data have shown that these data are only material for a limited number of firms.

FR Y-14Q, Schedule L (Counterparty)

The Board proposes several changes to the FR Y-14Q, Schedule L with the objective of increasing consistency across sub-schedules and submissions (stressed and unstressed) collecting counterparty exposures.

The Board proposes to change the scope and granularity of firms' reporting of CVA related data fields from the top 95 percent to all counterparties at the legal entity level on sub-schedules L.1(a-d), L.2, and L.3.¹⁶ This proposed change is twofold. First, to improve loss estimation, the reporting of CVA related data fields would be modified to include all counterparties, rather than the top 95 percent. The current approach of using only the top 95 percent of counterparties could miss material exposures from the remaining 5 percent. The change in reporting would allow for a more accurate assessment of stressed risks and determination of loss estimates. The reporting of all counterparties would also eliminate the need for the different breakdowns of data reported on schedules L.1.b through L.1.d and, if the changes are

implemented, these collections would be removed.

Second, the proposal would require firms to report non-sovereign and non-central counterparties on sub-schedule L.1.a-L.1.d at a counterparty legal entity level, rather than a consolidated parent level. This change would result in the elimination and addition of items to facilitate the collection of data at this level. Other existing items would be modified to include language in captions and definitions to specify at what level the information should be reported. There was previously a need to limit the reporting of counterparties on the FR Y-14Q, Schedule L to the consolidated parent level due to restrictions with the Excel submission method. However, this created inconsistency in the reporting granularity across counterparty types in that firms are required to report sovereign and central counterparties at the legal entity level and non-sovereign/central counterparties at the consolidated group/parent level. Now that the schedule is collected in XML, the Board has received feedback from some FR Y-14 filers requesting to report counterparty entity-level data on sub-schedule L.1.a-L.1.d (similar to how sovereign and central counterparties are currently being reported). The Board understands that doing so may streamline reporting from system infrastructure and could align reporting with a firm's internal practices for tracking counterparty exposures. From the Board's perspective, counterparty level and entity level data would provide additional granularity to ensure proper implementation of models using these data.

The Board also proposes requiring firms to report derivatives and fair valued securities financing transactions (SFTs) in CVA items in sub-schedules L.1 through L.4.¹⁷ This would clarify requirements regarding the range of products for estimating mark-to-market losses under the stressed scenario, which firms currently inconsistently report due to a lack of specificity in the FR Y-14Q instructions. The scope of schedules L.1-4 includes derivative trades, but does not explicitly include or exclude SFTs, leading some firms to report SFTs (fair valued, non-fair valued, or both) in the schedules. This clarification should result in consistent product capture and would ensure appropriate and comparable inputs across firms for supervisory modeling.

In August 2018, the Board proposed adding back an item to the FR Y-14Q,

¹⁶ Sub-schedules L.1.a through L.1.d.2 capture information regarding derivatives profile by counterparty and aggregate across all counterparties. Sub-schedule L.2 captures expected exposure profile by counterparty and sub-schedule L.3 captures credit quality by counterparty.

¹⁷ Sub-schedule L.4 captures aggregate and top CVA sensitivities.

Schedule L.5 to capture Total Stressed Net Current Exposure (Total Stressed Net CE).¹⁸ The proposal also clarified the intended ranking methodology for the stressed scenario. In line with this change, the Board proposes to add an item to collect Total Net CE from reporting firms in sub-schedule L.5 and to modify the ranking methodology for the unstressed scenario. The proposed changes would create consistency in the top 25 counterparty ranking methodologies between the stressed and unstressed scenarios. The change would also help subject matter experts understand and analyze key drivers of large counterparty default losses and would be responsive to questions regarding the appropriate reporting under the unstressed scenarios.

Finally, the Board has identified editorial and technical clarifications that would increase the use of consistent language and terminology and formatting across the counterparty instructions of Schedule L. The Board also proposes including language in the instructions that specifies how the FR Y-14Q submission should relate to the reported FR Y-14A data. In addition, the Board proposes consolidating certain counterparty identifier fields to make the collection of information surrounding these identifiers consistent across sub-schedules and to eliminate redundancy. The proposal would implement the clarifications as outlined in the draft instructions.

FR Y-14M, Schedule A (First Lien), Schedule B (Home Equity), Schedule D (Credit Card)

In regard to the FR Y-14M reports, the Board proposes to modify existing fields and to clarify the reporting instructions with the objective of improving clarity surrounding the intent of fields and to support more accurate and complete reporting. Many of the proposed clarifications are in response to questions and feedback received through the FR Y-14 Q&A process. As a result of the Board's effort to continually review the use and value of data items, the Board also proposes eliminating a number of fields across the FR Y-14M schedules. The proposed revisions are detailed below.

The Board proposes eliminating 16 fields from Schedule A (First Lien), seven fields from Schedule B (Home Equity), and four fields from Schedule D (Credit Cards). The Board proposes eliminating the fields in an effort to reduce the burden of reporting information that has been identified as redundant or of reduced value to data

end-users. Firms sparsely, inconsistently, or incorrectly report several of the fields. Specifically, the proposal would remove the following fields:

FR Y-14M, Schedule A.1 (First Lien, Loan Level)

- Item 26, Buy Down Flag
- Item 51, Servicer Advances
- Item 58, Scheduled Principal Balance Amount
- Item 76, Active Repayment Plan Flag
- Item 78, Repayment Plan Performance Status
- Item 79, "Home Affordable Refinance Program" Flag
- Item 80, HAMP Loan number
- Item 90, Property Valuation Method at Modification
- Item 107, Escrow Amount Before Modification
- Item 108, Escrow Amount After Modification
- Item 109, Alternative Home Liquidation Loss Mitigation Date
- Item 110, Alternative Home Retention Loss Mitigation Date
- Item 114, Escrow Amount at Origination
- Item 119, Loss/Write Down Amount
- Item 120, Loss/Write Down Date
- Item 123, Ever 90+ DPD in the Past 12 Months

FR Y-14M, Schedule B.1 (Home Equity, Loan Level):

- Item 35, ARM Periodic Pay Cap
- Item 36, ARM Periodic Pay Floor
- Item 56, Repayment Plan Performance Status
- Item 67, Repayment Plan Start Date
- Item 93, Loss/Write Down Amount
- Item 94, Loss/Write Down Date
- Item 97, Ever 90+ DPD in the past 12 months

FR Y-14M, Schedule D.1 (Credit Card, Loan Level):

- Item 35, Updated Borrower's Income
- Item 36, Updated Income Source
- Item 37, Date Refreshed Income Obtained
- Item 55, Interest Type in Current Month

While the Board has identified fields that are no longer necessary, certain new fields are proposed to provide similar information in clearer and more accurate ways. Specifically, the Board proposes adding two new fields, for Charge-Off Amount and Charge-off Date to the Home Equity schedule (Schedule B.1, proposed items 118 and 119). These fields would fill a gap in information available regarding non-performing loans and provide more accurate insight into a firm's expectation that an account is unlikely to repay. Given the volume

of Q&As and data issues evidenced in the reporting of the current loss/write down amount and date fields (proposed to be eliminated), the Board anticipates that the reporting of the two new charge-off fields would simplify reporting and improve data quality.

Two proposed modifications to the reporting instructions for existing fields would change the reporting requirements in order to achieve better data quality, reduce missing data, and reduce burden. First, the Board proposes updating the instructions for the FR Y-14M, Schedule A and Schedule B to indicate that in the case of involuntary terminations, loans should be reported for up to 24 months following termination, until the data in the four loss severity fields (Schedule A, Line Items 93 (Total Debt at Time of any Involuntary Termination), 94 (Net Recovery Amount), 95 (Credit Enhanced Amount), and 121 (Sales Price of Property), and Schedule B, Line Item 99 (Total Debt at Time of Any Involuntary Termination), Line Item 100 (Net Recovery Amount), and Line Item 101 (Sales Price on Property)) are available to report. If the data are available sooner, the firm would not have to continue reporting these loans in the following months. Firms have indicated that the recovery, total debt, sales price, and credit enhanced amount data collected in these fields are often not available until after a loan has been charged-off. Currently firms stop reporting involuntary terminated loans the month following the involuntary termination, resulting in firms reporting those fields as null or zero. The proposed change in reporting would provide additional time for firms to gather and report data in these fields.

Furthermore, the Board proposes limiting the reporting of the loss severity fields in Schedule B (Line Items 99, 100, and 101) to only first liens with the objective of reducing burden. The Board understands that it may be burdensome for firms to obtain and report this information for junior liens, particularly if they do not service the loan. Firms would report these fields as null for any junior liens.

Second, the Board proposes updating the general instructions for the FR Y-14M, Schedule D to indicate that firms (1) can discontinue reporting non-defaulted accounts after accounts are closed for inactivity or other reasons without a balance, and (2) should report recoveries for up to 24 months after the account's closure with a balance or charge-off, rather than the current 12-month window. The proposed change would extend the post-charge-off reporting window for closed accounts to

¹⁸ See 83 FR 39093 (August 8, 2018).

accommodate recoveries received past the one-year mark, and would eliminate the need to report accounts with no unpaid balance after the month of closure.

To align reporting requirements for recoveries and charge-offs across fields within the FR Y-14M Schedule D, the Board proposes clarifying the instructions for four portfolio level fields and two loan level fields. Specifically, the Board would clarify that Schedule D.1 (Credit Card, Loan level), Line item 107, Principal Charge-off Amount—current month, Schedule D.2 (Credit Card, Portfolio level) Line item 13, Managed Gross Charge-offs for the current month, and Line item 14, Booked Gross Charge-offs for the current month, should include all gross charge-offs, including those related to acquired impaired loans. Similarly, the instructions for Line item 63, Recovery Amount—Current month, on Schedule D.1 and Line items 17, Managed Recoveries, and 18, Booked Recoveries on Schedule D.2, would be clarified to note that these items include all recoveries, including those related to acquired impaired loans.

Finally, the Board proposes several clarifications to the FR Y-14M instructions that would incorporate typographical edits, clarify reporting, and align the instructions with or resolve Q&As. Editorial fixes and clarifications are outlined in the draft instructions and clarifications are as follows:

FR Y-14M, Schedule A.1 (First Lien, Loan Level)

- Line item 15, Credit Class: Confirm that the reported credit class should be reported as assessed at the time of loan origination and should not change over time.
- Line item 59, Principal and Interest Amount Current: Clarify that the scheduled principal and interest due from the borrower in the reporting month should also be reported for balloon loans that mature in the reporting month.
- Line item 65, Foreclosure Status: Clarify how firms should report the foreclosure status in the month in which the loan is liquidated.
- Line item 84, Step Modification Flag: Clarify the difference in reporting between a rate drop that is gradual (stepped) versus immediate, including to rates that are different from the contract rate.
- Line item 96, Troubled Debt Restructuring Flag: Note that firms should report this field as null for non-portfolio loans as this field only applies to portfolio loans.

FR Y-14M, Schedule B.1 (Home Equity, Loan Level)

- Line item 24, Credit Class: Confirm that the reported credit class should be reported as assessed at the time of loan origination and should not change over time.
- Line item 43, Principal and Interest Amount Current: Clarify that the scheduled principal and interest due from the borrower in the reporting month should also be reported for balloon loans that mature in the reporting month.

FR Y-14M, Schedule D.1 (Credit Card, Loan Level)

- Line item 5, State: Clarify that option A also includes U.S. Territories.
- Line item 7, Credit Card Type: Clarify that joint liability loans, which the instructions do not explicitly exclude or include, should be reported in Schedule D as corporate cards.¹⁹ Also clarify that if employers are ultimately responsible for the repayment of balances, and there is no individual liability and performance is not reported to a credit bureau, then balances should be reported in the FR Y-14Q, corporate loan schedule (Schedule H.1).
- Line items 17, Accounts Under Promotion, and 81, Promotional APR: Clarify that these fields include accounts under promotion with a positive promotional balance as reported in field 18, Cycle Ending Balances Mix—Promotional.
- Line item 28, Multiple Banking Relationship Flag: State that loans that the firm owns but does not service should be included in this field.
- Line item 31, Authorized Users: Note that the field should be left blank for closed and charged off accounts.
- Line item 39, Origination Credit Bureau Score for the co-borrower (if any): Indicate that firms should report the guarantor's credit score if there is no co-borrower or the credit score of the co-borrower is not available and there is a guarantor.
- Line item 47, Line Increase or Decrease Flag: Clarify that for accounts with both an increase and decrease in a reporting month, the flag should reflect the net change in credit limit.
- Line item 50, Next Payment Due Date: Clarify that if no payment is due, the field should be left blank.
- Line item 68, Account Sold Flag: Specify that the identifier should be reported starting from the sale announcement date.

¹⁹ This clarification also applies to Line Item 3 in the FR Y-14M, Schedule D.2 Credit Card, Portfolio Level.

- Line item 104, Workout Program Performance Status: Specify that the active and performing status should include accounts in a settlement program, where the borrower is fulfilling all obligations as agreed.

Burden Estimates

The Board proposes to roll up the burden estimates from the schedule level (Summary, RCI, PPNR, etc.) to the form level (FR Y-14A, FR Y-14Q, and FR Y-14M). Based on industry feedback, this seems to better represent how respondents itemize the burden associated with the FR Y-14. These proposed changes are used in the burden estimates earlier in this document. Displaying the burden in this way does not mean that, for example, 36 firms will be submitting all FR Y-14A or FR Y-14M schedules, or that the burden increase or decrease associated with proposed revisions would affect all 36 firms. Rather, it means that the Board estimates a maximum number of 36 firms will submit at least one FR Y-14A schedule. The rolled-up estimated average hours per response and annual burden hour figures are an average for each firm to complete the applicable form schedules. To ensure that the Board would still be providing sufficient information regarding FR Y-14 reporting burden, the following question is included in this **Federal Register Notice**:

- Is the existing, more granular breakout of FR-Y14 burden more informative than the proposed, rolled up breakout?

Based on outreach to industry as well as internal study, the Board is considering possible adjustments to the Board's estimate of the overall burden hours for the FR Y-14. At this time the Board is not proposing to adjust its estimate of the overall burden hours, but does here seek comment on the accuracy of the Board's burden estimates.

Legal Authorization and Confidentiality: Section 165 of the Dodd-Frank Act requires the Board to ensure that certain BHCs and nonbank financial companies supervised by the Board are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States. 12 U.S.C. 5365. Additionally, section 5 of the Bank Holding Company Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs. 12 U.S.C. 1844. These statutory provisions authorize the Board to collect this information. The obligation to respond is mandatory.

As the FR Y-14 reporting will be collected as part of the Board's supervisory process, such information may be accorded confidential treatment under Exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). In addition, commercial and financial information contained in these information collections may also be exempt from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), if disclosure would likely have the effect of (1) impairing the government's ability to obtain the necessary information in the future, or (2) causing substantial harm to the competitive position of the respondent. Such determinations will be made on a case-by-case basis.

Consultation outside the agency:
There has been no consultation outside the agency.

Board of Governors of the Federal Reserve System, July 26, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019-16340 Filed 7-30-19; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3377-PN]

Medicare and Medicaid Programs: Application From Accreditation Association of Hospitals/Health Systems—Healthcare Facilities Accreditation Program (AAHHS-HFAP) for Continued CMS-Approval of Its Critical Access Hospital (CAH) Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from Accreditation Association of Hospitals/Health Systems—Healthcare Facilities Accreditation Program for continued recognition as a national accrediting organization for critical access hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 30, 2019.

ADDRESSES: In commenting, refer to file code CMS-3377-PN. Because of staff and resource limitations, we cannot

accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3377-PN, P.O. Box 8016, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3377-PN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Mary Ellen Palowitch, (410) 786-4496.

Anita Moore, (410) 786-2161.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. Referencing the file code CMS-3377-PN and the specific "issue identifier" that precedes the section on which you choose to comment will assist us in fully considering issues and developing policies.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH) provided certain requirements are met by the CAH. Section 1861(mm)

of the Social Security Act (the Act), sets out definitions for "critical access hospital" and for inpatient and outpatient CAH services. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 485, subpart F specify the conditions that a CAH must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for CAHs.

Generally, to enter into an agreement, a CAH must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 485 of our regulations. Thereafter, the CAH is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative; however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide the Centers for Medicare and Medicaid Services (CMS) with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require an accrediting organization to reapply for continued approval of its accreditation program every 6 years or as determined by CMS. Accreditation Association of Hospitals/Health Systems—Healthcare Facilities Accreditation Programs (AAHHS-HFAP) current term of approval for its CAH accreditation program expires December 27, 2019.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at 42 CFR 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of AAHHS-HFAP's request for continued CMS approval of its CAH accreditation program. This notice also solicits public comment on whether AAHHS-HFAP's requirements meet or exceed the Medicare conditions of participation for CAHs.

III. Evaluation of Deeming Authority Request

AAHHS-HFAP submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its CAH accreditation program. This application was determined to be complete on May 31, 2019. Under Section 1865(a)(2) of the Act and our regulations at 42 CFR 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of AAHHS-HFAP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AAHHS-HFAP's standards for CAHs as compared with CMS' CAH conditions of participation.
- AAHHS-HFAP's survey process to determine the following:
 - ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
 - ++ The comparability of AAHHS-HFAP's processes to those of State agencies, including survey frequency,

and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ AAHHS-HFAP's processes and procedures for monitoring a CAH found out of compliance with AAHHS-HFAP's program requirements. These monitoring procedures are used only when AAHHS-HFAP identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys conducted by the State survey agency, the State survey agency monitors corrections as specified at 42 CFR 488.9.

++ AAHHS-HFAP's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ AAHHS-HFAP's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of AAHHS-HFAP's staff and other resources, and its financial viability.

++ AAHHS-HFAP's capacity to adequately fund required surveys.

++ AAHHS-HFAP's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ AAHHS-HFAP's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal**

Register announcing the result of our evaluation.

Dated: July 24, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019-16371 Filed 7-30-19; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-643 and CMS-10052]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 30, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax

Number: (202) 395–5806 OR, Email: OIRA_submission@omb.eop.gov.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT:

William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* Hospice Survey and Deficiencies Report Form and Supporting Regulations; *Use:* We use the information collected as the basis for certification decisions for hospices that wish to obtain or retain participation in the Medicare and Medicaid programs. The information is used by CMS regional offices, which have the delegated authority to certify Medicare facilities for participation, and by State Medicaid agencies, which have comparable authority under Medicaid. The information on the Hospice Survey and Deficiencies Report Form is coded for entry into the OSCAR system. The data is analyzed by the CMS regional offices and by the CMS central office components for program evaluation and

monitoring purposes. The information is also available to the public upon request. *Form Number:* CMS–643 (OMB control number: 0938–0379); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 4,801; *Total Annual Responses:* 1,600; *Total Annual Hours:* 1,600. (For policy questions regarding this collection contact Thomas Pryor at 410–786–1132.)

2. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Recognition of pass-through payment for additional (new) categories of devices under the Outpatient Prospective Payment System and Supporting Regulations; *Use:* Section 402 of the Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, made changes in the provision for transitional pass-through payment for devices under the hospital OPFS. Section 402 of BIPA amended section 1833(t)(6) of the Act to require that we abandon the item-specific approach in determining the eligibility of medical devices for transitional pass-through payments. This provision mandated that we adopt a category approach for making such payments. In accordance with this requirement, we would pay for any device that falls in categories we establish for this purpose. This provision required us to establish the initial set of categories, to include devices previously determined eligible for transitional pass-through payments, effective April 1, 2001.

The law made clear that application and approval processes are no longer required as the basis for determining an individual medical device's eligibility for transitional pass-through payments. However, we must assemble certain crucial information to be able to determine the appropriateness of establishing an additional (new) category. The information that we seek to collect is essential to determine whether additional categories of medical devices are appropriate for transitional pass-through payments. The intent of these provisions is to ensure that timely beneficiary access to new technologies is not jeopardized by inadequate payment levels.

Interested parties such as hospitals, device manufacturers, pharmaceutical companies, and physicians apply for transitional pass-through payment for certain items used with services covered in the outpatient PPS. After we receive all requested information, we evaluate the information to determine if the creation of an additional category of medical devices for transitional pass-

through payments is justified. We may request additional information related to the proposed new device category, as needed. We advise the applicant of our decision, and update the outpatient PPS during its next scheduled quarterly payment update cycle to reflect any newly approved device categories. *Form Number:* CMS–10052 (OMB control number 0938–0857); *Frequency:* Occasionally; *Affected Public:* State, Local, and Tribal Governments; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 160. (For policy questions regarding this collection contact AuSha Washington at 410–786–3736.)

Dated: July 25, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–16224 Filed 7–30–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3505]

Medical Device User Fee Rates for Fiscal Year 2020

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2020. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device User Fee Amendments of 2017 (MDUFA IV), authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. This notice establishes the fee rates for FY 2020, which apply from October 1, 2019, through September 30, 2020. To avoid delay in the review of your application, you should pay the application fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is recognized by the U.S. Treasury. If you want to pay a reduced small business fee, you must qualify as a small business before making your submission to FDA; if you do not qualify as a small business before making your submission to FDA, you will have to pay the higher standard fee.

Please note that the establishment registration fee is not eligible for a reduced small business fee. As a result, if the establishment registration fee is the only medical device user fee that you will pay in FY 2020, you should not submit a Small Business Certification Request. This document provides information on how the fees for FY 2020 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT:

For information on Medical Device User Fees: <https://www.fda.gov/industry/fda-user-fee-programs/medical-device-user-fee-amendments-mdufa>.

For questions relating to the MDUFA Small Business Program, please visit the Center for Devices and Radiological Health's website: <https://www.fda.gov/medical-devices/premarket-submissions/reduced-medical-device-user-fees-small-business-determination-sbd-program>.

For questions relating to this notice: David Haas, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 62041A, Beltsville, MD 20705, 240-402-9845.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the FD&C Act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, notices, and requests (for simplicity, this document refers to these collectively as

“submissions” or “applications”); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee (see 21 U.S.C. 379j(d) and (e)).

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2018 through FY 2022; the base fee for a premarket application received by FDA during FY 2020 is \$310,000. From this starting point, this document establishes FY 2020 fee rates for certain types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2018 through FY 2022; the base fee for an establishment registration in FY 2020 is \$4,760. There is no reduction in the registration fee for small businesses. Each establishment that is registered (or is required to register) with the Secretary of Health and Human Services under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Revenue Amount for FY 2020

The total revenue amount for FY 2020 is \$200,132,014, as set forth in the statute prior to the inflation adjustment (see 21 U.S.C. 379j(b)(3)). MDUFA directs FDA to use the yearly total revenue amount as a starting point to set the standard fee rates for each fee type. The fee calculations for FY 2020 are described in this document.

Inflation Adjustment

MDUFA specifies that the \$200,132,014 is to be adjusted for inflation increases for FY 2020 using two separate adjustments—one for payroll costs and one for non-payroll costs (see 21 U.S.C. 379j(c)(2)). The base inflation adjustment for FY 2020 is the sum of one plus the two separate adjustments and is compounded as specified in the statute (see 21 U.S.C. 379j(c)(2)(C) and 379j(c)(2)(B)).

The component of the inflation adjustment for payroll costs is the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by 0.60, or 60 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 1 summarizes the actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2020. The 3-year average is 3.1175 percent (rounded).

TABLE 1—FDA PC&Bs EACH YEAR AND PERCENT CHANGE

Fiscal year	2016	2017	2018	3-Year average
Total PC&B	\$2,414,728,159	\$2,581,551,000	\$2,690,678,000	.....
Total FTE	16,381	17,022	17,023	.....
PC&B per FTE	\$147,408	\$151,660	\$158,061	.....
Percent change from previous year	2.2474	2.8845	4.2206	3.1175

The payroll adjustment is 3.1175 percent multiplied by 60 percent, or 1.8705 percent. The statute specifies that the component of the inflation adjustment for non-payroll costs for FY 2020 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; Not Seasonally Adjusted; All Items; Annual Index) for the first 3 of the preceding 4 years of available data multiplied by 0.40, or 40 percent (see 21 U.S.C. 379j(c)(2)(C)). As a result of a geographical revision made by the

Bureau of Labor and Statistics in January 2018,¹ the “Washington-Baltimore, DC-MD-VA-WV” index was discontinued and replaced with two separate indices (i.e., “Washington-Arlington-Alexandria, DC-VA-MD-WV” and “Baltimore-Columbia-Towson, MD”). In order to continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data

¹ The Bureau of Labor Statistics' Announcement of the geographical revision can be viewed at <https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm>.

available, the Washington-Arlington-Alexandria index will be used in calculating the relevant adjustment factors for FY 2020 and subsequent years.

Table 2 provides the summary data and the 3-year average percent change in the specified CPI for the Washington-Arlington-Alexandria area. These data are published by the Bureau of Labor Statistics and can be found on their website under series Id CUURS35ASA0 at: <https://data.bls.gov/pdq/SurveyOutputServlet?>

data tool=dropmap&series
id=CUURS35ASA0, CUUSS35ASA0.

TABLE 2—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI

Fiscal year	2016	2017	2018	3-Year average
Annual CPI	253.422	256.221	261.445	.....
Annual Percent Change	1.1003	1.1045	2.0389	.....
3-Year Average Percent Change in CPI .....	.....	.....	.....	1.4146

The non-pay adjustment is 1.4146 percent multiplied by 40 percent, or 0.5658 percent. Next, the payroll adjustment (1.8705 percent or 0.018705) is added to the non-payroll adjustment (0.5658 percent or .005658), for a total of 2.4363 percent (or 0.024363). To complete the inflation adjustment, 1 (100 percent or 1.0) is added for a total base inflation adjustment of 1.024363 for FY 2020.

MDUFA IV provides for this inflation adjustment to be compounded for FY 2020 and each subsequent fiscal year (see 21 U.S.C. 379j(c)(2)(B)(ii)). To complete the compounded inflation adjustment for FY 2020, the FY 2019 compounded adjustment (1.073823) is multiplied by the FY 2020 base inflation adjustment (1.024363) to reach the applicable inflation adjustment of 1.099985 (rounded) for FY 2020. We then multiply the total revenue amount for FY 2020 (\$200,132,014) by 1.099985,

yielding an inflation adjusted total revenue amount of \$220,142,000 (rounded to the nearest thousand dollars).

III. Fees for FY 2020

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)).

A. Inflation Adjustment

MDUFA specifies that the base fees of \$310,000 (premarket application) and \$4,760 (establishment registration) are to be adjusted for FY 2020 using the same methodology as that for the total revenue inflation adjustment in section II (see 21 U.S.C. 379j(c)(2)(D)(i)). Multiplying the base fees by the compounded inflation adjustment of 1.099985 yields inflation adjusted base

fees of \$340,995 (premarket application) and \$5,236 (establishment registration).

B. Further Adjustments

After the applicable inflation adjustment to fees is done, FDA may increase, if necessary to achieve the inflation adjusted total revenue amount, the base fee amounts on a uniform proportionate basis (see 21 U.S.C. 379j(c)(2)(D)(ii)). If necessary after this adjustment, FDA may further increase the base establishment registration fees to generate the inflation adjusted total revenue amount (see 21 U.S.C. 379j(c)(3)).

C. Calculation of Fee Rates

Table 3 provides the last 3 years of fee-paying submission counts and the 3-year average. These numbers are used to project the fee-paying submission counts that FDA will receive in FY 2020.

TABLE 3—THREE-YEAR AVERAGE OF FEE-PAYING SUBMISSIONS

Application type	FY 2016 actual	FY 2017 actual	FY 2018 actual	3-Year average
Full Fee Applications	37	37	38	37
Small Business	10	6	7	8
Panel-Track Supplement	17	22	23	21
Small Business	1	2	5	3
De Novo Classification Request ¹ .....	.....	.....	27	27
Small Business ¹ .....	.....	.....	29	29
180-Day Supplements	115	167	133	138
Small Business	16	33	27	25
Real-Time Supplements	179	187	169	178
Small Business	27	19	34	27
510(k)s	2,583	2,969	2,122	2,558
Small Business	1,002	1,072	1,385	1,153
30-Day Notice	926	998	1,058	994
Small Business	76	78	98	84
513(g) (21 U.S.C. 360c(g)) Request for Classification Information	68	93	84	82
Small Business	46	41	33	40
Annual Fee for Periodic Reporting ²	586	618	624	609
Small Business ²	75	57	74	69
Establishment Registration	26,043	27,115	27,544	26,901

¹ Three-year average for De Novo is based on estimate for FY 2020.

² Includes collection of quarter 4 billing for FY 2018 during FY 2019.

The information in table 3 is necessary to estimate the amount of revenue that will be collected based on the fee amounts. Table 4 displays the FY 2020 base fees set in statute (column

one) and the inflation adjusted base fees (per calculations in section III.A.) (column two). Using the inflation adjusted fees and the 3-year averages of fee-paying submissions, collections are

projected to total \$221,603,174, which is \$1,461,174 higher than the inflation adjusted total revenue amount (in section II). The fees in column two are

those we are establishing in FY 2020, which are the standard fees.

TABLE 4—FEES NEEDED TO ACHIEVE NEW FY 2020 REVENUE TARGET

Application type	FY 2020 statutory fees (base fees)	FY 2020 inflation adjusted statutory base fees (standard fees)	3-Year average of fee-paying submissions	FY 2020 revenue from adjusted fees
Full Fee Applications	\$310,000	\$340,995	37	\$12,616,815
Small Business	77,500	85,249	8	681,992
Panel-Track Supplement	232,500	255,747	21	5,370,687
Small Business	58,125	63,937	3	191,811
De Novo Classification Request	93,000	102,299	27	2,762,073
Small Business	23,250	25,575	29	741,675
180-Day Supplements	46,500	51,149	138	7,058,562
Small Business	11,625	12,787	25	319,675
Real-Time Supplements	21,700	23,870	178	4,248,860
Small Business	5,425	5,968	27	161,136
510(k)s	10,540	11,594	2,558	29,657,452
Small Business	2,635	2,899	1,153	3,342,547
30-Day Notice	4,960	5,456	994	5,423,264
Small Business	2,480	2,728	84	229,152
513(g) Request for Classification Information	4,185	4,603	82	377,446
Small Business	2,093	2,302	40	92,080
Annual Fee for Periodic Reporting	10,850	11,935	609	7,268,415
Small Business	2,713	2,984	69	205,896
Establishment Registration	4,760	5,236	26,901	140,853,636
Total				221,603,174

The standard fee (adjusted base amount) for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is \$340,995 for FY 2020. The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 75 percent of the standard fee;
- For a de novo classification request, 30 percent of the standard fee;
- For a 180-day supplement, 15 percent of the standard fee;
- For a real-time supplement, 7 percent of the standard fee;

- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee;
- For a 510(k) premarket notification, 3.4 percent of the standard fee;
- For a 30-day notice, 1.6 percent of the standard fee; and
- For a 513(g) request for classification information, 1.35 percent of the standard fee.

For all submissions other than a 30-day notice and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission

(see 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C)). For a 30-day notice and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C)).

The annual fee for establishment registration, after adjustment, is set at \$5,236 for FY 2020. There is no small business rate for the annual establishment registration fee; all establishments pay the same fee.

Table 5 summarizes the FY 2020 rates for all medical device fees.

TABLE 5—MEDICAL DEVICE FEES FOR FY 2020

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2020 standard fee	FY 2020 small business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act, or a BLA submitted under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)).	Base fee specified in statute.	\$340,995	\$85,249
Premarket report (submitted under section 515(c)(2) of the FD&C Act)	100	340,995	85,249
Efficacy supplement (to an approved BLA under section 351 of the PHS Act)	100	340,995	85,249
Panel-track supplement	75	255,747	63,937
De novo classification request	30	102,299	25,575
180-day supplement	15	51,149	12,787
Real-time supplement	7	23,870	5,968
510(k) premarket notification submission	3.40	11,594	2,899
30-day notice	1.60	5,456	2,728
513(g) request for classification information	1.35	4,603	2,302
Annual Fee Type			
Annual fee for periodic reporting on a class III device	3.50	11,935	2,984

TABLE 5—MEDICAL DEVICE FEES FOR FY 2020—Continued

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2020 standard fee	FY 2020 small business fee
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(14)).	Base fee specified in statute.	5,236	5,236

IV. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business, including your affiliates, has gross receipts or sales of no more than \$100 million for the most recent tax year, you may qualify for reduced small business fees. If your business, including your affiliates, has gross sales or receipts of no more than \$30 million, you may also qualify for a waiver of the fee for your first premarket application (*i.e.*, PMA, PDP, or BLA) or premarket report. If you want to pay the small business fee rate for a submission or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business at least 60 days before you send your submission to FDA. FDA will review your information and determine whether you qualify as a small business eligible for the reduced fee and/or fee waiver. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2019, your status as a small business will expire at the close of business on September 30, 2019. You must re-qualify for FY 2020 in order to pay small business fees during FY 2020.

If you are a domestic (U.S.) business and wish to qualify as a small business for FY 2020, you must submit the following to FDA:

1. A completed MDUFA Small Business Certification Request For a Business Headquartered in the U.S. (Form FDA 3602). Form FDA 3602 is provided in the FDA Forms database: <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM573420.pdf>.

2. A signed certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2019, except:

If you submit your MDUFA Small Business Certification Request for FY 2020 before April 15, 2020, and you have not yet filed your return for 2019, you may use tax year 2018.

If you submit your MDUFA Small Business Certification Request for FY

2020 on or after April 15, 2020, and have not yet filed your 2019 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:
 - If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or
 - If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the business has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.

If you are a foreign business, and wish to qualify as a small business for FY 2020, you must submit the following:

1. A completed MDUFA Foreign Small Business Certification Request For a Business Headquartered Outside the United States (Form FDA 3602A). Form FDA 3602A is provided in the FDA Forms database: <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM573423.pdf>.

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S.

dollars, and the dates of the gross receipts or sales collected.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2019 or later), or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.

V. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is received by FDA between October 1, 2019, and September 30, 2020, you must pay the fee in effect for FY 2020. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2019 or FY 2020 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (*Note:* Do not send your user fee check to FDA with the application.)

A. Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log into the User Fee System at: https://userfees.fda.gov/OA_HTML/mdufmaCAcdLogin.jsp. Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2019. One choice is for applications and fees that will be received on or before September 30, 2019, which are subject to FY 2019 fee rates. A second choice is for applications and fees received on or after October 1, 2019, which are subject to FY 2020 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Electronically Transmit a Copy of the Printed Cover Sheet With the PIN

When you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Applicants are required to set up a user account and password to assure data security in the creation and electronic submission of cover sheets.

C. Submit Payment for the Completed Medical Device User Fee Cover Sheet

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize *Pay.gov*, a web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. Secure electronic payments can be submitted using the User Fees Payment Portal at <https://userfees.fda.gov/pay>. *Note:* Only full payments are accepted. No partial payments can be made online. Once you search for your invoice, select "Pay Now" to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

- All paper checks must be in U.S. currency from a U.S. bank and made

payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53-0196965.

- Please write your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) on your check.

- Mail the paper check and a copy of the completed cover sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197-9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact U.S. Bank at 314-418-4013. This telephone number is only for questions about courier delivery).

3. If paying with a wire transfer:

- Please include your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) in your wire transfer. Without the PIN, your payment may not be applied to your cover sheet and review of your application may be delayed.

- The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

FDA records the official application receipt date as the later of the following: (1) The date the application was received by the FDA Document Control Center for the reviewing Center or (2) the date the U.S. Treasury recognizes the payment. It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA.

D. Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to the address located at <https://www.fda.gov/cdrhsubmissionaddress>.

VI. Procedures for Paying the Annual Fee for Periodic Reporting

You will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file. You are responsible for ensuring FDA has your current billing information, and you may update your contact information for the PMA by submitting an amendment to the pending PMA or a supplement to the approved PMA.

1. The preferred payment method is online using electronic check (ACH also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at <https://userfees.fda.gov/pay> (*Note:* Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select "Pay Now" to be redirected to *Pay.gov*. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

The check must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53-0196965.

- Please write your invoice number on the check.

- Mail the paper check and a copy of the invoice to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197-9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

To send a check by a courier, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314-418-4013. This telephone number is only for questions about courier delivery).

3. When paying by a wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. If the payment amount is not applied, the invoice amount would be referred to collections. The originating financial

institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

VII. Procedures for Paying Annual Establishment Registration Fees

To pay the annual establishment registration fee, firms must access the Device Facility User Fee (DFUF) website at https://userfees.fda.gov/OA_HTML/furls.jsp. (FDA has verified the website address, but FDA is not responsible for any subsequent changes to the website address after this document publishes in the **Federal Register**.) Create a DFUF order and you will be issued a PIN when you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2020 until it has completed the steps below to register and pay any applicable fee (see 21 U.S.C. 379j(g)(2)).

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the user fee website listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee FY 2020 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. When you are satisfied that the information in the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Pay For Your DFUF Order

Unless paying by credit card, all payments must be in U.S. currency and drawn on a U.S. bank.

1. If paying by credit card or electronic check (ACH or eCheck):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. If paying with a paper check:

The check must be in U.S. currency and drawn on a U.S. bank, and mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197-9000. (Note: This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314-418-4013. This telephone number is only for questions about courier delivery.)

Please make sure that both of the following are written on your check: (1) The FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. Include a copy of your printed order when you mail your check.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment registration fees. To send a wire transfer, please read and comply with the following information:

Include your order's unique PIN (in the upper right-hand corner of your completed DFUF order) in your wire transfer. Without the PIN, your payment may not be applied to your facility and your registration may be delayed.

The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that you add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53-0196965.

C. Complete the Information Online To Update Your Establishment's Annual Registration for FY 2020, or To Register a New Establishment for FY 2020

Go to the Center for Devices and Radiological Health's website at <https://www.fda.gov/medical-devices/how-study-and-market-your-device/device-registration-and-listing> and click the "Access Electronic Registration" link on the left side of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the "Access Electronic Registration" link in the middle of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account, if your establishment did not create an account in FY 2019. Manufacturers of licensed biologics should register in the Biologics Establishment Registration (BER) system at <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-establishment-registration>.

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register and existing establishments will update their annual registration using choices on the DRLM menu. When you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: reglist@cdhr.fda.gov or call 301-796-7400 for assistance. (Note: This email address and this telephone number are for assistance with establishment registration only; they are not to be used for questions related to other aspects of medical device user fees.) Problems with the BER system should be directed to <https://www.accessdata.fda.gov/scripts/email/cber/bldregcontact.cfm> or call 240-402-8360.

D. Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

Dated: July 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-16270 Filed 7-30-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-N-0007]

Outsourcing Facility Fee Rates for Fiscal Year 2020

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2020 rates for the establishment and re-inspection fees related to entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities, as well as a re-inspection fee for each re-inspection of an outsourcing facility. This document establishes the FY 2020 rates for the small business establishment fee (\$5,599), the non-small business establishment fee (\$18,288), and the re-inspection fee (\$16,798) for outsourcing facilities; provides information on how the fees for FY 2020 were determined; and describes the payment procedures outsourcing facilities should follow. These fee rates are effective October 1, 2019, and will remain in effect through September 30, 2020.

FOR FURTHER INFORMATION CONTACT:

For more information on human drug compounding and outsourcing facility fees: Visit FDA's website at: <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm>.

For questions relating to this notice: Melissa Hurley, Office of Financial

Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61075, Beltsville, MD 20705-4304, 240-402-4585.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Quality and Security Act (DQSA) contains important provisions relating to the oversight of compounding human drugs. Title I of this law, the Compounding Quality Act, created a new section 503B in the FD&C Act (21 U.S.C. 353b). Under section 503B of the FD&C Act, a human drug compounder can become an "outsourcing facility."

Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that meet all of the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If the conditions of section 503B are met, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) concerning the labeling of drugs with adequate directions for use; (2) section 505 (21 U.S.C. 355) concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs); and (3) section 582 (21 U.S.C. 360eee-1) concerning drug supply chain security requirements. Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) concerning current good manufacturing practice requirements for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j-62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities: (1) An annual establishment fee from each outsourcing facility and (2) a re-inspection fee from each outsourcing facility subject to a re-inspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a

qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled "Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act." The guidance provides additional information on the annual fees for outsourcing facilities and adjustments required by law, re-inspection fees, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's website at: <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM391102.pdf>.

II. Fees for FY 2020

A. Methodology for Calculating FY 2020 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: One based on FDA's payroll costs and one based on FDA's non-payroll costs for the first 3 of the 4 previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first 3 of the 4 previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2020. The 3-year average is 3.1175 percent.

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2016	2017	2018	3-year average
Total PC&B	\$2,414,728,159	\$2,581,551,000	\$2,690,678,000	.....
Total FTE	16,381	17,022	17,023	.....
PC&B per FTE	\$147,408	\$151,660	\$158,061	.....
Percent change from previous year	2.2474%	2.8845%	4.2206%	3.1175%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 3.1175 percent should be multiplied by the proportion

of PC&B to total costs of an average FDA FTE for the same 3 fiscal years.

TABLE 2—FDA PC&Bs AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

Fiscal year	2016	2017	2018	3-year average
Total PC&B	\$2,414,728,159	\$2,581,551,000	\$2,690,678,000	.....
Total Costs	\$4,666,236,000	\$5,104,580,000	\$5,370,935,000	.....
PC&B Percent	51.7490%	50.5732%	50.0970%	50.8064%

The payroll adjustment is 3.1175 percent multiplied by 50.8064 percent, or 1.5839 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2020 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers

(U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FDA FTE for the same period.

Table 2 provides the summary data for the percent change in the specified

CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its website: <https://data.bls.gov/cgi-bin/surveymost?cu>. The data can be viewed by checking the box marked “U.S. All items, 1982–84=100—CUUR0000SA0” and then selecting “Retrieve Data.”

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

Year	2016	2017	2018	3-year average
Annual CPI	240.007	245.120	251.107	.....
Annual Percent Change	1.2615%	2.1304%	2.4425%	1.9448%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 1.9448 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same 3 fiscal years. The proportion of all non-PC&B costs to total costs of an average FDA FTE for FYs 2016 to 2018 is 49.1936 percent (100 percent – 50.8064 percent = 49.1936 percent). Therefore, the non-pay adjustment is 1.9448 percent times 49.1936 percent, or 0.9567 percent.

The PC&B component (1.5839 percent) is added to the non-PC&B component (0.9567 percent), for a total inflation adjustment of 2.5406 percent (rounded). Section 744K(c)(2)(A)(i) of the FD&C Act specifies that one is added to that figure, making the inflation adjustment 1.025406.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2020 (2.5406 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2019 (9.2148 percent), as published in the **Federal Register** of August 1, 2018 (83 FR 37500 at 37502). The result of this multiplication of the inflation factors for the 5 years since FY 2015 (1.025406×1.092148) becomes the inflation adjustment for FY 2020. For FY 2020, the inflation adjustment is 11.9895 percent (rounded). We then add one, making the FY 2020 inflation adjustment factor 1.119895.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation

adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2020, FDA must estimate: (1) The number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2020 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.*, if each entity that registers as an outsourcing facility for FY 2020 were to pay the inflation-adjusted fee amount of \$16,798).

With respect to (1), FDA estimates that 14 entities will qualify for small business exceptions and will pay the reduced fee for FY 2020. With respect to (2), to estimate the total number of entities that will register as outsourcing facilities for FY 2020, FDA used data

submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 85 outsourcing facilities, including 14 small businesses, will be registered with FDA in FY 2020.

If the projected 85 outsourcing facilities paid the full inflation-adjusted fee of \$16,798, this would result in total revenue of \$1,427,830 in FY 2020 ($\$16,798 \times 85$). However, 14 of the entities that are expected to register as outsourcing facilities for FY 2020 are projected to qualify for the small business exception and to pay one-third of the full fee ($\$5,599 \times 14$), totaling \$78,386 instead of paying the full fee ($\$16,798 \times 14$), which would total \$235,172. This would leave a potential shortfall of \$156,786 ($\$235,172 - \$78,386$).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. FDA has determined that it is appropriate to credit excess fees collected from the last completed fiscal year, due to the inability to conclusively determine the amount of excess fees from the fiscal year that is in progress at the time this calculation is made. This crediting is done by comparing the small business adjustment factor for the last completed fiscal year, FY 2018 (\$2,012), to what would have been the small business adjustment factor for FY

2018 (\$1,262) if FDA had estimated perfectly.

The calculation for what the small business adjustment would have been if FDA had estimated perfectly begins by determining the total target collections ($15,000 \times [\text{inflation adjustment factor}] \times [\text{number of registrants}]$). For the most recent complete fiscal year, FY 2018, this was \$1,223,068 ($\$16,093 \times 76$). The actual FY 2018 revenue from the 76 total registrants (*i.e.*, 68 registrants paying FY 2018 non-small business establishment fee and eight small business registrants) paying establishment fees is \$1,137,236. \$1,137,236 is calculated as follows: (FY 2018 Non-Small Business Establishment Fee adjusted for inflation only) \times (total number of registrants in FY 2018 paying Non-Small Business Establishment Fee) + (FY 2018 Small Business Establishment Fee) \times (total number of small business registrants in FY 2018 paying Small Business Establishment Fee). $\$16,093 \times 68 + \$5,364 \times 8 = \$1,137,236$. This left a shortfall of \$85,832 from the estimated total target collection amount

($\$1,223,068 - \$1,137,236$). \$85,832 divided by the total number of registrants in FY 2018 paying Standard Establishment Fee (68) equals \$1,262. The difference between the small business adjustment factor used in FY 2018 and the small business adjustment factor that would have been used had FDA estimated perfectly; is \$749 ($\$2,012 - \$1,262$). The \$749 (rounded to the nearest dollar) is then multiplied by the number of actual registrants who paid the standard fee for FY 2018 (68), which provides us a total excess collection of \$50,963 in FY 2018.

Therefore, to calculate the small business adjustment factor for FY 2020, FDA subtracts \$50,963 from the projected shortfall of \$156,786 for FY 2020 to arrive at the numerator for the small business adjustment amount, which equals \$105,823. This number divided by 71 (the number of expected non-small businesses for FY 2020) is the small business adjustment amount for FY 2020, which is \$1,490 (rounded to the nearest dollar).

B. FY 2020 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Re-Inspection Fee

1. Establishment Fee for Qualified Small Businesses¹

The amount of the establishment fee for a qualified small business is equal to

¹ To qualify for a small business reduction of the FY 2020 establishment fee, entities had to submit their exception requests by April 30, 2019. See

\$15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by three (see section 744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2020 is 1.119895. See section II.A.1 for the methodology used to calculate the FY 2020 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2020 is one third of \$16,798, which equals \$5,599 (rounded to the nearest dollar).

2. Establishment Fee for Non-Small Businesses

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business is equal to \$15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over- or under-collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2020 is 1.119895. The small business adjustment amount for FY 2020 is \$1,490. See section II.A.2 for the methodology used to calculate the small business adjustment factor for FY 2020. Therefore, the establishment fee for a non-small business for FY 2020 is \$15,000 multiplied by 1.119895 plus \$1,490, which equals \$18,288 (rounded to the nearest dollar).

3. Re-Inspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2020 re-inspection fee is equal to \$15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2020 is 1.119895. Therefore, the re-inspection fee for FY 2020 is \$15,000 multiplied by 1.119895, which equals \$16,798 (rounded to the nearest dollar). There is no reduction in this fee for small businesses.

C. Summary of FY 2020 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	\$5,599
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section 744K(c)(4)(B) of the FD&C Act. The time for requesting a small business exception for FY 2020 has now passed. An entity that wishes to request a small business exception for FY 2021 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's guidance for industry entitled "Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act," which can be accessed on FDA's website at <https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm391102.pdf>.

TABLE 4—OUTSOURCING FACILITY FEES—Continued

Non-Small Business Establishment Fee	18,288
Re-inspection Fee	16,798

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the email address indicated in the registration file, or via regular mail if email is not an option. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2019 and wish to maintain their status as an outsourcing facility in FY 2020 must register during the annual registration period that lasts from October 1, 2019, to December 31, 2019. Failure to register and complete payment by December 31, 2019, will result in a loss of status as an outsourcing facility on January 1, 2020. Entities should submit their registration information no later than December 10, 2019, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Re-Inspection Fee

FDA will issue invoices for each re-inspection after the conclusion of the re-inspection, via email to the email address indicated in the registration file or via regular mail if email is not an option. Invoices must be paid within 30 days.

C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American

Express). Secure electronic payments can be submitted using the User Fees Payment Portal at <https://userfees.fda.gov/pay>. (Note: Only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, click "Pay Now" to be redirected to [Pay.gov](https://pay.gov). Electronic payment options are based on the balance due. Payment by credit card is available for balances less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check: Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197-9000. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314-418-4013).

3. When paying by wire transfer, the invoice number must be included. Without the invoice number the payment may not be applied. Regarding re-inspection fees, if the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that the outsourcing facility add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53-0196965.

Dated: July 25, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-16253 Filed 7-30-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-1203]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 30, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0661. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements

OMB Control Number 0910-0661—Extension

Under section 520(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(m)), as amended by section 3052 of the 21st Century Cures Act (Cures Act) (Pub. L. 114-255), FDA is authorized to exempt a humanitarian

use device (HUD) from the effectiveness requirements in sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) is designed to treat or diagnose a disease or condition that affects not more than 8,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnose the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

HUDs approved under a humanitarian device exemption (HDE) cannot be sold for an amount that exceeds the costs of research and development, fabrication, and distribution of the device (*i.e.*, for profit), except in narrow circumstances. Under section 520(m)(6)(A)(i) of the FD&C Act, a HUD approved under an HDE is eligible to be sold for profit if the device meets the following criteria: The device is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in a pediatric subpopulation in which the disease or condition occurs; or the device is intended for the treatment or diagnosis of a disease or condition that does not occur in pediatric patients, or that occurs in pediatric patients in such numbers that the development of the device for such patients is impossible, highly impracticable, or unsafe.

Section 520(m)(6)(A)(ii) of the FD&C Act, provides that the Secretary of Health and Human Services will determine the annual distribution number (ADN) for devices that meet the eligibility criteria to be permitted to be sold for profit. The Cures Act amended the FD&C Act definition of the ADN as the number of devices reasonably needed to treat, diagnose, or cure a population of 8,000 individuals in the United States.

Section 520(m)(6)(A)(iii) of the FD&C Act provides that an HDE holder immediately notify the Agency if the number of such devices distributed during any calendar year exceeds the ADN. Section 520(m)(6)(C) of the FD&C Act provides that an HDE holder may petition to modify the ADN if additional information arises.

FDA is requesting the extension of OMB approval for the collection of information required under the statutory mandate of sections 515A (21 U.S.C. 360e-1) and 520(m) of the FD&C Act.

In the **Federal Register** of March 12, 2019 (84 FR 8874), FDA published a 60-day notice requesting public comment on the proposed collection of

information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity/section of FD&C Act, as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA) and the Cures Act	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pediatric Subpopulation and Patient Information—515A(a)(2) of the FD&C Act	1	1	1	100	100
Exemption from Profit Prohibition Information—520(m)(6)(A)(i) and (ii) of the FD&C Act	1	1	1	50	50
Request for Determination of Eligibility Criteria—613(b) of FDASIA	1	1	1	10	10
ADN Notification—520(m)(6)(A)(iii) of the FD&C Act	1	1	1	100	100
ADN Modification—520(m)(6)(C) of the FD&C Act	1	1	1	100	100
Total					360

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects a decrease in the number of responses and corresponding decrease of 1,010 hours in the total burden since our last OMB approval. We attribute this adjustment to a decrease in the number of submissions we received over the last few years.

Dated: July 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-16244 Filed 7-30-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-N-4319]

Agency Information Collection Activities; Proposed Collection; Comment Request; Unique Device Identification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in

response to the notice. This notice solicits comments on information collection associated with the Unique Device Identification System.

DATES: Submit either electronic or written comments on the collection of information by September 30, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 30, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 30, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that

identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2016-N-4319 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Unique Device Identification System.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your

comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRASaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Unique Device Identification System—21 CFR Parts 16, 801, 803, 806, 810, 814, 820, 821, 822, and 830

OMB Control Number 0910-0720—Extension

In accordance with the Unique Device Identification (UDI) system (see 21 CFR part 801, subpart B), medical device labelers, unless excepted, are required to design and use medical device labels and device packages that bear a UDI, present dates on labels in a particular format, and submit data concerning each version or model of a device to the Global Unique Device Identification Database (GUDID) no later than the date the label of the device must bear a UDI. Once a device becomes subject to UDI requirements, respondents will be required to update the information reported whenever the information changes.

The recordkeeping, reporting, and third-party disclosure requirements referenced in this document are imposed on any person who causes a label to be applied to a device, or who causes the label to be modified, with the intent that the device will be commercially distributed without any subsequent replacement or modification of the label. In most instances, the labeler would be the device manufacturer, but other types of labelers include a specification developer, a single-use device reprocessor, a convenience kit assembler, a private label distributor, a repackager, or a relabeler. Respondents may also include any private organization that applies for

accreditation by FDA as an issuing agency.

FDA has identified the following requirements as having burdens that must be accounted for under the PRA; the burdens associated with these requirements are summarized in the table that follows:

Section 801.18 requires that whenever a labeler of a medical device includes an expiration date, a date of manufacture, or any other date intended to be brought to the attention of the user of the device, the labeler must present the date on the label in a format that meets the requirements of this section.

Section 801.20 requires every medical device label and package to bear a UDI.

Under § 801.35, any labeler of a device that is not required to bear a UDI on its label may include a UDI on the label of that device and utilize the GUDID.

Under § 801.45, any device that has to be labeled with a UDI also has to bear a permanent marking providing the UDI on the device itself if the device is intended for more than one use and intended to be reprocessed before each use.

Section 801.50 requires stand-alone software to comply with specific labeling requirements that identify the software.

Section 801.55 authorizes additional, case-by-case, labeling exceptions and alternatives to standard UDI labeling requirements.

If a labeler relabels or modifies a label of a device that is required to bear a UDI, under § 830.60 it has to keep a record showing the relationship of the original device identifier to the new device identifier.

Section 830.110 requires an applicant seeking initial FDA accreditation as a UDI-issuing agency to furnish FDA an application containing certain information, materials, and supporting documentation.

Under § 830.120, an FDA-accredited issuing agency is required to disclose information concerning its system for the assignment of UDIs; maintain a list of labelers that use its system for the assignment of UDIs and provide FDA a copy of such list; and upon request, provide FDA with information concerning a labeler that is employing the issuing agency's system for assignment of UDIs.

Sections 830.310 and 830.320 require the labeler to provide certain information to the GUDID concerning the labeler and each version or model of a device required to be labeled with a UDI, unless the labeler obtains a waiver.

Section 830.360 requires each labeler to retain records showing all UDIs used

to identify devices that must be labeled with a UDI and the particular version or model associated with each device identifier, until 3 years after it ceases to market a version or model of a device.

Respondents who are required to submit data to the Agency under certain other approved information collections (listed below) are required to include UDI data elements for the device that is the subject of such information collection. Addition of the UDI data

elements is included in this burden estimate for the conforming amendments in the following 21 CFR parts:

Part 803—Medical Device Reporting (OMB control number 0910–0437),

Part 806—Medical Devices; Reports of Corrections and Removals (OMB control number 0910–0359),

Part 814—Premarket Approval of Medical Devices (OMB control number 0910–0231),

Part 820—Quality System Regulation (OMB control number 0910–0073),

Part 821—Medical Device Tracking Requirements (OMB control number 0910–0442), and

Part 822—Postmarket Surveillance (OMB control number 0910–0449).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL BURDEN

	Number of respondents ¹	Number of responses per respondent ²	Total annual responses ³	Average burden per response ⁴	Total hours ⁵	Total capital costs and operating and maintenance costs
Reporting	6,199	51	316,149	0.023 (1 minute)	7,289	\$425,000
Recordkeeping	5,987	51	305,337	0.989 (59 minutes)	302,121	14,733,333
Third-Party Disclosure	5,987	51	305,337	0.885 (53 minutes)	270,143	13,033,333

¹ Maximum number of respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.

² Maximum number of responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer responses.

³ Maximum total annual responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.

⁴ Rounded to three decimals. Total hours reflects a more precise, non-rounded average burden per response. An approximate (non-rounded) conversion to minutes is shown in parentheses.

⁵ Total hours is based on a more precise burden per response than the rounded value show in this table.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: July 24, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–16269 Filed 7–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2544]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Current Good Manufacturing Practice Quality System Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements related to the medical devices current good manufacturing practice (CGMP) quality system (QS) regulation (CGMP/QS regulation).

DATES: Submit either electronic or written comments on the collection of information by September 30, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 30, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 30, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for

information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2016–N–2544 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Current Good Manufacturing Practice Quality System Regulation.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:
Amber Sanford, Office of Operations,

Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Current Good Manufacturing Practice Quality System Regulation—21 CFR Part 820

OMB Control Number 0910–0073—Extension

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a device, but not including an evaluation of the safety and effectiveness of a device), packing,

storage, and installation of a device conform to CGMP, as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the FD&C Act.

The CGMP/QS regulation implementing authority provided by this statutory provision is found under part 820 (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. The authority for this regulation is covered under sections 501, 502, 510, 513, 514, 515, 518, 519, 520, 522, 701, 704, 801, and 803 of the FD&C Act (21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, and 383). The CGMP/QS regulation includes requirements for purchasing and service controls, clarifies recordkeeping requirements for device failure and complaint investigations, clarifies requirements for verifying/validating production processes and process or product changes, and clarifies requirements for product acceptance activities quality data evaluations and corrections of nonconforming product/quality problems.

Requirements are compatible with specifications in the international standards “ISO 9001: Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing.” The CGMP/QS information collections will assist FDA inspections of manufacturers for compliance with QS requirements encompassing design, production, installation, and servicing processes.

Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review the following topics: (1) The quality policy, (2) the organizational structure, (3) the quality plan, and (4) the quality system procedures of the organization. Section 820.22 requires the conduct and documentation of QS audits and readouts. Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j) requires, in respective order, the establishment, maintenance, and/or documentation of the following topics: (1) Procedures to control design of class III and class II devices and certain class I devices as listed therein; (2) plans for design and development activities and updates; (3) procedures identifying, documenting, and approving design input requirements; (4) procedures defining design output, including

acceptance criteria, and documentation of approved records; (5) procedures for formal review of design results and documentation of results in the design history file (DHF); (6) procedures for verifying device design and documentation of results and approvals in the DHF; (7) procedures for validating device design, including documentation of results in the DHF; (8) procedures for translating device design into production specifications; (9) procedures for documenting, verifying, and validating approved design changes before implementation of changes; and (10) the records and references constituting the DHF for each type of device.

Section 820.40 requires manufacturers to establish and maintain procedures controlling approval and distribution of required documents and document changes. Section 820.40(a) and (b) requires the establishment and maintenance of procedures for the review, approval, issuance, and documentation of required records (documents) and changes to those records.

Section 820.50(a) and (b) requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers, and purchasing data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a) through (e), (g)(1) through (3), (h), and (i) requires the establishment, maintenance, and/or documentation of the following topics: (1) Process control procedures; (2) procedures for verifying or validating changes to specification, method, process, or procedure; (3) procedures to control environmental conditions and inspection result records; (4) requirements for personnel hygiene; (5) procedures for preventing contamination of equipment and products; (6) equipment adjustment, cleaning, and maintenance schedules; (7) equipment inspection records; (8) equipment tolerance postings, procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and (9) validation protocols and validation records for computer software and software changes.

Sections 820.72(a), (b)(1) and (2), and 820.75(a) through (c) require,

respectively, the establishment, maintenance, and/or documentation of the following topics: (1) Equipment calibration and inspection procedures; (2) national, international, or in-house calibration standards; (3) records that identify calibrated equipment and next calibration dates; (4) validation procedures and validation results for processes not verifiable by inspections and tests; (5) procedures for keeping validated processes within specified limits; (6) records for monitoring and controlling validated processes; and (7) records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80(a) through (e) and 820.86, respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for incoming acceptance by inspection, test, or other verification; (2) procedures for ensuring that in-process products meet specified requirements and the control of product until inspection and tests are completed; (3) procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests, or other verifications; (4) procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master record (DMR) activities are completed; (5) records in the device history record (DHR) showing acceptance dates, results, and equipment used; and (6) the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90(a), (b)(1) and (2), and 820.100 require, respectively, the establishment, maintenance and/or documentation of the following topics: (1) Procedures for identifying, recording, evaluating, and disposing of nonconforming product; (2) procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; (3) procedures for reworking products, evaluating possible adverse rework effect and recording results in the DHR; (4) procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes, and results; and (5) records for all corrective and preventive action activities.

Section 820.100(a)(1) through (7) states that procedures and requirements shall be established and maintained for corrective/preventive actions, including the following: (1) Analysis of data from process, work, quality, servicing records, investigation of nonconformance causes; (2)

identification of corrections and their effectiveness; (3) recording of changes made; and (4) appropriate distribution and managerial review of corrective and preventive action information. Section 820.120 states that manufacturers shall establish/maintain procedures to control labeling storage/application, examination/release for storage and use, and to document those procedures.

Sections 820.120(b) and (d), 820.130, 820.140, 820.150(a) and (b), 820.160(a) and (b), and 820.170(a) and (b), respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for controlling and recording the storage, examination, release, and use of labeling; (2) the filing of labels/labeling used in the DHR; (3) procedures for controlling product storage areas and receipt/dispatch authorizations; (4) procedures controlling the release of products for distribution; (5) distribution records that identify consignee, product, date, and control numbers; and (6) instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c), 820.181(a) through (e), 820.184(a) through (f), and 820.186 require, respectively, the maintenance of records that are: (1) Retained at prescribed site(s), made readily available and accessible to FDA, and retained for the device's life expectancy or for 2 years; (2) contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; (3) contained in a DHR and demonstrate the manufacture of each unit, lot, or batch of product in conformance with DMR and regulatory requirements include manufacturing and distribution dates, quantities, acceptance documents, labels and labeling, and control numbers; and (4) contained in a quality system record, consisting of references, documents, procedures, and activities not specific to particular devices.

Sections 820.198(a) through (g) and 820.200(a) through (d), respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Complaint files and procedures for receiving, reviewing, and evaluating complaints; (2) complaint investigation records identifying the device, complainant, and relationship of the device to the incident; (3) complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; (4) procedures for performing and verifying that device servicing requirements are met and that service

reports involving complaints are processed as complaints; and (5) service reports that record the device, service activity, and test and inspection data.

Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, which are written and based on valid statistical rationale; and procedures for ensuring adequate sampling methods.

The CGMP/QS regulation added design and purchasing controls, modified previous critical device requirements, revised previous validation and other requirements, and harmonized device CGMP requirements with QS specifications in the international standard “ISO 9001: Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing.” The rule does not apply to manufacturers of components or parts of finished devices, or to manufacturers of human blood and blood components

subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements apply only to class I devices listed in § 820.30(a)(2) of the regulation. The rule imposes burden upon: (1) Finished device manufacturer firms, which are subject to all recordkeeping requirements; (2) finished device contract manufacturers, specification developers; and (3) repacker, re-labelers, and contract sterilizer firms, which are subject only to requirements applicable to their activities. In addition, remanufacturers of hospital single-use devices are now considered to have the same requirements as manufacturers in regard to the regulation.

The establishment, maintenance, and/or documentation of procedures, records, and data required by the regulation assists FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective, and suitable

for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries.

The CGMP/QS regulation applies to approximately 27,074 respondents. This estimate is based on a query of the Agency’s registration and listing database. Respondents to this information collection have no reporting activities, but must make required records available for review or copying during FDA inspection. Except for manufacturers, not every type of firm is subject to every CGMP/QS requirement. For example, all are subject to Quality Policy (§ 820.20(a)), Document Control (§ 820.40), and other requirements, whereas only manufacturers and specification developers are subject to subpart C, Design Controls. The PRA burden placed on the 27,074 establishments is an average burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Quality policy—820.20(a)	27,074	1	27,074	7	189,518
Organization—820.20(b)	27,074	1	27,074	4	108,296
Management review—820.20(c)	27,074	1	27,074	6	162,444
Quality planning—820.20(d)	27,074	1	27,074	10	270,740
Quality system procedures—820.20(e)	27,074	1	27,074	10	270,740
Quality audit—820.22	27,074	1	27,074	33	893,442
Training—820.25(b)	27,074	1	27,074	13	351,962
Design procedures—820.30(a)(1)	27,074	1	27,074	2	54,148
Design and development planning—820.30(b)	27,074	1	27,074	6	162,444
Design input—820.30(c)	27,074	1	27,074	2	54,148
Design output—820.30(d)	27,074	1	27,074	2	54,148
Design review—820.30(e)	27,074	1	27,074	23	622,702
Design verification—820.30(f)	27,074	1	27,074	37	1,001,738
Design validation—820.30(g)	27,074	1	27,074	37	1,001,738
Design transfer—820.30(h)	27,074	1	27,074	3	81,222
Design changes—820.30(i)	27,074	1	27,074	17	460,258
Design history file—820.30(j)	27,074	1	27,074	3	81,222
Document controls—820.40	27,074	1	27,074	9	243,666
Documentation approval and distribution and document changes—820.40(a) and (b)	27,074	1	27,074	2	54,148
Purchasing controls—820.50(a)	27,074	1	27,074	22	595,628
Purchasing data—820.50(b)	27,074	1	27,074	6	162,444
Identification—820.60	27,074	1	27,074	1	27,074
Traceability—820.65	27,074	1	27,074	1	27,074
Production and process controls—820.70(a)	27,074	1	27,074	2	54,148
Production and process changes and environmental control—820.70(b) and (c)	27,074	1	27,074	2	54,148
Personnel—820.70(d)	27,074	1	27,074	3	81,222
Contamination control—820.70(e)	27,074	1	27,074	2	54,148
Equipment maintenance schedule, inspection, and adjustment—820.70(g)(1)–(3)	27,074	1	27,074	1	27,074
Manufacturing material—820.70(h)	27,074	1	27,074	2	54,148
Automated processes—820.70(i)	27,074	1	27,074	8	216,592
Control of inspection, measuring, and test equipment—820.72(a)	27,074	1	27,074	5	135,370
Calibration procedures, standards, and records—820.72(b)(1)–(2)	27,074	1	27,074	1	27,074
Process validation—820.75(a)	27,074	1	27,074	3	81,222

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹—Continued

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Validated process parameters, monitoring, control methods, and data—820.75(b)	27,074	1	27,074	1	27,074
Revalidation—820.75(c)	27,074	1	27,074	1	27,074
Acceptance activities—820.80(a)–(e)	27,074	1	27,074	5	135,370
Acceptance status—820.86	27,074	1	27,074	1	27,074
Control of nonconforming product—820.90(a)	27,074	1	27,074	5	135,370
Nonconforming product review/disposition procedures and rework procedures—820.90(b)(1)–(2)	27,074	1	27,074	5	135,370
Procedures for corrective/preventive actions—820.100(a)(1)–(7)	27,074	1	27,074	12	324,888
Corrective/preventive activities—820.100(b)	27,074	1	27,074	1	27,074
Labeling procedures—820.120(b)	27,074	1	27,074	1	27,074
Labeling documentation—820.120(d)	27,074	1	27,074	1	27,074
Device packaging—820.130	27,074	1	27,074	1	27,074
Handling—820.140	27,074	1	27,074	6	162,444
Storage—820.150(a) and (b)	27,074	1	27,074	6	162,444
Distribution procedures and records—820.160(a) and (b) ..	27,074	1	27,074	1	27,074
Installation—820.170	27,074	1	27,074	2	54,148
Record retention period—820.180(b) and (c)	27,074	1	27,074	2	54,148
Device master record—820.181	27,074	1	27,074	1	27,074
Device history record—820.184	27,074	1	27,074	1	27,074
Quality system record—820.186	27,074	1	27,074	1	27,074
Complaint files—820.198(a)–(g)	27,074	1	27,074	5	135,370
Servicing procedures and reports—820.200(a) and (d)	27,074	1	27,074	3	81,222
Statistical techniques procedures and sampling plans—820.250	27,074	1	27,074	1	27,074
Total					9,421,752

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 812,928 hours. We attribute this adjustment to an increase in the number of respondents.

Dated: July 24, 2019.

Lowell J. Schiller,
Principal Associate Commissioner for Policy.

[FR Doc. 2019–16260 Filed 7–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0579]

Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Deviations in Manufacturing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of

certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the reporting of biological product deviations and human cells, tissues, and cellular and tissue-based product (HCT/P) deviations in manufacturing, and Forms FDA 3486 and 3486A. July 31, 2019

DATES: Submit electronic or written comments on the collection of information by September 30, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 30, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 30, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery

service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://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 <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2013-N-0579 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Deviations in Manufacturing; Forms FDA 3486 and 3486A.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://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 <http://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: <http://www.gpo.gov/>

[fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf](https://www.fda.gov/oc/ohrt/2015-09-18/2015-23389.pdf).

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601, Landsdown St., North Bethesda, MD 20852, 301-796-5733, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Forms FDA 3486 and 3486A

OMB Control Number 0910-0458—Extension

Under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards, including those prescribed in the FDA regulations, designed to ensure the continued safety, purity, and potency of such products. In addition, under section 361 of the PHS Act (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States or possessions. Further, the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with current good manufacturing practice (CGMP) assuring that they meet the requirements of the FD&C Act. Establishments manufacturing biological products, including human blood and blood components, must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)) and current good tissue practice (CGTP) regulations (part 1271 (21 CFR part 1271)) as appropriate. FDA regards biological product deviation (BPD) reporting and HCT/P deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14 (21 CFR 600.14), in brief, requires the manufacturer who holds the biological product license, for other than human blood and blood components, and who had control over a distributed product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drug Evaluation and Research (CDER) as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171, in brief, requires licensed manufacturers of human blood and blood components, including Source Plasma, unlicensed registered blood establishments, and transfusion

services, who had control over a distributed product when the deviation occurred, to report to CBER as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Similarly, § 1271.350(b), in brief, requires HCT/P establishments that manufacture non-reproductive HCT/PS described in § 1271.10 to investigate and report to CBER all HCT/P deviations relating to a distributed HCT/P that relates to the core CGTP requirements, if the deviation occurred in the establishment's facility or in a facility that performed a manufacturing step for the establishment under contract, agreement or other arrangement. Form FDA 3486 is used to submit BPD reports and HCT/P deviation reports.

Respondents to this collection of information are: (1) Licensed manufacturers of biological products other than human blood and blood components, (2) licensed manufacturers of blood and blood components including Source Plasma, (3) unlicensed registered blood establishments, (4) transfusion services, and (5) establishments that manufacture non-reproductive HCT/PS regulated solely under section 361 of the PHS Act as

described in § 1271.10. The number of respondents and total annual responses are based on the BPD reports and HCT/P deviation reports FDA received in fiscal year 2018. The number of licensed manufacturers and total annual responses under § 600.14 include the estimates for BPD reports submitted to both CBER and CDER. Based on the information from industry, the estimated average time to complete a deviation report is 2 hours, which includes a minimal one-time burden to create a user account for those reports submitted electronically. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER has developed a Web-based addendum to Form FDA 3486 (Form FDA 3486A) to provide additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested includes information not contained in the Form FDA 3486 such as: (1) Distribution pattern; (2) method of consignee notification; (3) consignee(s) of products for further manufacture; (4) additional

product information; (5) updated product disposition; and (6) industry recall contacts. This information is requested by CBER through email notification to the submitter of the BPD report. This information is used by CBER for recall classification purposes. CBER estimates that 5 percent of the total BPD reports submitted to CBER would need additional information submitted in the addendum. CBER further estimates that it would take between 10 to 20 minutes to complete the addendum. For calculation purposes, CBER is using 15 minutes.

Activities such as investigating, changing standard operating procedures or processes, and followup are currently required under 21 CFR parts 211 (approved under OMB control number 0910-0139), 606 (approved under OMB control number 0910-0116), 820 (approved under OMB control number 0910-0073), and 1271 (approved under OMB control number 0910-0543) and, therefore, are not included in the burden calculation for the separate requirement of submitting a deviation report to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
600.14; Reporting of product deviations by licensed manufacturers.	3486	93	6.14	571	2.0	1,142
606.171; Reporting of product deviations by licensed manufacturers, unlicensed registered blood establishments, and transfusion services.	3486	1,937	23.847	46,192	2.0	92,384
1271.350(b); Reporting requirements (human cells, tissues, and cellular and tissue-based products).	3486	93	2.61	243	2.0	486
1271.350(b) (CBER addendum report)	3486A ²	102	22.76	2,322	0.25	580.5
Total				49,328		94,592.5

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Five percent of the number of respondents $((1,937 + 93) \times 0.05 = 102)$ and total annual responses to CBER $((46,192 + 243) \times 0.05 = 2,322)$.

Our estimated burden for the information collection reflects an overall increase of 739 hours and a corresponding increase of 398 responses. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: July 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-16243 Filed 7-30-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Council on Blood Stem Cell Transplantation

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 Council on Blood Stem Cell Transplantation (ACBSCT) has

scheduled a public meeting. Information about ACBSCT and the agenda for this meeting will be available on the ACBSCT website at https://bloodcell.transplant.hrsa.gov/about/advisory_council/meetings/index.html. **DATES:** September 10, 2019, 10:00 a.m.–4:00 p.m. Eastern Time (ET).

ADDRESSES: This meeting will be held by webinar. Members of the public can access the webinar link and conference call-in number at https://bloodcell.transplant.hrsa.gov/about/advisory_council/meetings/index.html.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, Designated Federal Official, (DFO), at Division of Transplantation, Healthcare Systems

Bureau, HRSA, 5600 Fishers Lane, 8W60, Rockville, Maryland 20857; 301-443-6839; or RWalsh@hrsa.gov.

SUPPLEMENTARY INFORMATION: ACBSCT provides advice and recommendations to the Secretary of HHS (Secretary) and the HRSA Administrator on the activities of the C.W. Bill Young Cell Transplantation Program and the National Cord Blood Inventory Program. The principal purpose of these programs is to make blood stem cells from adult donors and cord blood units available for patients who need a transplant to treat life-threatening conditions such as leukemia, and who lack a suitably matched relative who can be the donor.

During the September 10, 2019, meeting, ACBSCT will discuss issues related to utilization of cord blood for transplant and utilization of blood stem cells in cellular therapies. Agenda items are subject to change as priorities dictate. Refer to the ACBSCT website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to ACBSCT must be sent to Robert Walsh, DFO, using the contact information above at least three business days before the meeting.

Individuals who plan to participate in the webinar and need special assistance or other reasonable accommodations should notify Robert Walsh at the address and phone number listed above at least 10 business days before the meeting.

Maria G. Button,

Director, Division of the Executive Secretariat.
[FR Doc. 2019-16306 Filed 7-30-19; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Projects (R24).

Date: August 20, 2019.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: David C. Chang, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC 9823, Rockville, MD 20852 david.chang3@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: August 22, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Roberta Binder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G21A, National Institutes of Health/ NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892-9823, (240) 669-5050, rbinder@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 25, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-16245 Filed 7-30-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Proposed Collection; 60-Day Comment Request; NIH Information Collection Forms To Support Genomic Data Sharing for Research Purposes (Office of Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, OIRA_submission@omb.eop.gov or by fax to 202-395-6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Lyric A. Jorgenson, Acting Director, Division of Scientific Data Sharing Policy, Office of Science Policy, NIH, 6705 Rockledge Dr., Suite 750, Bethesda, MD 20892, or call non-tollfree number (301) 496-9838 or email your request including your address to: SciencePolicy@mail.nih.gov.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 1, 2019, page 18555 (84 FR 18555) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The Office of the Director (OD), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NIH Information Collection Forms to Support Genomic Data Sharing for Research Purposes—0925-0670—Expiration Date 07/31/2019—Revision—Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Sharing research data supports the National Institutes of Health (NIH) mission and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health. NIH has longstanding policies to make a broad range of research data, including genomic data, publicly available in a timely manner from the research activities that it funds. Genomic research data sharing is an integral element of the NIH mission as it facilitates advances in our understanding of factors that influence health and disease, while also providing opportunities to accelerate research through the power of combining large and information-rich datasets. To promote robust sharing of human and non-human data from a wide range of large-scale genomic research and provide appropriate protections for research involving human data, the NIH issued the NIH Genomic Data Sharing Policy (NIH GDS Policy). Human genomic data submissions and controlled access are managed through a central data repository, the database of Genotypes and Phenotypes (dbGaP)

which is administered by the National Center for Biotechnology Information (NCBI), part of the National Library of Medicine at NIH. Under the NIH GDS Policy, all investigators who receive NIH funding to conduct large-scale genomic research are expected to register studies with human genomic data in dbGaP, no matter which NIH-designated data repository will maintain the data. As part of the registration process, investigators must provide basic study information such as the type of data that will be submitted to dbGaP, a description of the study, and an institutional assurance (*i.e.* Institutional Certification) of the data submission which delineates any limitations on the secondary use of the data (*e.g.*, data cannot be shared with for-profit companies, data can be used only for research of particular diseases). Investigators interested in using controlled-access data for secondary research must apply through dbGaP and be granted permission from the relevant NIH Data Access Committee(s). As part of the application process, investigators and their institutions must provide information such as a description of the proposed research use of controlled

access datasets that conforms to any data use limitations, agree to the Genomic Data User Code of Conduct, and agree to the terms of access through a Data Use Certification agreement. Requests to renew data access and reports to close out data use are similar to the initial data access request, requiring sign-off by both the requestor and the institution, but also ask for information about how the data have been used, and about publications, presentations, or intellectual property based on the research conducted with the accessed data as well as any data security issues or other data management incidents. NIH has developed online forms, available through dbGaP, in an effort to reduce the burden for researchers and their institutional officials to complete the study registration, data submission, data access, and renewal and closeout processes.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 5,850.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Study Registration and Data Submission					
dbGaP Registration and Submission.	Investigator Submitting Data	300	1	1	300
	Institutional Official to Certify Submission.	300	1	30/60	150
Requesting Access to Data					
Data Access Request	Requester Submitting Request.	1,500	2	45/60	2,250
Data Access Request	Institutional Signing Official to Certify Request.	1,500	2	30/60	1,500
Project Renewal or Project Close-out					
Project Renewal or Project Close-out form.	Requester Submitting Request.	1,500 (same individuals as above).	2	15/60	750
Project Renewal or Project Close-out form.	Institutional Signing Official to Certify Request.	1,500 (same individuals as above).	2	18/60	900
Total .....	.....	.....	12,600	.....	5,850

Dated: July 24, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019-16289 Filed 7-30-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Loan Repayment Programs (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be

directed to the: Office of Management and Budget, Office of Regulatory Affairs, OIRA_submission@omb.eop.gov or by fax to 202-395-6974, Attention: NIH Desk Officer.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Steve Boehlert, Director of Operations, Division of Loan Repayment, National Institutes of Health, 6700B Rockledge Dr., Room 2300 (MSC 6904), Bethesda, Maryland 20892-6904 or email your request, including your address to BoehlerS@od.nih.gov or call (301) 451-4465. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 21, 2019, page numbers 23060-23061 (84 FR 23060) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director (OD), National Institutes of Health (NIH) may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Loan Repayment Programs (LRP), 0925-0361, expiration date 08/31/19, EXTENSION, Office of the Director (OD), National Institutes of Health.

Need and Use of Information Collection: The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., Pharm.D., Psy.D., D.O., D.D.S., D.M.D., D.P.M., DC, N.D., O.D., D.V.M., or equivalent doctoral degree holders who perform biomedical or behavioral research in NIH intramural laboratories or as extramural grantees or scientists funded by domestic non-profit organizations for a minimum of two years (three years for the General Research subcategory) in research areas supporting the mission and priorities of the NIH. The information proposed for collection will be used by the DLR to determine an applicant's eligibility for the program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 27,481.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Initial Extramural Applicants	1,650	1	8	13,200
Renewal Extramural Applicants	1,000	1	8	8,000
Initial Intramural Applicants	40	1	8	320
Renewal Intramural Applicants	40	1	8	320
Recommenders	10,760	1	30/60	5,380
Institutional Contacts	2,650	1	5/60	221
NIH LRP Coordinators	80	1	30/60	40
Total	16,220	16,220	.....	27,481

Dated: July 24, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019-16288 Filed 7-30-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory General Medical Sciences Council, September 19, 2019, 9:00 a.m. to September 20, 2019, 12:00 p.m., National Institutes of Health, Natcher

Building, 45 Center Drive, Conference Rooms E1 & E2, Bethesda, MD 20892, which was published in the **Federal Register** on February 14, 2019, 84 FR 4089.

The meeting notice is amended to change the date and time of the meeting from September 19-20, 2019, 9:00 a.m.-12:00 p.m. to September 19, 2019, 8:30 a.m.-5:00 p.m. The meeting is partially closed to the public.

Dated: July 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16222 Filed 7–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; Member Conflict: Cardiovascular Sciences.

Date: August 27, 2019.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, aitouchea@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 26, 2019.

Natasha M. Copeland,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16268 Filed 7–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; PAR Panel: Addressing the Role of Violence on HIV Care.

Date: August 13, 2019.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shalanda A. Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, bynumsa@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16215 Filed 7–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Drug Repositioning and Combination Therapy for AD.

Date: September 4, 2019.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, PARSADANIAN@NIA.NIH.GOV. (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16221 Filed 7–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee NIA S.

Date: September 26–27, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carmen Moten, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, cmoten@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16220 Filed 7–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee NIA B.

Date: September 26–27, 2019.

Time: 12:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bitu Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, nakhaib@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16219 Filed 7–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee NIA C.

Date: September 26–27, 2019.

Time: 12:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, markowska@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–16216 Filed 7–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <http://www.samhsa.gov/workplace>.

FOR FURTHER INFORMATION CONTACT:

Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with

Executive Order 12564 and section 503 of Public Law 100–71. The “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190. (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226
 Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)
 Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)
 Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
 Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917
 Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438. (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 10221 North 32nd Street Suite J, Phoenix, AZ 85028, 602–457–5411
 DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890
 Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630. (Formerly: Gamma-Dynacare Medical Laboratories)
 ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609
 Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
 Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)
 Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
 Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
 LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
 MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
 Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
 Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only
 Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory)
 Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840
 Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
 Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
 Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159
 U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085. Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles P. LoDico,
Chemist.

[FR Doc. 2019–16242 Filed 7–30–19; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0477]

Draft Policy Letter on the Coast Guard's Process To Accept Proposed Type-Approval Testing Protocols for Ballast Water Management Systems (BWMS) That Render Organisms in Ballast Water Nonviable

AGENCY: Coast Guard, DHS

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of a draft policy letter that establishes the Coast Guard's proposed acceptance of type-approval testing protocols for BWMS that render nonviable (meaning "permanently incapable of reproduction") organisms in ballast water and may be used in addition to the methods established under existing regulations; the process for accepting type-approval testing protocols for BWMS, if any, that render nonviable organisms in ballast water and may be used in addition to the methods established under existing regulations which includes: The process for incorporating accepted protocols into the type-approval procedures established under existing regulations; the acceptance of laboratories to evaluate applicable treatment technologies; and the certification of BWMS that render nonviable organisms in ballast water. This notice solicits public comments on the draft policy letter that is entitled TYPE APROVAL METHODS FOR BALLAST WATER MANAGEMENT SYSTEMS THAT RENDER NONVIALE ORGANISMS IN BALLAST WATER, hereinafter referred to in this notice as the "draft policy letter."

DATES: Comments must reach the United States Coast Guard (USCG) by September 30, 2019.

ADDRESSES: To view the draft policy letter, as well as documents mentioned in this notice, go to <http://www.regulations.gov>, type "USCG–2019–0477", and click "Search." Then click the "Open Docket Folder."

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Reudelhuber, Environmental Standards Division, 202–372–1432.

SUPPLEMENTARY INFORMATION:

I. Abbreviations

BWMS Ballast Water Management System
CATEX Categorical Exclusion
CFR Code of Federal Regulations
DHS Department of Homeland Security

FR Federal Register
NEPA National Environmental Policy Act
U.S.C. United States Code
USCG U. S. Coast Guard
VIDA Vessel Incident Discharge Act of 2018

II. Public Participation and Request for Comments

We encourage you to submit comments on the draft policy letter which is available in the docket. The draft policy letter is also available on the USCG website: <http://www.dco.uscg.mil/OES/Viability-Policy-Letter/>. We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If you cannot submit your material by using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section for alternate instructions. Documents mentioned in this notice, and all public comments, will be available in our online docket at <https://www.regulations.gov>, and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

III. Background

The Vessel Incident Discharge Act of 2018 (VIDA) found at Title IX of the Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law 115–282, amended Section 312(p) of the Federal Water Pollution Control Act (33 U.S.C.1322). Pursuant to VIDA, the Coast Guard¹ is required to publish for review and comment a draft policy letter, based on the best available science, describing type-approval testing methods and protocols for BWMS, if any, that—

(I) Render nonviable organisms in ballast water; and

(II) May be used in addition to the methods established under subpart 162.060 of Title 46, Code of Federal Regulations (or successor regulations)—

(aa) To measure the concentration of organisms in ballast water that are capable of reproduction;

¹ In DHS delegation 0170.1, the Commandant of the Coast Guard was delegated the authority to carry out the functions in section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*) as amended by the Oil Pollution Act of 1990.

(bb) To certify the performance of each BWMS under this subsection; and
(cc) To certify laboratories to evaluate applicable treatment technologies.

IV. Environmental Aspect and Impact Considerations

a. The development of this draft policy letter and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management, Commandant (CG–47). This draft policy letter is categorically excluded under current Department of Homeland Security (DHS) categorical exclusion (CATEX) A3 from further environmental analysis in accordance with the U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 and the Environmental Planning (EP) Implementing Procedures (IP).

b. This draft policy letter will not have any of the following: Significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policy in this draft policy letter must be individually evaluated for compliance with the National Environmental Policy Act (NEPA) and Environmental Effects Abroad of Major Federal Actions, Executive Order 12114, Department of Homeland Security (DHS) NEPA policy, Coast Guard Environmental Planning Policy, and compliance with all other applicable environmental mandates.

V. Paperwork Reduction Act

Before issuing a final policy letter, the Coast Guard will determine if the final policy calls for a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501.

VI. Public Availability of the Draft Policy Letter

The Coast Guard developed this draft policy letter in coordination with the EPA pursuant to 33 U.S.C. 1322(p)(6)(D)(ii). The draft policy letter may be amended by the USCG, in coordination with the EPA, based upon public comment on this **Federal Register** notice.

Dated: July 26, 2019.

Sean. T. Brady,
Captain, Environmental Standards Division.
[FR Doc. 2019–16305 Filed 7–30–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R1-ES-2019-N072;
FXES11140100000-190-FF01E00000]

Proposed Amendment and Transfer of Enhancement of Survival Permits Developed in Accordance With the Template Safe Harbor Agreement for the Columbia Basin Pygmy Rabbit, Douglas and Grant Counties, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application for an amendment of an enhancement of survival permit (permit) and an application for transferring a permit pursuant to the Endangered Species Act. The applications were developed in accordance with the Template Safe Harbor Agreement (Template SHA) for the Columbia Basin pygmy rabbit. The Washington Department of Natural Resources is requesting a permit amendment to add 3,628 acres of lands in Douglas and Grant Counties, Washington, to their site plan enrolled under the Template SHA. The proposed permit transfer was requested by Mr. Jim Myers following his purchase of 1,320 acres of land in Grant County, Washington, enrolled under the Template SHA. The amendment and transfer of these permits would authorize incidental take that is above the baseline conditions of the properties enrolled under the Template SHA and that may result from the permittees' otherwise lawful management activities. The Service requests comments from the public regarding the proposed amendment and transfer of these permits.

DATES: To be fully considered, written comments from interested parties must be received on or before August 30, 2019.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- **Internet:** You may view or download copies of the Template SHA and draft environmental assessment and obtain additional information on the internet at <http://www.fws.gov/wafwo/>.
- **Email:** wfwocomments@fws.gov. Include "Template SHA for the Columbia Basin pygmy rabbit" in the subject line of the message.

- **U.S. Mail:** Public Comments Processing, Attn: FWS-R1-ES-2019-N072; U.S. Fish and Wildlife Service; c/o Russ MacRae; Eastern Washington Fish and Wildlife Field Office; 11103 E Montgomery Drive, Spokane Valley, WA 99206.

- **In-Person Drop-off, Viewing, or Pickup:** Call 509-891-6839 ext. 8001 to make an appointment (necessary for viewing or picking up documents only) during regular business hours at the above address. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Russ MacRae, Field Supervisor, Eastern Washington Fish and Wildlife Field Office (see **ADDRESSES**); 509-891-6839 ext. 8001 (telephone). If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Service has received an application for an amendment of an enhancement of survival permit (permit) and an application for transferring a permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). These permits authorize otherwise prohibited take of an endangered species. The applications were developed in accordance with the Template Safe Harbor Agreement (Template SHA) for the Columbia Basin pygmy rabbit (CBPR, *Brachylagus idahoensis*). The Washington Department of Natural Resources (WDNR) is requesting a permit amendment to add 3,628 acres of WDNR lands in Douglas and Grant Counties, Washington, to their site plan enrolled under the Template SHA. The proposed permit transfer was requested by Mr. Jim Myers following his purchase of 1,320 acres of land from ABS Farms LLC in Grant County, Washington, enrolled under the Template SHA.

The CBPR is currently listed under the ESA as endangered on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h). Consequently, take of this species is prohibited by section 9 of the Act. The amended and transferred permits would authorize take that is above the baseline conditions of the properties enrolled under the Template SHA and that may result from the permittees' otherwise lawful management activities. The Service requests comments from the public regarding the proposed

amendment and transfer of these permits.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm," as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term "harass" is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

Under a Safe Harbor Agreement (SHA), participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation efforts for listed species. The SHAs provide assurances to property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22(c). As provided for in the Service's final Safe Harbor Policy (64 FR 32717; June 17, 1999), SHAs provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of a listed species, to such an extent that the property is returned back to the originally agreed upon baseline conditions.

On September 7, 2006, the Service announced the availability for public review and comment of a draft Template SHA, which was jointly developed by the Service and the Washington Department of Fish and Wildlife (WDFW), and a draft environmental assessment (EA), which was developed by the Service pursuant to Federal responsibilities under the National Environmental Policy Act (71 FR 52816). The Service's September 7, 2006, **Federal Register** notice also announced the receipt of three initial permit applications that were developed in accordance with the Template SHA. The final Template SHA, which contained only minor modifications from the draft released for public review, was signed by the Service and WDFW on October 24, 2006. On April 25, 2007, the Service announced the availability for public review and comment of another 13 permit applications that were developed in accordance with the Template SHA (72 FR 20557). To date, the Service has issued 16 permits under the Template SHA, which cover 109,425 acres that are within the historic distribution of the CBPR.

The primary objective of the Template SHA is to facilitate collaboration between the Service, WDFW, and prospective participants to voluntarily implement conservation measures to benefit the CBPR. Another objective of the Template SHA is to facilitate the processing of enhancement of survival permits that will provide incidental take coverage for participants to relieve them of additional section 9 liability under the ESA if implementation of their conservation measures results in increased numbers or distribution of CBPRs on their enrolled properties.

Proposed Action

We received applications from the WDNr for an amendment of a permit, and from Mr. Jim Myers requesting the transfer of a permit under the ESA and in accordance with the Template SHA and 50 CFR 13.25(b). If we approve the applications, the implementation of the Template SHA would occur on the following properties:

- **WDNR:** The proposed permit amendment would add an additional 3,628 acres of WDNr lands to the 29,346 acres of their land currently enrolled under the Template SHA. This addition would result in a cumulative total of 32,974 acres of WDNr-owned land in Douglas and Grant Counties, Washington, that are located within the geographic area covered by the existing Template SHA. All of the area proposed for enrollment by WDNr represents

intervening properties (*i.e.*, property outside of CBPR recovery emphasis areas) as defined in the Template SHA. WDNr and WDFW biologists conducted evidence searches for CBPRs on all properties identified by the WDNr for enrollment under the Template SHA. No CBPRs or evidence of active pygmy rabbit burrows were detected during these surveys. Therefore, in accordance with the provisions of the Template SHA, the baseline for properties covered by WDNr's site plan, including the additional acres, is zero active pygmy rabbit burrows.

- **Mr. Jim Myers:** The properties included within the proposed permit transfer total 1,320 acres in Grant County, Washington, and are located within the geographic area covered by the Template SHA. Ms. Mary Bolyard of ABS Farms LLC sold the property to Mr. Jim Myers, and his permit application requests the transfer of the permit from ABS Farms LLC. All of the area proposed for enrollment by Mr. Myers represent intervening properties (*i.e.*, property outside of CBPR recovery emphasis areas) as defined in the Template SHA. WDFW biologists conducted evidence searches for CBPR on all ABS Farms LLC properties identified for enrollment under the Template SHA. No CBPRs or evidence of active pygmy rabbit burrows were detected during these surveys. Therefore, in accordance with the provisions of the Template SHA, the baseline for properties covered by the site plan is zero active pygmy rabbit burrows.

The Service has previously determined that implementation of the Template SHA will result in conservation benefits to the CBPR and will not result in significant effects to the human environment. The Service will evaluate the permit applications, related documents, and any comments submitted to determine whether the applications are consistent with the measures prescribed by the Template SHA and comply with relevant statutory and regulatory requirements. If it is determined that the requirements are met, a permit authorizing incidental take of the CBPR will be issued to the applicants. The final determinations for each permit will not be completed until after the end of the 30-day comment period, and we will fully consider all comments received.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request data, comments, new information, or suggestions from the public, other

concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action. The original Template SHA and EA are available for reference.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Eastern Washington Fish and Wildlife Field Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22, and 40 CFR 1506.6, respectively).

Robyn Thorson,

Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2019-16313 Filed 7-30-19; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X R4079V4 RX.12255301.3000000
AZA30355]

Notice of Application for Withdrawal Extension and Notification of Public Meeting, Lake Roosevelt Expansion Area; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 7420 for

an additional 20-year term. PLO No. 7420 withdrew 9,175 acres of National Forest System lands from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws. The purpose of the withdrawal is to protect the Bureau of Reclamation's (BOR) Lake Roosevelt expansion area. This Notice also gives the public an opportunity to comment on the withdrawal extension application, and announces the date, time, and location of the public meeting.

DATES: Comments must be received by October 29, 2019. The BOR will hold a public meeting in connection with the proposed withdrawal extension on September 4, 2019.

ADDRESSES: All comments should be sent to the Bureau of Land (BLM) Arizona State Office, One North Central, Suite 800, Phoenix, Arizona 85004, or faxed to 602-417-9452. The BLM will not consider comments received via telephone calls.

FOR FURTHER INFORMATION CONTACT: Sara Ferreira, Land Law Examiner, BLM, at 602-417-9598, by email at sferreir@blm.gov, or contact the BLM Arizona State Office, One North Central, Suite 800, Phoenix, Arizona 85004. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BOR has filed an application to extend, for an additional 20-year term, a withdrawal established by PLO No. 7420 which will expire on December 3, 2019. PLO 7420 withdrew the following described lands from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, for a period of 20 years, to protect the BOR's Roosevelt Lake Expansion Area. Portions of these lands are unsurveyed and the acres were obtained from protraction diagrams. The legal descriptions written in PLO No. 7420 are revised to reflect the Cadastral Survey's Specifications for Descriptions of Land:

Gila and Salt River Meridian, Arizona

- T. 3 N, R. 13 E, unsurveyed.
 A portion of protraction block 45;
 A portion of protraction block 46;
 A portion of protraction block 47;
 A portion of protraction block 48;
 A portion of protraction block 53;
 A portion of protraction block 54.
 T. 3 N, R. 14 E, partially surveyed.
 A portion of unsurveyed section 2;

- A portion of unsurveyed section 3;
 Sec. 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 5, lots 1, 2, and 4;
 Sec. 6, lot 1, and SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 A portion of unsurveyed section 9;
 A portion of unsurveyed section 10;
 A portion of unsurveyed section 11.
 T. 4 N, R. 11 E, partially surveyed.
 Sec. 2, lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 3, lots 1 and 2, and S $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 12, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 13, N $\frac{1}{2}$ NE $\frac{1}{4}$.
 T. 4 N, R. 12 E, partially surveyed.
 Sec. 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
 Sec. 3;
 Sec. 4, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 5, lot 1, and SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 9, N $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 10, N $\frac{1}{2}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 12, W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 36, E $\frac{1}{2}$ NE $\frac{1}{4}$.
 T. 4 N, R. 13 E,
 Sec. 17, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 21, N $\frac{1}{2}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$;
 Sec. 22, S $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;
 Sec. 23, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 25, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;
 Sec. 31, lots 1 and 2, E $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 32, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 4 N, R. 14 E, partially surveyed.
 Sec. 30, lot 3;
 Sec. 31, E $\frac{1}{2}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$.
 T. 5 N, R. 10 E, unsurveyed.
 A portion of protraction block 37.
 T. 5 N, R. 11 E, partially surveyed.
 Sec. 5, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 6, lots 3, 4, and 5, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 7, NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 8, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 14, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 15, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 16, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 17, E $\frac{1}{2}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 22, N $\frac{1}{2}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 23, W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 24, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 25, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 28, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 34, NW $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 5 N, R. 12 E, unsurveyed.
 A portion of protraction block 48;
 A portion of protraction block 49;
 A portion of protraction block 50.
 T. 6 N, R. 11 E,
 Sec. 31, lots 4 and 9, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 32, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described aggregate 9,175 acres in Gila County.

The proposed withdrawal would continue the purpose of the withdrawal established by PLO No. 7420 to protect the capital investments and high-quality recreation values in the BOR's Lake Roosevelt Expansion area.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection for the capital improvement investment that the BOR has made to the Lake Roosevelt Expansion Area.

No additional water rights are needed to fulfill the purpose of the requested withdrawal extension.

There are no suitable alternative sites since the land described contains the developed Lake Roosevelt Expansion Area.

For a period until the October 29, 2019 all persons who wish to submit comments, suggestions, or objections in connection with the withdrawal extension application may present their views in writing to the BLM to the address noted above. Comments, including name and street address of respondents, will be available for public review stated in the **ADDRESSES** section above during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

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

Notice is hereby given that a public meeting in connection with the application for withdrawal extension will be held at the BOR Glendale Office, 6150 W. Thunderbird Rd., Glendale, AZ 85306, on September 4, 2019 from 8:00 a.m. to 5:00 p.m. The BOR will publish a Notice of the time and place in a local newspaper at least 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Dated: July 22, 2019.

Joseph R. Balash,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2019-16299 Filed 7-30-19; 8:45 am]

BILLING CODE 4332-90-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLCOF02000 L51100000.GL0000
LVEMC1700600 18X]

**Notice of Intent To Prepare an
Environmental Impact Statement for
the Proposed Competitive Mineral
Materials Sale (COC-078119) at
Parkdale, Fremont County, CO**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Royal Gorge Field Office, Cañon City, Colorado, intends to prepare an Environmental Impact Statement (EIS) for the Proposed Competitive Mineral Materials Sale at Parkdale, Fremont County, Colorado. This notice announces the beginning of the scoping process to solicit public comments and identify issues for the EIS.

DATES: Comments on issues may be submitted in writing until August 30, 2019. The BLM will announce date(s) and location(s) of any scoping meetings at least 15 days in advance of the meeting through local media, newspapers, and the BLM National NEPA website. For comments to be considered in the Draft EIS, the BLM must receive them before the close of the 30-day scoping period. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Competitive Mineral Materials Sale (COC-078119) at Parkdale, Fremont County, Colorado, by any of the following methods:

- *BLM National NEPA website:* <https://eplanning.blm.gov/>; search for NEPA Document Number BLM-CO-F020-2019-0013.

- *Mail:* BLM Royal Gorge Field Office, 3028 East Main Street, Cañon City, CO 81212.

Documents pertinent to this proposal may be examined at the Royal Gorge Field Office.

FOR FURTHER INFORMATION CONTACT: Stephanie Carter, Geologist; telephone: (719) 269-8551; address: 3028 East Main Street, Cañon City, CO 81212; email: sscarter@blm.gov. Contact Ms. Carter to have your name added to our mailing list. Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Martin Marietta Materials, Inc. has requested a contract from the BLM to mine 400-million net tons of aggregate reserves located on BLM-managed lands adjacent to their existing hard rock quarry northwest of Cañon City, Colorado. Mining activity would be conducted on up to approximately 700 acres of BLM-administered public land for up to 100 years with a maximum production rate of 4-million tons annually. The aggregate reserves consist of a granodiorite bedrock that would be mined utilizing blasting, crushing, and screening methods. The aggregate would be used in the production of asphalt and concrete, as well as for a source of railroad ballast. The current mine is the only rail-served aggregate mine in Colorado. The BLM mineral material reserves would sustain uninterrupted supplies of aggregate to meet future demands in southern Colorado and adjacent areas.

The purpose of the public scoping process is to determine relevant issues that may influence the scope of the environmental analysis for development of the EIS, including alternatives. At present, the BLM has identified the following preliminary issues: Potential effects to bighorn sheep, visual resources, air quality, surface and ground water quantity and quality, and socioeconomic conditions. The BLM will identify, analyze, and require mitigation, as appropriate, to address impacts to resources from the proposed action and alternatives.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other

stakeholders that may be interested in or affected by the proposed Competitive Mineral Materials Sale (COC-078119) at Parkdale, Fremont County, Colorado, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency.

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

Authority: 40 CFR 1501.7.

Jamie Connell,
Colorado State Director.

[FR Doc. 2019-16337 Filed 7-30-19; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLESJ02300.L14400000.FQ0000; FLES
041063-03]

**Public Land Order No. 7881; Partial
Revocation Jupiter Inlet Lighthouse
Withdrawal; Florida**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Public Land Order.

SUMMARY: This Order revokes the withdrawal created by two Executive Orders insofar as they affect 16.41 acres of land reserved for the United States Coast Guard's (USCG) Jupiter Lighthouse site. The land is no longer needed for lighthouse purposes. This Order also returns administrative jurisdiction of the land to the Bureau of Land Management (BLM) to continue to be managed as part of the Jupiter Inlet Lighthouse Outstanding Natural Area.

DATES: This Public Land Order takes effect on July 31, 2019.

FOR FURTHER INFORMATION CONTACT: Vicki Craft, Realty Specialist, BLM-ES Southeastern States District Office, 273 Market Street, Flowood, MS 39232, 601-919-4655. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to reach the above individual. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the

above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USCG has determined that the Jupiter Lighthouse reservation is no longer needed for the land described in this Public Land Order. The land was incorporated into the Jupiter Inlet Lighthouse Outstanding Natural Area pursuant to Section 202 of the Consolidated Natural Resource Act of 2008 (43 U.S.C. 1787).

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The withdrawal created by Executive Order dated October 22, 1854, and Executive Order No. 4254, dated June 12, 1925, which reserved public land is hereby revoked in-part insofar as it affects the following described land:

Tallahassee Meridian

T. 40 S., R. 43 E.,
sec. 31, Lot 22.

The area described contains 16.41 acres in Palm Beach County.

2. Administrative jurisdiction over the land described in Paragraph 1 is hereby relinquished to the BLM to be managed as part of the Jupiter Inlet Lighthouse Outstanding Natural Area pursuant to Section 202 of the Consolidated Natural Resource Act of 2008 (43 U.S.C. 1787). Subject to valid existing rights, the land shall remain closed to all forms of entry, appropriation or disposal under the public land laws, location, entry, and patent under the mining laws, and operation of the mineral and geothermal leasing laws and the mineral material laws.

Joseph R. Balash,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2019–16303 Filed 7–30–19; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L14400000.BJ0000–19X;
MO#4500135675]

Notice of Proposed Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed official filing.

SUMMARY: The plats of survey for the lands described in this notice are

scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the Director, Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: jalexand@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Principal Meridian, Montana

T. 27 N, R. 48 E
Secs. 13, 14, 15, and Tract 38.
T. 27 N, R. 49 E
Sec. 18.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day after all timely protests have been dismissed or otherwise resolved, including appeals.

If a notice of protest is received after the scheduled date of official filing and the 10 calendar day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chapter 3.

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2019–16314 Filed 7–30–19; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Exogenous Beta-Hydroxybutyrate Nutraceutical Products, DN 3400*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's

Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of New U Life Corporation on July 25, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain exogenous beta-hydroxybutyrate nutraceutical products. The complaint names as respondents: Axxess Global, LLC of Holladay, UT; Axxess Global Sciences, LLC of Holladay, UT; Compound Solutions, Inc. of Carlsbad, CA; RK Solutions, LLC of Holladay, UT; Pruvit Ventures, Inc. of Me'lissa, TX; and VND Butyrate, LLC of Houston, TX. The complainant requests that the Commission issue a general exclusion order and cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested

remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3400") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures).¹ Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the

Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 25, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019-16230 Filed 7-30-19; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

On July 23, 2019, the Department of Justice lodged a proposed Consent Decree ("Consent Decree") in the United States District Court for the Northern District of Alabama, in the lawsuit entitled the *United States of America v. MRC Holdings, Inc.*, Civil Action No. 1:19-cv-01153-CLM.

This Consent Decree represents a settlement of the United States' ("Plaintiff's") claims against MRC, Holdings, Inc. ("MRC" or "Defendant") under Sections 104, 106, 107, 113 and 122 of the Comprehensive Environmental Response,

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

Compensation, and Liability Act ("CERCLA"), 42 U.S.C. , 9604, 9607, 9613 and 9622, relating to the Anniston PCB Hazardous Waste Site ("Site") located in and around Anniston, Alabama. The Consent Decree requires MRC to undertake injunctive measures to remediate specific parcels of property identified in the Consent Decree where hazardous substances are located. More specifically, the Consent Decree requires the Defendant to perform a remedial design and remedial action ("RD/RA") at those properties in accordance with a Record of Decision ("ROD") issued by the Environmental Protection Agency ("EPA") and Statement of Work ("SOW") attached to the Consent Decree as Appendix A. In addition, MRC is required under the Consent Decree to reimburse EPA for both past and future response costs.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. MRC Holdings, Inc.*, and the D.J. Ref. No. 90–11–2–07135/15. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Amended Consent Decree may be examined and downloaded at this Justice Department website: http://www.usdoj.gov/enrd/Consent_Decrees.html. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$10.50 (25 cents per page reproduction cost) payable to the United States Treasury for the Consent Decree

and \$15.00 for the Consent Decree and Exhibits thereto.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–16307 Filed 7–30–19; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Responsibility, Compensation, and Liability Act (CERCLA)

On July 25, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for Eastern District of Pennsylvania in the lawsuit entitled *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. Whitpain Township*, Civil Action No. 2:19–cv–03240–JP. In a civil action filed on July 25, 2019, under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), the United States, on behalf of the Environmental Protection Agency, alleged defendant Whitpain Township, as a current owner of a portion of the BoRit Asbestos Superfund Site (known as the "Park Parcel"), is liable for response action and costs of response action at the Site. The Commonwealth of Pennsylvania is a co-plaintiff and asserts claims under the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. Section 6020.101 *et seq.* The Site was used by Keasbey & Mattison Company for the disposal of asbestos-containing material and other waste products, starting in the 1930s. EPA performed response action that included removal of asbestos containing material, site stabilization, capping, fencing, and installation engineering controls.

Under the terms of the proposed Consent Decree, Whitpain will perform certain enumerated operation and maintenance activities at the Park Parcel and will record an environmental covenant to protect the integrity of the cleanup at the Park Parcel.

The publication of this notice opens a period for public comment on the Consent Decree. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division and refer to *United States and PADEP v. Whitpain Township*, DJ. Ref. No. 90–11–3–11909. All comments must be submitted no later than thirty (30) days after the publication date of this notice.

Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$9.75 (25 cents per page reproduction cost) payable to the United States Treasury for the Consent Decree without attachments, or \$126.75 for the Consent Decree with attachments.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–16264 Filed 7–30–19; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2019–02; Exemption Application No. D–11938]

Notice of Exemption Involving Retirement Clearinghouse, LLC (RCH or the Applicant), Located in Charlotte, North Carolina

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of five-year exemption.

SUMMARY: This document contains a notice of a five-year exemption issued by the Department of Labor (the Department) from the restrictions of the Internal Revenue Code of 1986, as amended (the Code). The exemption permits RCH to receive certain fees in connection with the transfer under the RCH Program, of an individual's Default IRA or Eligible Mandatory Distribution Account assets to the individual's New Plan Account, without the individual's affirmative consent, provided the

conditions described below are satisfied.

DATES: This exemption will be in effect for five years from the date this notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 7, 2018, the Department published a notice of proposed exemption in the **Federal Register**, at 83 FR 55741, in connection with RCH's Auto-Portability Program (the RCH Program). The RCH Program provides individuals who are changing jobs with a means to transfer retirement assets from their prior employers' plans to their new employers' plans. To do this, the RCH Program features "locate and match" technology that coordinates between multiple record-keeper systems. The RCH Program identifies when an individual with a Default IRA (or Eligible Mandatory Distribution Account) has opened a New Plan Account with his or her current employer. The RCH Program facilitates the transfer of those Default IRA (or Eligible Mandatory Distribution Account) assets to the New Plan Account, following the individual's failure to respond to two letters stating that the assets will be transferred if he or she fails to respond within the later of: Sixty days of the first letter; or thirty days of the second letter.

Relief under this exemption is solely available for the payment by a Default IRA of a Transfer Fee and a Communication Fee to RCH in connection with the transfer of \$5,000 or less (with a limited exception, described below) from the Default IRA to a New Plan Account, pursuant to either a Default IRA Model Transfer or a Conduit Model Transfer.

The objective of the RCH Program is to improve overall asset allocation, eliminate duplicative fees for small retirement saving accounts, and reduce leakage of retirement savings. For a more comprehensive discussion of the mechanics of the RCH Program, including required disclosures, fees and confidentiality and data protection obligations, please see the notice of proposed exemption, at 83 FR 55741.

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing. All comments and requests for a hearing were due by December 24, 2018. The Department received one written comment from RCH, and 13 written comments from other interested

persons, covering a broad range of issues, which are discussed below.¹ After considering the entire record, the Department has determined to grant the exemption, subject to the revisions described below.

Written Comments

1. Two Commenters Opposed the Exemption. One of the two commenters opposing the exemption stated that an employee's assets should be rolled in or out of their retirement account at the employee's discretion. The commenter stated further that a transfer to a new employer's Plan may not be in an employee's best interest if the new Plan has higher fees or does not accept Roth contributions. The other commenter stated the exemption overstates the fee-related benefits to affected IRAs since most fee structures are percentage-based. The commenter stated further that investment options available through a 401(k) plan tend to be more limited than those available through an IRA or Roth IRA.²

Department's Response. The Department's safe harbor regulation permits Plan fiduciaries to direct the transfer of separated employees' small Plan-account balances to Default IRAs, only if protective conditions are met. This exemption contains additional conditions applicable for transfers of Default IRAs to New Plan Accounts, under the RCH Program. Before authorizing a Plan's participation in the RCH Program, a Plan fiduciary who is independent of RCH must review the terms of the RCH Program, and determine, consistent with its duties under Section 404 of ERISA, that the Plan's participation in the RCH Program is prudent. All fees, direct or indirect, that RCH and related parties (including participating record-keepers) receive in connection with the Program must be approved by the responsible Plan fiduciary of the old employer Plan. RCH has no authority to unilaterally change the types or amounts of these fees. In addition, all fees under the RCH Program must not exceed reasonable compensation, within the meaning of Section 408(b)(2) of ERISA. Thus, the exemption protects separated employees from excessive fees both through fiduciary review and approval, and through the overarching condition that

compensation be no more than reasonable.

Under the RCH Program, and the exemption requires that, affected individuals receive multiple accurate notices written in plain English, containing all relevant information, so they can decide for themselves which retirement-related investment vehicles are most appropriate for their Default IRA assets. For example, the first letter, the Mandatory Distribution Letter, informs individuals that their Plan accounts will be automatically rolled over into a default IRA unless they provide affirmative direction regarding their account disposition within 30-90 days. The Mandatory Distribution Letter also explains distribution options, discloses all fees and features of the RCH Program, and includes a Code-required notice explaining various tax rules for eligible rollover distributions. Following an account rollover into a default IRA, individuals receive the Welcome Letter, which describes the IRA's investment options and includes a statement regarding all the Program's associated fees and features, including information regarding the possible future transfer of the IRA into a new employer's plan. The Welcome letter also specifically informs the individual that, unless they direct otherwise, the IRA may be transferred to their new employer's Plan after 60 days. For the duration of the IRA's existence, RCH or the record-keeper annually notifies the individual of the automatic transfer process as part of an IRA annual statement. Transfers under the RCH Program to a New Plan Account occur only if: The individual does not timely respond to the notices; or the individual affirmatively approves the transfer.

RCH itself also has fiduciary responsibilities with respect to the RCH Program. Unless it has received the individual's express affirmative consent for the transfer, RCH acts as a fiduciary in causing the transfer of the individual's retirement account assets from a Default IRA (or Eligible Mandatory Distribution Account) to the individual's New Plan Account. Similarly, in situations where a Default IRA maintained by a third party record-keeper is transferred to an RCH Default IRA, absent the individual's affirmative consent, RCH acts as a fiduciary both in affecting the transfer of the individual's Default IRA to the RCH Default IRA and subsequently to the new employer's Plan.

In response to the commenter's observation about asset-based fees, the Department notes that custodians of IRAs typically charge a range of fees that are not included within the asset-based

¹ The Department received correspondence from one other person, who requested to be informed if any hearing was to be held in connection with the proposed exemption.

² This commenter also stated that the rollover process is often particularly cumbersome and that custodians can do more to streamline the asset transfer processes and improve participant access to information.

fees. These charges are taken directly from the IRA's assets, and may include monthly administration fees, transfer fees, and account closing fees. Whether or not the assets in a particular Default IRA would benefit from a transfer under the RCH Program that triggers some of these fees and/or eliminates others, is fact specific. Notwithstanding this, individuals will likely benefit from transfers of their Default IRAs under the RCH Program, where those IRAs are subject to fixed reoccurring fees that are greater than the IRAs' investment returns. Individuals should be able to quantify the impact a transfer under the RCH Program would have on their Default IRAs' assets, using the multiple detailed plain English notices provided by RCH or participating record-keepers.

Regarding Roth IRAs, RCH represents that RCH may accept Roth Accounts as Default IRAs, but designated Roth IRAs are not eligible to participate in the transfer function of the RCH Program. Accordingly, the Department has added new condition (t) to Section I, which precludes the transfer of Roth IRA assets to New Plan Accounts under the RCH Program.

2. *Two Commenters supported the exemption, as written.* Two commenters supported the exemption without changes, and stressed that the exemption would reduce retirement-asset leakage.

3. *Three commenters sought expansion of the exemption.* Three commenters advocated an expansion of the exemption to permit transfers of "pre-existing" safe harbor IRAs to New Plan Accounts. "Pre-existing" Default IRAs are already-established IRAs. These IRAs hold assets that the Plan transferred to the IRA, without a Plan Fiduciary's prior approval of participation in the RCH Program.

Department's Response: The Department declines to make the requested revision. An essential protection of this exemption is a Plan fiduciary's independent evaluation of the RCH Program and determination that the Program is appropriate for the Plan's participants and beneficiaries. The decision to transfer plan assets to a Default IRA subject to the RCH Program is a fiduciary decision under Section 3(21) of ERISA, and is fully subject to the fiduciary protections of Title I of ERISA. Accordingly, the exemption ensures that a Plan fiduciary who is independent of RCH (an independent plan fiduciary), in advance of the Plan's participation in the Program: Reviews the material terms of the Program, including the reasonableness and necessity of the fees and services; evaluates the impact that the Plan's

participation in the Program may have on the Plan, and on its participants and beneficiaries; reviews the terms of the Plan's arrangements with its default IRA custodians and service providers, with consideration given to the possibility that those default IRA assets may ultimately be transferred to new employer Plans (resulting in additional fees) through the Program; and determines that participation in the Program is fully consistent with the Fiduciary's obligations under ERISA, including its fundamental duties of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B).

Because "pre-existing" Default IRAs lack these fiduciary safeguards with respect to the RCH Program, the Department finds that their inclusion in the Program would not be in the interest of the affected plans, participants and beneficiaries, and IRA owners, or protective of their rights.

4. *Two Commenters Expressed Concern Regarding the Proposed Exemption.* One commenter expressed skepticism about trusting an aggregator to roll assets out of an IRA to a new 401k Plan, due to the aggregator's disincentive to give up these assets. The commenter stated that the exemption should impose penalties on the aggregator for failing to follow through with account transfers. Another commenter similarly sought greater liability for RCH, and recommended that the Department retain the annual audit and the "no more than reasonable compensation" provisions.

Department's Response: The exemption is structured to address these concerns. The exemption, which retains the referenced provisions, requires that transfers under the RCH Program be made according to fixed, disclosed timeframes, and that an independent auditor test a representative sample of transfers to determine whether those timelines were met. These audit reports will be reviewed by the Department, and will be part of the public record. The Department notes that failure by RCH to comply with the terms of this exemption may result in prohibited transactions that give rise to excise taxes under the Code.

5. *One Commenter Seeks a Class Exemption.* One commenter recommended that the Department convert the exemption into a class exemption that would be available to any entity meeting the requirements of the exemption.

Department's Response: At the present time, the Department is not aware of any other service providers that provide the transition services offered by RCH and who operate their

business in a manner similar to RCH. Therefore, the Department does not have a record upon which to make a valid determination regarding the feasibility of providing exemptive relief on a class basis.

6. *One Commenter Suggested Certain Tax Disclosures.* One commenter stated that distribution checks sent to participants should include a disclosure explaining the tax consequence of cashing out of retirement accounts.

Department's Comment: Prior to receiving distribution checks, affected individuals receive Mandatory Distribution Letters, which include a Code-required notice explaining various tax rules for eligible rollover distributions.

7. *One Commenter Proposed a Wide Range of Additional Protections.* Another commenter proposed a variety of changes to the exemption, which are addressed as follows:

A. According to the commenter, the exemption largely does not address how RCH will invest and oversee participant accounts before another account is located, and a significant number of participants may not join another retirement Plan for years or decades.

Department's Response: Independent Plan fiduciaries, and not RCH, select and approve the investment vehicles for Default IRAs that receive assets directly from the Plan. An individual who does not join another Plan for decades will receive "Annual Statements," alerting the individual that, among other things, he or she may direct RCH to transfer the account balance into another account.

B. The commenter (and one other commenter) recommended that RCH assume more fiduciary responsibility. The commenter suggested that the Department require RCH to prudently select and monitor all funds invested or, alternatively, an independent Plan fiduciary could ensure that all participant accounts are prudently invested.

Department's Response: As noted above, Plan fiduciaries that are independent of RCH must select and approve the investment vehicles that contain Default IRA assets (prior to the RCH Program's identification of a New Plan Account). Before selecting the RCH Program, the independent Plan fiduciary must: Review the material terms of the Program; understand the impact that the Plan's participation in the Program may have on the Plan, and on its participants and beneficiaries; review the terms of the Plan's arrangements with its default IRA custodians/service providers, with consideration given to the possibility that those default IRA assets may

ultimately be transferred to new employer Plans (and incur additional fees in connection therewith) through the Program. Once selected, the plan sponsor must periodically monitor the RCH Program, to ensure that the Plan's continued participation remains in the interest of, and protective of, the Plan and its participants and beneficiaries.

The Department also notes that the sponsor of a plan that participates in the RCH Program retains its fiduciary obligations with respect to the plan's Eligible Mandatory Distribution Accounts, and that the account owner receives complete disclosure of the terms and fees associated with the Program and retains the ongoing authority to transfer funds out of the Program.

If assets in a Mandatory Distribution Account, or other plan assets, are transferred to a Default IRA, the exemption requires that affected individuals receive multiple accurate notices written in plain English, containing all relevant information, so they can decide for themselves which retirement-related investment vehicles are most appropriate for their Default IRA assets. The Mandatory Distribution Letter explains distribution options, discloses all fees and features of the RCH Program, and includes a Code-required notice explaining various tax rules for eligible rollover distributions. Thereafter, individuals receive Welcome Letters, which describe the IRA's investment options and include statements regarding all the Program's associated fees and features, including information regarding the possible future transfer of the IRA into a new employer's plan. The Welcome Letters also specifically inform individuals that, unless they direct otherwise, the IRA may be transferred to their new employer's plan after 60 days. For the duration of the IRA's existence, RCH or the record-keeper provide an "Annual Statement" regarding: The Program's material features; all fees the account will pay under the Program; and all compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with the Program. Transfers under the RCH Program to a New Plan Account occur only if: The individual does not timely respond to the notices; or the individual affirmatively approves the transfer.

C. The commenter additionally suggested that it would be beneficial to participants to require participating Plans to explain the RCH arrangement in any Plan communication regarding the mandatory distribution or termination distribution.

Department's Response: As noted above, under the exemption, RCH or the record-keeper must provide individuals with multiple detailed notices that explain all aspects of the Program, including how the Program works, a statement of all material Program features and a complete and accurate statement of all fees that are charged to accounts in the Program, including all compensation, direct or indirect, of any type received by RCH, related parties and participating record-keepers. The exemption also requires that all fees and expenses under the Program be fully disclosed in participating Plan's summary plan descriptions.

D. The commenter also recommended that the independent Plan fiduciary should ensure that not only is each fee necessary and as modest as possible, but that the totality of all fees is reasonable.

Department's Response: As noted above, the Department agrees that it is critically important that an independent Plan fiduciary review and approve the Plan's participation in the RCH Program. The duties of the fiduciary include ensuring that the fees associated with the RCH Program are necessary and reasonable. The exemption further requires an Independent Auditor to determine, among other things, whether the fees and compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with the Program did not exceed reasonable compensation. Finally, Section 408(b)(2) of ERISA and Section 4975(d)(2) of the Code independently require that RCH, the related service providers, and record-keepers, in fact, receive no more than reasonable compensation for their services.

E. The commenter also said that RCH will have some bias to retain accounts as long as possible to maximize its fees and suggested that the Plan fiduciary who is independent of RCH should be directed to monitor the timeliness of RCH's account matching and roll-over practices.

Department's Response: The exemption is structured to address this concern, as described in paragraph 4 above.

F. The commenter also recommended that RCH should be required to disclose its participating record-keepers in the materials it provides to Plans and participants.

Department's Response: As noted above, individuals receive a number of letters from RCH or participating record-keepers that provide material information on service providers and record-keepers. The first letter is a Mandatory Distribution Letter, which

names the service providers to the Default IRA that would be established should the individual not respond to the letter. Specifically, the Mandatory Distribution Letter identifies: The name of the investment provider; the specific investment(s) in which the IRA's assets will be invested; the name of the Default IRA's custodian; and each type of fee (and its amount) applicable to the Default IRA.

RCH has subsequently represented, and this exemption now requires, in Section I(v), that RCH will maintain a list of participating record-keepers on its website, with a link to that list in its letters to affected individuals.

G. The commenter additionally suggested that RCH should be required to ensure that all RCH notices and materials explain in plain and clear language participants' right to opt out of RCH, and that RCH provide all such documents in paper form, unless the participant has specifically requested electronic communications.

Department's Response: The exemption requires that the notices provided by RCH must be written in plain English, and these notices must be delivered by first class mail.

H. The commenter stated that the exemption does not provide any procedures for participant complaints about RCH, and that the Department should require RCH to notify participants of their right to file complaints with the Department of Labor.

Department's Response: Individuals with complaints about their Plan benefits may contact EBSA's Office of Outreach, Education and Assistance. More information may be found at <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/organization-chart#section11>. Persons with questions about their IRAs may find helpful information from the IRS at: <https://www.irs.gov/retirement-plans/individual-retirement-arrangements-iras>. The exemption now also requires that individuals receiving Mandatory Distribution notices are effectively given the opportunity to opt-out of the RCH Program, by the use of an operational phone number with a clearly available opt-out choice in the main menu.

8. *Another Commenter Sought a Revision to Section I(b) of the Exemption.* Another commenter supported the exemption, but recommended a revision to Section I(b), which provides, as a condition for relief, that "RCH does not sell or market Plan or Plan participant-related data RCH accesses or obtains to third parties in connection with the Program, nor does RCH use the data for any purpose other

than administration of the Program.” In particular, the commenter requested that the Department remove the phrase “. . . nor does RCH use the data for any purpose other than administration of the Program.” In the alternative, the commenter recommends that Section I(b) allow this use if the independent Plan fiduciary consents. In support of its recommendation, the commenter states that all custodians, record-keepers and other service providers to the retirement industry aggregate and use data for a variety of business related purposes, such as building IT solutions, planning for emergency contingencies, pricing the services of their vendors, and in response to government requests and often aggregate data to learn about how individuals save, how to best engage participants, and how participants are allocating investments, among other things.

Department's Response: In response to the comment, the Department has revised Section I(b). The condition now permits the use of a Plan's data by RCH, but only for RCH's internal business operations as they relate to the RCH Program. The revised condition specifically provides that “RCH does not sell or market Plan or Plan participant-related data RCH accesses or obtains to third parties in connection with the Program. Nor does RCH use the data for any purpose other than administration of the Program, without the express consent of the Plan fiduciary, after full disclosure by RCH of how the data will be used[.]”

9. RCH Requested the Following Revisions to the Proposed Exemption:

A. Remove the Exemption's Five-Year Term

RCH states that the exemption establishes a mechanism to ensure continued satisfaction of the requirements of section 408(a) of ERISA. RCH notes that the exemption requires an Independent Auditor to conduct an annual audit of the Program. RCH states that “the Independent Auditor's reports will provide the Department with information sufficient to determine that the “asset transfers . . . were performed accurately, without undue delay, and with RCH receiving no more than the fees and compensation disclosed to, and approved by, the applicable independent Plan fiduciaries.”

RCH states further that its success in achieving its corporate objectives should be irrelevant to the Department for purposes of determining whether the exemption meets the statutory requirements of “section 408(a) of ERISA.” RCH notes that the Department maintains the authority to revoke or modify the exemption at any time, and

that requiring RCH to submit an application in five years would be unnecessarily duplicative and result in a substantial economic and administrative burden to RCH.

Department's Response: The Department has decided not to remove the exemption's five year term. As noted by one of the commenters (who recommended that the duration of the exemption be reduced to three years) the RCH Program is novel. At present, there is insufficient data for the Department to confidently determine precisely how likely the Program is to achieve its goals of: Reducing asset leakage; improving retirement savings outcomes for former Plan participants with small account balances; and avoiding abuse. Given the exemption's protective conditions, including the required annual determination by the independent auditor, to be reviewed by the Department, regarding whether the New Plan Accounts, participants and beneficiaries received all the assets they were due, the Department has decided that the exemption's five year term is appropriate. Assuming RCH later seeks an extension of this exemption, the Department expects to use the data contained in the audits as one of the bases for determining whether and for how long additional relief is warranted.

B. Remove the \$5,000 Limitation. RCH requests that the exemption be modified to limit the availability of the exemption to amounts described under section 401(a)(31)(B)(ii) of the Code, rather than the actual dollar limitation of \$5,000. RCH states that, absent such a revision, the Program would be significantly disrupted if Congress were to change the limits under Code section 401(a)(31)(B)(ii). RCH states that requiring Plans under the Program to keep track of two limits could result in a substantial administrative burden that would contravene the Program's intention of complementing the already existing safe harbor provisions of the Code and regulations at 29 CFR 2550.404a-2.

RCH requests further that the account balance limitation under the exemption be applied as of the time of the transfer from an individual's prior employer Plan to a Default IRA. In this respect, RCH states that account balances with less than the Code section 401(a)(31)(B) limitation at the time of transfer to a Default IRA may grow due to investment performance over time. However, RCH states that investment gains in Default IRAs accrue incrementally and requests that these accounts be eligible to participate in the Program.

Department's Response: The Department has added new paragraph (v) to Section I of the exemption, which permits the transfer of more than \$5,000 to a New Plan Account if the amounts transferred exceed \$5,000 solely because of investment gains attributable to the assets held in the individual's Default IRA(s) and/or Eligible Mandatory Distribution Account(s).

C. Exemptive Relief for Communication Fee. In its exemption application, RCH described a \$6 communication fee (the Communication Fee), which it said reimburses RCH for a portion of the cost of issuing the notices and forms associated with effectuating the transfer of assets under the Program. However, RCH did not request relief for the Communication Fee in its application. Now RCH states that “because RCH receives the Communication Fee only after it engages in the Locate and Match process, sends the notices, and transfers the individual's assets to the New Plan Account, it may require relief for its receipt of the Communication Fee.”

Department's Response: The Department has revised the exemption to permit RCH's receipt of the Communication Fee, provided that the fee does not cause RCH to receive more than reasonable compensation, within the meaning of Section 408(b)(2) of ERISA and Section 4975(d)(2) of the Code. The Communication Fee is subject to the same conditions applicable to RCH's receipt of a Transfer Fee. Among other things: An independent Plan fiduciary must approve the fee; as noted above, the Independent Auditor must determine, among other things, whether the fees and compensation, direct or indirect, of any type, received by RCH, including the Communication Fee, exceed reasonable compensation; and the fee must not cause RCH, in fact, to receive more than reasonable compensation. This revision notwithstanding, however, the Department makes no factual determination, as to the reasonableness of the specific amount charged by RCH. The Communication Fee, like other fees under this exemption, is subject to the reasonable compensation requirement and the auditor's review.

D. Beneficiaries under the Program. RCH requests that the Department remove all references to “beneficiaries” participating in the Program throughout the proposed exemption, particularly in sections I(e)(2), I(1)(2), I(r), and I(s) of the operative language of the proposed exemption, because the inclusion would cause substantial hardship to RCH. RCH states that the Program is designed to assist job changers who participate in a

Plan to consolidate their Eligible Mandatory Distribution Accounts and Default IRA balances with their New Plan Accounts. According to RCH, by definition, the consolidation of beneficiary accounts falls outside the parameters of the Program. RCH Safe Harbor IRAs are separate retirement accounts from the prior employer plan.

However, RCH notes that once RCH Safe Harbor IRAs are established, affected individuals have the opportunity to designate beneficiaries to their respective IRAs, either on-line or by filling out the IRA custodial account agreement. RCH represents that if the IRA account holder dies, and there is no named beneficiary, RCH tries to locate and contact the individual's next of kin through the different search methods at its disposal. Once located, RCH communicates with the next of kin to either inform him or her of their benefit, to find any other beneficiaries, or to obtain contact information for the deceased account holder's estate.

Department's Response: The Department is not removing the exemption's references to "beneficiaries." As RCH notes above, individuals with RCH Safe Harbor IRAs may designate a "beneficiary," and the exemption's conditions continue to mandate certain protections for these persons. The exemption now mandates that each notice provided to individuals with RCH Safe Harbor IRAs must inform them that they may designate a "beneficiary," and the notice must clearly describe the process by which this may be achieved. The exemption further requires that, consistent with RCH's representation above, if an RCH Safe Harbor IRA account holder dies, and there is no named beneficiary, RCH will try to locate and contact the individual's next of kin through the different search methods at its disposal. Once located, RCH will communicate with the next of kin to either inform him or her of their benefit, to find any other beneficiaries, or to obtain contact information for the deceased account holder's estate.

Plan fiduciaries are directed to the GENERAL INFORMATION section of the exemption, which states, among things, that the general fiduciary responsibility provisions of section 404 of ERISA require a fiduciary to discharge its duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. Therefore, independent Plan fiduciaries must fulfill their fiduciary duties with respect to beneficiaries under their Plans, as well as with respect to Plan

participants, when deciding whether to adopt and retain the RCH Program.

E. Use of Participant Data. Section I(b) of the operative language provides that: "RCH does not sell or market Plan or Plan participant-related data RCH accesses or obtains to third parties in connection with the Program, nor does RCH use the data for any purpose other than administration of the Program; . . ."

RCH requests the addition of the clause "without the express consent of the Plan fiduciary" to the end of Section I(b) of the proposed exemption. The Applicant adds that it does not intend to sell any Plan or participant data to third parties.

Department's Response: As noted above, Section I(b) now permits RCH to use a Plan's data, but only for RCH's internal business operations as they relate to the RCH Program. In particular, Section I(b) provides: "RCH does not sell or market Plan or Plan participant-related data RCH accesses or obtains to third parties in connection with the Program. Nor does RCH use the data for any purpose other than administration of the Program, without the express consent of the Plan fiduciary, after full disclosure by RCH of how the data will be used[.]"

F. Third Party Restrictions. Section I(d) of the proposed exemption provides that: "(d) RCH does not restrict or limit the ability of unrelated third parties to develop, market and/or maintain a locate-and-match process separate from RCH's process that facilitates the transfer of Default IRA assets or Eligible Mandatory Distribution Account assets;"

RCH requests that the Department revise Section I(d) to clarify that the exemption does not restrict RCH from pursuing legal claims against those that may violate the law. In addition, RCH states that it is in general agreement with Section I(d)'s limitation, but has concerns regarding its breadth and potential implications. RCH states that it believes the purpose behind Section I(d) is to preclude RCH from entering into exclusivity agreements with record-keepers or Plan sponsors which would preclude other service providers from providing services similar to the Program. RCH further states that the exemption should not preclude RCH from pursuing available remedies under the law for misconduct by those persons that provide similar services, such as pursuing a legal claim against a third party that violates any intellectual property right of RCH.

Specifically, RCH requests that Section I(d) of the proposed exemption be revised to accommodate this concern

and reflect that "RCH does not restrict or limit the ability of unrelated third parties to develop, market and/or maintain a locate-and-match process separate from RCH's process that facilitates the transfer of Default IRA assets or Eligible Mandatory Distribution Account assets. Notwithstanding the foregoing, nothing in this section limits or precludes RCH from pursuing legal claims available to it under the law."

Department's Response: The Department has decided not to revise this condition. RCH's proposed revision is overbroad because a contract claim is a type of "legal claim." Section I(d) should be interpreted as prohibiting RCH from contractually insulating itself from competition, or from otherwise entering into arrangements, agreements or understandings with third parties, in a manner that precludes unrelated service providers from developing and providing services similar to the RCH Program. Section I(d) does not, however, limit the ability of RCH to pursue legal claims arising from third party misconduct, such as a violation of its intellectual property rights.

G. Exculpatory Provisions. Section I(n) of the proposed exemption provides that: "RCH does not include exculpatory provisions in its contracts disclaiming or limiting RCH's liability in the event that the RCH Program results in an improper transfer from a Default IRA or Eligible Mandatory Distribution Account."

RCH states that, by its terms, Section I(n) could be interpreted as prohibiting RCH from limiting its liability from errors caused by third parties, and RCH should not be precluded from disclaiming liability for improper transfers caused by third parties participating in the Program.

Therefore, RCH requests that the Department revise Section I(n) to add: "However, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a party independent of RCH and its affiliates, or damages arising from acts outside the control of RCH."

Department's Response: Section I(n) was not intended to prohibit RCH from limiting its liability from errors caused by third parties. The Department has revised Section I(n) in the manner requested by RCH.

H. Pre-Existing IRAs. RCH requests that the Department expand relief under the proposed exemption to cover Default IRA accounts that have already been established with RCH or third party record-keepers. RCH states that RCH and third party record-keepers

currently maintain a substantial number of Default IRAs that could benefit from the Program through consolidation with New Plan Accounts.

RCH states that no transfer of participant funds from a Default IRA currently held with RCH or a third party record-keeper would occur without the Plan sponsor of the participant's new Plan first approving the Program. RCH states that the safeguards established by the exemption, such as the requirement that Plan sponsors approve fees associated with the Program, would also be present for Default IRAs maintained by RCH and third party record-keepers.

Department's Response: The Department declines to make the requested revision. An essential protection of this exemption is a Plan fiduciary's independent evaluation of the RCH Program and determination that the Program is appropriate for the Plan's participants and beneficiaries. The decision to transfer plan assets to a Default IRA subject to the RCH Program is a fiduciary decision under Section 3(21) of ERISA, and is fully subject to the fiduciary protections of Title I of ERISA. Accordingly, the exemption ensures that a Plan fiduciary who is independent of RCH (an independent plan fiduciary), in advance of the Plan's participation in the Program: Reviews the material terms of the Program, including the reasonableness and necessity of the fees and services; evaluates the impact that the Plan's participation in the Program may have on the Plan, and on its participants and beneficiaries; reviews the terms of the Plan's arrangements with its default IRA custodians and service providers, with consideration given to the possibility that those default IRA assets may ultimately be transferred to new employer Plans (resulting in additional fees) through the Program; and determines that participation in the Program is fully consistent with the Fiduciary's obligations under ERISA, including its fundamental duties of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B).

Because "pre-existing" Default IRAs lack these fiduciary safeguards with respect to the RCH Program, the Department finds that their inclusion in the Program would not be in the interest of the affected plans, participants and beneficiaries, and IRA owners, or protective of their rights.

I. Conditions Related to the Independent Auditor. RCH requests that the annual reports required to be submitted to the Department by the Independent Auditor be protected from disclosure under the Freedom of Information Act (FOIA). RCH states that

it is concerned that including the annual report as a part of the public record could result in the disclosure of confidential trade secrets and proprietary business information that would not be subject to the protections under FOIA. RCH states that, while it is comfortable with the Department receiving the annual report in furtherance of the Department's continued evaluation of the Program, the report should not be made publicly-available, due to the significant potential that doing so would unnecessarily expose confidential trade secrets that are not otherwise available to third parties.

Department's Response: The Department is not revising the exemption as requested. RCH has not identified any confidential or privileged information required by, or that would be contained in, the audit. The Department expects the audit will provide helpful information to Plan fiduciaries seeking to determine whether to participate in the RCH Program. In addition, the public availability of the audit report provides a mechanism for the informed review and assessment of the RCH program by experts and analysts other than the Department, and creates an additional incentive for a compliant program. In sum, the condition promotes compliance, assists plan fiduciaries in discharging their responsibilities, and makes the exemption more administrable for the Department by increasing effective oversight by persons other than the Department. The Department has added clarifying language to Section I(m) of the exemption, making it clear that the auditor is free to make recommendations to RCH to assist with RCH's compliance with the exemption, and these recommendations must be included in the audit report submitted to the Department.

J. Lost and Missing Procedures. Section I(r) of the exemption provides that: "RCH is required to 'verify the accuracy of all participant . . . data . . . when assets are first transferred to a Default IRA or Eligible Mandatory Distribution Account. RCH may engage its processes for identifying lost and missing participants upon the receipt of returned mail that is described by the U.S. Post Office as 'undeliverable.'"

RCH states that it is unclear as to the meaning of the term "verify the accuracy" and the Department's intention behind this condition. RCH states that it performs its processes for identifying lost and missing participants upon the receipt of returned mail identified as undeliverable. For

example, where an individual's account balance is transferred to a RCH Safe Harbor IRA, RCH will send the Welcome Letter and other notices to the last known address of the individual. If the mail is returned as undeliverable to RCH, RCH continues to search for the individual and seeks to locate the individual through the RCH locate-and-match process. If RCH identifies a New Plan Account for the individual, RCH will begin sending the notices to the address associated with the New Plan Account.

RCH requests that the Department amend Section I(r) to reflect that RCH will engage in its search process upon receiving returned mail described as undeliverable mail from the U.S. Post Office; and that RCH should not be required to conduct searches for individuals where there is no indication that the address on file with the Plan sponsor of the participant's prior employer is correct. RCH states that requiring RCH to conduct searches without considering the veracity of the underlying participant data would serve no meaningful purpose and cause a substantial administrative burden to RCH that may not be currently supported by its fees.

Department's Response: Plan fiduciaries have an obligation to ensure the accuracy and integrity of the data they furnish to RCH. In an effort to more clearly describe the scope of RCH's responsibilities once that data is received by RCH, the Department is deleting Section I(r) and expanding Section I(s), as set forth in the proposed exemption. Previously, proposed Section I(s) required that, "RCH takes all prudent actions necessary to reasonably ensure that the Plan's participant and beneficiary data is current and accurate, and that the appropriate participants and beneficiaries, in fact, receive all the required notices and disclosures, until the assets are transferred under the Program to a New Plan Account." Now Section I(r) states that, "At all times during a Plan's participation in the RCH Program, from when an IRA is first established and subject to the RCH Program until the final transfer out of the IRA's assets from the RCH Program, RCH takes all prudent actions necessary to reasonably ensure that the Plan's participant and beneficiary data is current and accurate, and that the appropriate participants and beneficiaries, in fact, receive all the required notices and disclosures."

The Department notes that this exemption requires that the independent auditor ensure that: individuals are, in fact, receiving all of the notices; and the assets these

individuals are entitled to make their way to the proper New Plan Accounts.

K. Timing of Notices. Section I(f) of the proposed exemption states, in part, that: The notices required under the terms of the exemption will be sent no later than the following business day after: “(1) RCH receives a file from the Plan sponsor that an individual is eligible for mandatory distribution . . . (2) RCH receives the individual’s assets within a Default IRA; . . . and (4) the Locate and Match process verifies that the individual maintains a New Plan Account; . . .”

RCH requests a revision to Section I(f) to allow RCH three business days to send the notices (*i.e.*, three business days after the triggering event for each notice).

Department’s Response: The Department concurs with RCH’s request, and has revised the exemption accordingly.

L. Definition of Default IRA. Section III (h) of the proposed exemption states that: “the term “Default IRA” means “an individual retirement account with assets that is described in Section 408(a) of the Code and established pursuant to, and satisfies the requirements of, Section 401(a)(31) of the Code and regulations at 29 CFR 2550.404a–2; . . .”

RCH requests that the exemption be revised to permit the Program to cover Default IRAs that are: (a) Established as a result of a plan termination under 29 CFR 2550.404a–3; and (b) remain under the Code section 401(a)(31)(B)(ii).³ RCH also recommends adding a definition of a “Conduit IRA” for transactions involving Conduit Model Transfers to avoid confusion. A “Conduit Model Transfer” occurs when assets are transferred from an Eligible Mandatory Distribution Account or Non-RCH Default IRA through the conduit of an RCH Default IRA.

Department’s Response: The Department concurs, in part, with RCH’s request. Section III(h) now includes Default IRAs that are established as a result of a Plan termination under 29 CFR 2550.404a–3. For clarity, the Department has revised the heading to I(g) to better explain what a Conduit Model Transfer is.

M. “Independent of Influence, Suggestion, and Assistance by RCH.”

The exemption provides that the selection of the investment options by the Plan sponsor “must be made

independent of influence, suggestion or assistance by RCH, and RCH may not in any way, directly or indirectly, act in a manner that affects the amount of sub-transfer agency fees it receives under the Program.” RCH states that, while it does not provide any investment advice to Plan fiduciaries with respect to the selection of the investment option utilized within the Default IRA, it is unclear as to the meaning of “influence, suggestion or assistance,” as such terms are without significant guidance under ERISA or the Code. RCH states that it is concerned that these terms will result in confusion on the part of the Independent Auditor when evaluating the Program and RCH’s compliance with the terms of the exemption.

RCH states that, as is customary by providers of default IRAs, RCH currently makes investment options available to a Plan sponsor that selects the RCH automatic rollover services. RCH expresses concern that, merely by offering such investment options, it could be argued that RCH has suggested or influenced the investment selection, within the meaning of the exemption. RCH further states that, while it does not provide investment advice with respect to any particular investment option, it may provide access to information and educate the Plan sponsor regarding the various investment options that RCH makes available. RCH states that Plan sponsors often ask questions related to the differences between investment options available under the Program before making an investment selection. In this regard, RCH states that it is concerned that such education could be construed as “assistance” deemed improper for purposes of the exemption.

RCH requests that the Department remove references to “influence, suggestions and assistance,” and amend Section I(c) of the proposed exemption to reflect that RCH may not provide “investment advice in connection with the Plan sponsor’s selection of the Default IRA’s investment option under the Program and that RCH may not directly or indirectly, act in a manner that affects the amount of sub-transfer agency fees it receives under the Program.”

Alternatively, to the extent that the Department determines to keep this language, RCH requests that the Department clarify that RCH’s limitation of the number of investment options for selection by the Plan sponsor would not result in “influence or suggestion” as prohibited under Section I(c) of the exemption.

Department’s Response: While the Department is not wholly persuaded

that the phrase “independent of influence, suggestion or assistance by RCH” is unclear or that it will cause confusion for the Independent Auditor, it believes that RCH’s proposed amendment serves the intended purpose and has adopted it. Accordingly, Section I(c) of the exemption now provides that “RCH may not provide investment advice in connection with the Plan sponsor’s selection of investment options under the Program and RCH may not directly or indirectly, act in a manner that affects the amount of sub-transfer agency fees it receives under the Program.”

N. Description of the Relief. Section I(p) of the exemption provides that, “RCH does not have discretion under the RCH Program to affect the timing or amount of the transfer, other than to deduct the appropriate fees[.]” RCH states that the deduction of fees, the amount and timing of which is approved by a plan fiduciary in advance, does not cause a person to become a fiduciary under ERISA or the Code. RCH requests relief for the exercise of discretion in transferring an account that results in the payment of a fee. Specifically, RCH requests that the Department remove the clause “other than to deduct the appropriate fees” from Section I(p) of the Proposal.

Department’s Comment: The Department is not revising Section I(p). This condition, as written, is clear and unambiguous and consistent with the Department’s understanding of the Program. As represented by RCH, RCH will not have any discretion to affect the timing or amount of the transfers described herein.

O. Qualified Default Investment Alternative. Section I(j) of the exemption provides that: “Amounts transferred under the Program to the New Plan Account will be automatically invested according to the individual’s current investment elections under the terms of the Plan or, if no such elections were made, under the qualified default investment alternative as defined under ERISA section 404(c)(5) and established under the terms of the Plan[.]”

RCH states that, while many Plans maintain a default fund, not all default funds satisfy the requirements of ERISA section 404(c)(5) and regulations thereunder. Notwithstanding the foregoing, the plan fiduciary that selects any plan default fund is responsible for selecting the fund in accordance with its fiduciary responsibilities under ERISA. The failure of an investment option to satisfy section 404(c)(5) of ERISA results in no loss of protection for the participant under ERISA because plan fiduciaries remain responsible for

³ RCH notes that the definition of “plan” under Section III(d) of the proposed exemption includes individual account, defined contribution plans that satisfy the automatic rollover rules under 29 CFR 2550.404a–2 or 3. See DOL Advisory Opinion 2018–01A (November 5, 2018).

compliance with section 404 of ERISA. Participants of Plans that maintain a default fund that does not conform to section 404(c)(5) of ERISA should not be precluded from participating in the Program and accessing its benefits.

RCH requests that the Department revise Section I(j) of the proposed exemption to permit such Plans to participate in the Program and recommends that the Department revise Section I(j) to state that “if no such elections were made, under the qualified default investment alternative as defined under ERISA section 404(c)(5) or other default fund selected by the plan’s fiduciary.”

Department’s Response: The Department concurs with the comment, and has revised the exemption accordingly.

10. RCH’s Other Clarifications

RCH seeks certain clarifications to the proposed exemption that the Department does not view as relevant to its determination of whether to grant this exemption. These requested clarifications may be found as part of the public record for Application No. D–11938. On its own motion, the Department has made several minor non-substantive clarifying revisions to the operative language of the exemption.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Exemption Application No. D–11949) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on November 7, 2018, at 83 FR 55741.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, which, among other things, require a fiduciary to discharge its duties respecting the plan solely in the interest of the participants and beneficiaries of

the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: The exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Five Year Exemption

The sanctions resulting from the application of Code section 4975, by reason of sections 4975(c)(1)(D) and (E) of the Code, shall not apply to the receipt of a Transfer Fee and a Communication Fee, as defined in Section III(i) and (p) respectively, by RCH in connection with the transfer of assets from an individual’s Default IRA, as defined in Section III(h), to the individual’s New Plan Account, as defined in Section III(a) (the Transfer), following the individual’s failure to respond to two letters informing the individual that the assets will be transferred if he or she fails to contact RCH within the later of: Sixty days of the first letter; or thirty days of the second letter. Except as permitted by Section I(v), relief under this exemption is solely available for the payment of a Transfer Fee and a Communication Fee by a Default IRA to RCH in connection with the transfer of \$5,000 or less from the Default IRA to a New Plan Account,

pursuant to either a Default IRA Model Transfer (as defined in Section III(l)) or a Conduit Model Transfer (as defined in Section III(k)).

Section I. Conditions

(a) Any and all fees and compensation, direct or indirect, associated with the Program, including the Transfer Fee and the Communication Fee, must be fully disclosed to, and approved by, in the applicable agreement, a Plan fiduciary that is independent of RCH (an independent Plan fiduciary), prior to the transfer from the Plan to the Default IRA. The fees and compensation (direct or indirect) RCH receives in connection with a Conduit Model Transfer, as defined in Section III(k), are limited to a Transfer Fee and a Communication Fee paid by a Default IRA;

(b) RCH does not sell or market Plan or Plan participant-related data RCH accesses or obtains to third parties in connection with the Program. Nor does RCH use the data for any purpose other than administration of the Program, without the express consent of the Plan fiduciary, after full disclosure by RCH of how the data will be used;

(c) RCH does not receive any fees or compensation, direct or indirect, from third parties other than an asset-based sub-transfer agency fee paid to RCH from an IRA investment provider; any such IRA investment provider must be selected by an independent Plan fiduciary. RCH may not provide investment advice in connection with the Plan sponsor’s selection of investment options under the Program and RCH may not directly or indirectly, act in a manner that affects the amount of sub-transfer agency fees it receives under the Program.

The asset-based sub-transfer agency fee must be solely for shareholder services related to the investment options in which IRA assets are invested under the Program and may not exceed reasonable compensation as within the meaning of Section 408(b)(2) of ERISA, Section 4975(d)(2) of the Code, and 29 CFR 2550.408c–2 of the Department’s regulations. RCH will not fail to meet the terms of the condition solely because an independent Plan fiduciary selects and approves investment options in which IRA assets are invested under the RCH Program from a list provided by RCH;

(d) RCH does not restrict or limit the ability of unrelated third parties to develop, market and/or maintain a locate-and-match process separate from RCH’s process that facilitates the transfer of Default IRA assets or Eligible Mandatory Distribution Account assets;

(e) The disclosures described below in paragraphs (f) and (g) must be:

(1) Written in a manner calculated to be understood by the average intended recipient. To the extent reasonably possible, such disclosures must limit or eliminate technical jargon and long, complex sentences, and use clarifying examples and illustrations. No communication required by this exemption shall be made or written in a way that misleads, misinforms, or fails to properly inform the intended recipient; and

(2) sent to the last known address of the individual after RCH verifies the accuracy of the participant data (including the participant's and any beneficiary's social security number, first name, last name, middle name or initial, address, city, state, zip code, date of birth, and phone number);

(f) *Transfers From RCH Default IRAs to New Plan Accounts.* RCH will direct the transfer of assets from a RCH Default IRA to a New Plan Account only after RCH furnishes the following notifications to the individual in the manner required by paragraph (e) above:

(1) *Mandatory Distribution Letter.* RCH must provide a "Mandatory Distribution Letter" to an individual who is eligible for mandatory distribution under section 401(a)(31)(B) of the Code prior to establishing a Default IRA for that individual. The Mandatory Distribution Letter is sent no later than three business days after RCH receives the file from the Plan sponsor indicating that the individual is eligible for mandatory distribution under section 401(a)(31)(B) of the Code, and must include:

(A) A description of the available Plan distribution options, including the independent Plan fiduciary's selection of the Default IRA;

(B) A notice that the individual has 30–90 days (as determined by the independent Plan fiduciary) to contact RCH and specify a different distribution option before his or her account is transferred into the Default IRA;

(C) A description of how the Program works, including a description of all material Program features and a complete and accurate statement of all fees that are charged to accounts in the Program, as well as all compensation, direct or indirect, of any type received by RCH, related parties and participating record-keepers in connection with the Program;

(D) An explanation of distributions eligible for rollover treatment as required under section 402(f) of the Code;

(E) A statement that at any time the individual can direct RCH to transfer

the balance into the ERISA-covered Plan of his or her current employer or to another account;

(F) A statement that unless the individual specifies an alternative distribution option, the individual's Plan balance will be transferred into a Default IRA;

(G) A notice that if the Locate and Match process, as defined in Section III(b), finds that the individual maintains another Plan account sponsored by his or her current employer, RCH will send the Consent Letter, described below, and seek the individual's consent to transfer assets from the Default IRA to the Plan of the individual's current employer; and

(H) A statement that the individual may opt out of the transfer by calling or writing RCH, and an explanation of how such individual can effectively opt out.

(2) *Welcome Letter.* RCH must furnish each individual a "Welcome Letter" immediately upon the transfer of assets to a Default IRA. The Welcome Letter is sent no later than three business days after RCH receives an individual's assets in a Default IRA. The Welcome Letter must include:

(A) A notice that RCH opened an IRA on behalf of the individual;

(B) All relevant information regarding the Default IRA, including: Applicable account fees; the name of the investment fund into which the individual's assets were transferred; the fund's symbol; the total dollar amount of assets invested; the number of fund shares; and the fund share price;

(C) A trade confirmation;

(D) RCH's contact information, including toll-free numbers for the service center and on-line access instructions;

(E) A full and complete statement of all fees charged to the Default IRA, and all compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with administration of the Program;

(F) A notice that the individual may contact RCH and transfer his or her balance from the Default IRA to another account at any time before RCH locates and verifies the individual's account at the Plan sponsored by his or her current employer;

(G) A statement that RCH will not transfer the Default IRA for at least 60 days from the date of the Welcome Letter. The notice shall further state that if the individual takes no action within the 60 days, and if the Locate and Match process finds that the individual maintains a New Plan Account, RCH will send the Consent Letter and seek the individual's consent to transfer the

assets of the Default IRA to the Plan of the individual's new employer. The notice will also state that if the individual fails to contact RCH within 30 days of receiving the Consent Letter, RCH will transfer the Default IRA balances to the Plan of the individual's current employer.

(3) *Annual Statements.* At least annually, RCH must furnish an "Annual Statement" to the individual which includes a statement of:

(A) All fees the account will pay under the Program and a statement of all the Program's material features, including a complete and accurate statement of all compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with the Program;

(B) A statement that the individual may contact RCH and direct RCH to transfer the balance into the Plan of his or her current employer or another account if he or she contacts RCH before RCH locates the individual's account at their new employer Plan; and

(C) A statement that if the Locate and Match process finds that the individual maintains another individual account plan sponsored by his or her current employer, RCH will send the Consent Letter and seek the individual's consent to transfer the assets of the Default IRA to the Plan sponsored by the individual's current employer. The notice will also state that if the individual fails to contact RCH within 30 days of receiving the Consent Letter, RCH will transfer the Default IRA balances to the Plan sponsored by the individual's current employer.

(4) *Consent Letter.* For transfers of assets from a Default IRA to the New Plan Account, no later than three business days after verification through the Locate and Match Process that the individual has opened a New Plan Account, RCH must send the Consent Letter, which must include:

(A) A notification that the individual's Default IRA has been matched with the individual's New Plan Account;

(B) A request for the individual's consent to transfer the assets from the Default IRA to the New Plan Account. The Consent Letter will also state that if the individual fails to contact RCH within 30 days of receipt of the Consent Letter, RCH will transfer the Default IRA balances to the Plan sponsored by the individual's current employer.

(C) A statement of all fees and other compensation, direct or indirect, of any type, associated with the Program and with the transfer of assets to the Plan sponsored by his or her current employer.

(g) *Conduit Model Transfers (i.e., Transfers from Eligible Mandatory Distribution Accounts or Non-RCH Default IRAs through the Conduit of RCH Default IRAs)*. Assets will be transferred from an Eligible Mandatory Distribution Account to a RCH Default IRA and then to a New Plan Account, or from a non-RCH Default IRA to an RCH Default IRA and then to a New Plan Account, only after the following notifications are provided to the individual in the manner required by paragraph (e) above: (1) A Mandatory Distribution Letter that is sent when it is determined under the RCH Program that an individual on whose behalf a non-RCH Default IRA has been established, or an Eligible Mandatory Distribution Account has been maintained at a prior employer, has opened a New Plan Account at the individual's current employer. The Mandatory Distribution Letter will contain the information described in paragraph (f), as applicable, and will note that if the individual fails to contact RCH within 60 days of the Consent Letter described below, the individual's account balance will be transferred to the Plan of the individual's current employer through an RCH Safe Harbor IRA unless the individual opts out of the transfer;

(2) A Consent Letter is sent when the RCH Program determines that an individual on whose behalf a non-RCH Default IRA has been established, or on whose behalf an Eligible Mandatory Distribution Account is maintained at a prior employer, has opened a New Plan Account at the individual's current employer. The Consent Letter will fully state the fees and other compensation, direct or indirect, of any type, associated with the RCH Program, and will explain that if the individual fails to opt out of the RCH Program within 60 days of receiving the Consent Letter, the assets will be transferred to the New Plan Account.

(3) Another Consent Letter is sent if, after 30 days following the first Consent Letter, the participant has not contacted RCH with instructions to opt in or opt out of the RCH Program. The Consent Letter will explain that, unless the individual opts out of the RCH Program within 30 days of receiving the letter, RCH will direct the transfer of the assets to the New Plan Account;

(h) The Plan maintaining the New Plan Account and the Plan maintaining the Eligible Mandatory Distribution Account are each a qualified retirement Plan as described under section 401(a) of the Code;

(i) The Plan maintaining the New Plan Account has authorized the transfer of

assets from other qualified retirement accounts;

(j) Amounts transferred under the Program to the New Plan Account will be automatically invested according to the individual's current investment elections under the terms of the Plan or, if no such elections were made, under the qualified default investment alternative as defined under ERISA section 404(c)(5) and established under the terms of the Plan, or other default fund selected by the independent Plan fiduciary;

(k) The RCH Default IRA does not incur any fees or charges, direct or indirect, after the Program identifies a match with a New Plan Account, except for the Transfer Fee and Communication Fee;

(l) RCH submits to an annual audit, performed by a qualified independent auditor, as defined in Section III(j). The auditor must review a representative sample of transactions and related undertakings, sufficient for the auditor to make the following determinations:

(1) Whether the notices met the timing and content requirements of this exemption, and were written and delivered in a manner reasonably designed to ensure that affected individuals would both receive and understand the notices;

(2) Whether the asset transfers were conducted in accordance with this exemption and the applicable written agreement, and the New Plan Accounts and participants and beneficiaries received all the assets they were due;

(3) Whether the fees and compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with the Program are consistent with the fees authorized by appropriate Plan fiduciaries; were properly disclosed to the affected individuals in accordance with the terms of this exemption; and did not exceed reasonable compensation, within the meaning of Section 408(b)(2) of ERISA, Section 4975(d)(2) of the Code, and 29 CFR 2550.408c-2 of the Department's regulations;

(4) Whether individuals receiving Mandatory Distribution notices were effectively given the opportunity to opt-out by the use of a phone number that was operational and with a clearly available opt-out choice in the main menu; and

(5) Whether the conditions of this exemption have been met;

(m) The Auditor must complete the audit within 6 months following the 12-month period to which the audit relates, and the Auditor must submit a written report to the Office of Exemption

Determinations within 30 days of completion detailing its findings, and the report will be part of the public record for this exemption. The written report must: Describe the Auditor's methodology in performing the Audit; contain a detailed description of the Auditor's findings; and include any recommendations the Independent Auditor may make to assist with RCH's compliance with the terms of this exemption;

(n) RCH does not include exculpatory provisions in its contracts disclaiming or limiting RCH's liability in the event that the RCH Program results in an improper transfer from a Default IRA or Eligible Mandatory Distribution Account. However, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a party independent of RCH and its affiliates, or damages arising from acts outside the control of RCH;

(o) RCH does not provide investment advice, as described in ERISA section 3(21) or Code Section 4975(e)(3) and accompanying regulations, with respect to the assets held in a Default IRA or Eligible Mandatory Distribution Account;

(p) The Program queries on at least a monthly basis whether a participant with a New Plan Account in the Program has either a Default IRA or an Eligible Mandatory Distribution Account covered by the Program. If the Program identifies a match, and the affected individual does not respond in a timely manner to the required notifications, RCH will immediately direct the transfer of the assets of the Default IRA or Eligible Mandatory Distribution Account to the participant's New Plan Account following the Settlement Date, as defined in Section III(m). RCH does not have discretion under the RCH Program to affect the timing or amount of the transfer, other than to deduct the appropriate fees;

(q) All fees and expenses under the Program must be fully disclosed in participating Plans' summary plan descriptions;

(r) At all times during a Plan's participation in the RCH Program, from when an IRA is first established and subject to the RCH Program until the final transfer out of the IRA's assets from the RCH Program, RCH takes all prudent actions necessary to reasonably ensure that the Plan's participant and beneficiary data is current and accurate, and that the appropriate participants and beneficiaries, in fact, receive all the required notices and disclosures, until the assets are transferred under the Program to a New Plan Account.

(s) RCH may not receive a Transfer Fee or Communication Fee in connection with a roll-in transaction to an ERISA-covered Plan sponsored or maintained by RCH;

(t) Roth IRAs assets are not transferred to New Plan Accounts under the RCH Program;

(u) RCH will maintain a list of participating record-keepers on its website, with a link to that list in its letters to affected individuals;

(v) A transfer to an individual's New Plan Account may exceed \$5,000, if the amounts transferred exceed \$5,000 solely because of investment gains attributable to the assets held in the individual's Default IRA(s) and/or Eligible Mandatory Distribution Account(s);

(w) Individuals receiving Mandatory Distribution notices must effectively be given the opportunity to opt-out by the use of an operational phone number with a clearly available opt-out choice in the main menu;

(x) Each notice provided to individuals with RCH Safe Harbor IRAs must afford the opportunity to designate a "beneficiary," and the notice must clearly describe the process by which this designation may be achieved;

(y) If an RCH Safe Harbor IRA account holder dies, and there is no named beneficiary, RCH will try to locate and contact the individual's next of kin through the different search methods at its disposal. Once located, RCH will communicate with the next of kin to either inform him or her of their benefit, to find any other beneficiaries, or to obtain contact information for the deceased account holder's estate.

Section II. Record-Keeping Requirements

(a) RCH maintains for 6 years the records necessary to enable the persons described below to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, solely because of circumstances beyond the control of RCH, the records are lost or destroyed before the 6-year period ends; and

(2) No party in interest other than RCH will be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required below:

(b)(1) Except as provided in Section II(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section

II(a) are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any individual or fiduciary of a Plan participating in the Program; and

(iii) None of the persons described in Section II(b)(1)(ii) shall be authorized to examine trade secrets of RCH, or commercial or financial information which is privileged or confidential.

Section III. Definitions

(a) The term "New Plan Account" means any account maintained by a Plan that has received contributions or experienced investment activity within the preceding three months and is held for the benefit of an individual that maintains active employment with the Plan sponsor;

(b) The term "Locate and Match" means the technological process relied upon by RCH and participating record-keepers to identify multiple accounts maintained by the same individual.

(c) The term "Eligible Mandatory Distribution Account" means an account with assets that is eligible for mandatory distribution under section 401(a)(31) of the Code at the individual's prior employer Plan;

(d) The term "Plan" means an individual account defined contribution plan that satisfies the automatic rollover rules under 29 CFR 2550.404a-2 or 3;

(e) The term "Program" means the RCH Auto Portability Program as it is described in this exemption and as it applies to Eligible Mandatory Distribution Accounts and Default IRAs, as defined in this section;

(f) The term, "RCH" means Retirement Clearinghouse LLC or any affiliates;

(g) The term "record-keeper" means record-keepers that are independent of RCH and any affiliates of the record-keepers who elect to participate in the Program;

(h) The term "Default IRA" means an individual retirement account that is described in Section 408(a) of the Code, and established pursuant to and in compliance with the requirements of Section 401(a)(31) of the Code and regulations at 29 CFR 2550.404a-2; or an individual retirement account established as a result of a plan termination under 29 CFR 2550.404a-3;

(i) The term "Transfer Fee" means the fee paid to RCH for processing the transfer of assets from the Default IRA or Eligible Mandatory Distribution Account to the Current Plan Participant Account;

(j) The term "Independent Auditor" means a person or entity with extensive knowledge of ERISA, the Code and the types of transactions described in this exemption, who is capable of reviewing and analyzing the Program and the requirements of this exemption in a manner sufficient to perform the audit, and who has been retained by RCH to conduct the audit required by this exemption. The Independent Auditor may derive no more than 2 percent of its annual compensation from services provided directly or indirectly to RCH or any of its affiliates or related parties;

(k) In a "Conduit Model Transfer," RCH first transfers an individual's assets from either an Eligible Mandatory Distribution Account or a non-RCH default IRA, to an RCH default IRA, and then transfers the assets to a New Plan Account based upon the RCH Program's determination that the individual has opened a New Plan Account sponsored by the individual's current employer;

(l) In an "RCH Default IRA Model Transfer," an individual's Eligible Mandatory Distribution Account or non-RCH default IRA assets are transferred first to an RCH default IRA, and then the assets are transferred to a New Plan Account, based upon the RCH Program's determination that the individual has opened a New Plan Account sponsored by the individual's current employer;

(m) The term "Settlement Date" means the settlement date set forth in an applicable mutual fund's prospectus. In no case will the Settlement Date be later than three business days after the date the relevant sell order is placed. RCH has no discretion regarding the timing of the Settlement Date;

(n) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(o) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(p) The term "Communication Fee" means the \$6 communication fee RCH receives under the Program. The Communication Fee reimburses RCH for a portion of the cost of issuing the notices and forms associated with effectuating the transfer of assets under the Program.

This exemption will be in effect for five years from the date this notice is published in the **Federal Register**.

Signed at Washington, DC.

Lyssa Hall,

*Director, Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2019-16237 Filed 7-30-19; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act," 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 30, 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=201904-1205-002 (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202-693-8073, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to 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-ETA, 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 Licari by telephone at 202-693-8073, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act (WIOA) information collection. This ICR collects the required information for the submission of WIOA State Plans and Modifications. The information covered includes the State's strategic focus for its public workforce system and then several key items for operationalizing the strategic goals. Information in the WIOA State Plan includes an overview of the State's governance structure, resources, programs, career pathways, and sector strategy initiatives. The ICR also covers assurances that the WIOA program in the State is compliant with statutory and regulatory requirements. This ICR submission is classified as a revision because it seeks to make a number of changes. More specifically, changes are proposed to the data collection instrument to remove references to dates that have already passed, correct typographical errors, provide an optional data element, incorporate two separate data elements into another existing data element, and update instructions for collection elements. WIOA sections 102 and 103 authorize this information collection. See 29 U.S.C. 3112 and 3113.

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 1205-0522. The current approval is scheduled to expire on September 30, 2019; however, the DOL notes that existing information collection requirements submitted to the OMB will receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 2, 2019 (84 FR 19).

The DOL submitted another ICR for this same Control Number under ICR reference Number 201906-1205-005. That ICR was associated Wagner-Peyser Act Staffing Flexibility proposed rule originally published in the **Federal Register** on June 24, 2019 (84 FR 29433). Each ICR is a standalone request; consequently, comments submitted to OMB pursuant to this action should not address the changes sought by the rulemaking ICR. Similarly, comments on the information collections proposed to be changed by the rulemaking should not be sent in response to the changes proposed by this ICR.

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 1205-0522. 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-ETA.

Title of Collection: Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act.

OMB Control Number: 1205–0522.
Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 38.

Total Estimated Number of Responses: 38.

Total Estimated Annual Time Burden: 8,136 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 25, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–16254 Filed 7–30–19; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the “Job Openings and Labor Turnover Survey.” A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the

ADDRESSES section below on or before September 30, 2019.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Job Openings and Labor Turnover Survey (JOLTS) collects data on job vacancies, labor hires, and labor separations. As the monthly JOLTS time series grow longer, their value in assessing the business cycle, the difficulty that employers have in hiring workers, and the extent of the mismatch between the unused supply of available workers and the unmet demand for labor by employers will increase. The study of the complex relationship between job openings and unemployment is of particular interest to researchers. While these two measures are expected to move in opposite directions over the course of the business cycle, their relative levels and movements depend on the efficiency of the labor market in matching workers and jobs.

Along with the job openings rate, trends in hires and separations may broadly identify which aggregate industries face the tightest labor markets. The quits rate, the number of persons who quit during an entire month as a percentage of total employment, may provide clues about workers’ views of the labor market or their success in finding better jobs. In addition, businesses will be able to compare their own turnover rates to the national, regional, and major industry division rates.

The BLS uses the JOLTS form to gather employment, job openings, hires, and total separations from business establishments. The information is collected once a month at the BLS Data

Collection Center (DCC) in Atlanta, Georgia. The information is collected using Computer Assisted Telephone Interviewing (CATI), Web, email, and FAX. An establishment is in the sample for 36 consecutive months.

II. Current Action

Office of Management and Budget clearance is being sought for the JOLTS. The BLS is requesting a revision to the existing clearance for the JOLTS. JOLTS is extending time respondents remain in the sample from 24 to 36 months. This will cause an estimated 9.2% increase in burden costs resulting from an increase in the sample from 16,000 to 20,700 (30% increase).

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- Minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Job Openings and Labor Turnover Survey.

OMB Number: 1220–0170.

Affected Public: Federal Government; State, Local, or Tribal governments; Businesses or other for-profit; Not-for-profit institutions; Small businesses and organizations.

Affected public	Total respondents	Frequency	Total responses	Average time per response (min.)	Estimated total burden
Private	9,637	Monthly	115,643	10	19,274
State, Local, & Tribal Gov’t	1,512	Monthly	18,149	10	3,025
Federal Gov’t	532	Monthly	6,379	10	1,063
Totals	11,681	Monthly	140,171	10	23,362

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on July 25, 2019.

Mark Staniorski,

*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 2019-16257 Filed 7-30-19; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0140]

Proposed Extension of Information Collection; High-Voltage Continuous Mining Machines Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for High-Voltage Continuous Mining Machines Standards for Underground Coal Mines.

DATES: All comments must be received on or before September 30, 2019.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2019-0023.

- *Regular Mail:* Send comments to USDOL-MSHA, Office of Standards,

Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452.

- *Hand Delivery:* USDOL—Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT:

Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

This information collection maintains the safe use of high-voltage continuous mining machines in underground coal mines by requiring records of testing, examination and maintenance on machines to reduce fire, electrical shock, ignition and operation hazards.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to High-Voltage Continuous Mining Machines Standards for Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at USDOL—Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for High-Voltage Continuous Mining Machines Standards for Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0140.

Affected Public: Business or other for-profit.

Number of Respondents: 3.

Frequency: On occasion.

Number of Responses: 4,810.

Annual Burden Hours: 148 hours.

Annual Respondent or Recordkeeper Cost: \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2019-16255 Filed 7-30-19; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR**Mine Safety and Health Administration****[OMB Control No. 1219-0147]****Proposed Extension of Information Collection; Coal Mine Dust Sampling Devices****AGENCY:** Mine Safety and Health Administration, Labor.**ACTION:** Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Coal Mine Dust Sampling Devices.

DATES: All comments must be received on or before September 30, 2019.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2019-0026.

- *Regular Mail:* Send comments to USDOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452.

- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:**I. Background**

U.S.C. 813(h), authorizes MSHA to collect information necessary to carry

out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Continuous Personal Dust Monitors (CPDMs) determine the concentration of respirable dust in coal mines. CPDMs must be designed and constructed for coal miners to wear and operate without impeding their ability to perform their work safely and effectively, and must be durable to perform reliably in normal working conditions of coal mines. Paperwork requirements imposed on applicants are related to the application process and CPDM testing procedures.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Coal Mine Dust Sampling Devices. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed

to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Coal Mine Dust Sampling Devices. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0147.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Frequency: On occasion.

Number of Responses: 1.

Annual Burden Hours: 41 hours.

Annual Respondent or Recordkeeper Cost: \$301,810.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2019-16258 Filed 7-30-19; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice: (19-041)]****Notice of Information Collection**

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Gatrie Johnson, JF000, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument(s) and instructions should be directed to Gatrie Johnson, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546-0001 or *Gatrie.Johnson@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

To ensure accurate reporting of Government-owned, contractor-held property on the financial statements and to provide information necessary for effective property management in accordance with FAR Part 45, NASA obtains summary data annually from the official Government property records maintained by its contractors. The information is submitted via the NASA Form 1018, at the end of each fiscal year.

II. Method of Collection

Electronic.

III. Data

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700-0017.

Type of Review: Renewal of a previously approved information collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 726.

Estimated Time per Response: 4 hrs.

Estimated Total Annual Burden Hours: 2644.

Estimated Total Annual Cost: \$308,944.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this

information collection. They will also become a matter of public record.

Gatrie Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2019-16249 Filed 7-30-19; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155 and 72-043; NRC-2019-0127]

Entergy Nuclear Operations, Inc.; Entergy Nuclear Palisades, LLC; Big Rock Point Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from the requirement to maintain a specified level of onsite property damage insurance in response to a request from Entergy Nuclear Operations, Inc. (ENO) dated August 10, 2018. This exemption would permit the Big Rock Point (BRP) Independent Spent Fuel Storage Installation (ISFSI) to reduce its onsite insurance coverage from \$500 million to \$50 million.

DATES: The exemption was issued on July 31, 2019.

ADDRESSES: Please refer to Docket ID NRC-2019-0127 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov/> and search for Docket ID NRC-2019-0127. 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.

- *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.

FOR FURTHER INFORMATION CONTACT:

Norma García Santos, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6999, email: *Norma.GarciaSantos@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Big Rock Point is located in Charlevoix County, Michigan, approximately 11 miles west of Petoskey, on the northern shore of Michigan's Lower Peninsula. The BRP nuclear plant was a boiling water reactor rated at 75 MW electric and began commercial operation in March 1963. The plant was permanently shut down on August 29, 1997, and Consumer's Energy (CE) submitted a post shutdown decommissioning activities report on September 19, 1997 (ADAMS Accession No. ML19196A241). In accordance with the requirements of paragraph 50.82(a)(9) of title 10 of the *Code of Federal Regulations* (10 CFR), the licensee submitted BRP's license termination plan (LTP) for its facility. The licensee constructed an onsite ISFSI under its 10 CFR part 50 general license (SFGL-16) and completed the transfer of all spent nuclear fuel to the ISFSI in May 2003 (ADAMS Accession No. ML031270219). After the release of land from the part 50 license in January 2007 (ADAMS Accession No. ML063410368), the remaining onsite area is a parcel of land approximately 30 acres, within which the ISFSI is located, and an additional parcel of approximately 75 acres adjacent to the ISFSI.

By order dated April 6, 2007 (ADAMS Accession No. ML070740758), the NRC approved the direct transfer of Possession Only License No. DPR-06 for BRP from CE to Entergy Nuclear Palisades, LLC (ENP), and ENO, and approved a conforming license amendment, pursuant to 10 CFR 50.80, "Transfer of licenses," and 10 CFR 72.50, "Transfer of license," to reflect the change. The order was published in the **Federal Register** (FR) on April 16, 2007 (72 FR 19056). Accordingly, the project name was changed from Big Rock Point Restoration Project to Big Rock Point ISFSI.

II. Request/Action

The BRP site currently maintains \$500 million in onsite insurance coverage in accordance with a previous exemption approved by the NRC on November 3, 1982 (ADAMS Accession No. ML19196A229). Under 10 CFR 50.12, "Specific exemptions," BRP has requested an exemption from 10 CFR 50.54(w)(1) by letter dated August 10, 2018 (ADAMS Accession No. ML18222A394). The exemption from the requirements of 10 CFR 50.54(w)(1) would permit BRP to reduce its onsite property damage insurance from \$500 million to \$50 million. This second exemption is being requested to allow reduced insurance coverage commensurate with the significantly reduced risks associated with a single reactor facility that has ceased operation, permanently defueled, and transferred all Spent Nuclear Fuel (SNF), Special Nuclear Material (SNM), and Greater Than Class C (GTCC) waste to dry fuel storage (DFS) casks stored in an ISFSI.

The regulation in 10 CFR 50.54(w)(1) requires each licensee to have and maintain onsite property damage insurance to stabilize and decontaminate the reactor and reactor site in the event of an accident. The onsite insurance coverage must be either \$1.06 billion or whatever amount of insurance is generally available from private sources (whichever is less).

In its application, the licensee stated that there is a reduced potential for, and consequences of, a fuel handling accident or a fuel zirconium fire. Because reactor operation is no longer authorized at BRP, there are no events that would require the stabilization of reactor conditions after an accident. Similarly, the risk of an accident that would result in significant onsite contamination at BRP is also much lower than the risk of such an event at operating reactors. In addition, plant structures have been removed from the site, and non-ISFSI related portions of the site have been released from the BRP part 50 license for unrestricted use. Therefore, BRP requested an exemption from 10 CFR 50.54(w)(1) that would permit a reduction of its onsite property damage insurance from \$500 million to \$50 million, commensurate with an ISFSI only facility, which is consistent with the underlying purpose of the rule.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when:

(1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present.

The financial protection limits of 10 CFR 50.54(w)(1) were established after the Three Mile Island accident out of concern that licensees may be unable to financially cover onsite cleanup costs in the event of a major nuclear accident. The specified coverage requirement (\$1.06 billion) was developed based on an analysis of an accident at a nuclear reactor operating at power, resulting in a large fission product release and requiring significant resource expenditures to stabilize the reactor conditions and ultimately decontaminate and clean up the site.

The NRC developed cost estimates from the spectrum of postulated accidents for an operating nuclear reactor and the consequences of any associated release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large. In an operating plant, the high temperature and pressure of the reactor coolant system, as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. With the permanent cessation of reactor operations at BRP, the permanent removal of the fuel from the reactor core, and the movement of all the irradiated fuel assemblies into storage at the onsite ISFSI, such accidents are no longer possible. As a result, the reactor, reactor coolant system, and supporting systems no longer operate, and these components have already been dismantled and removed from the site as part of the decommissioning process. Therefore, these systems and components no longer serve any function related to the storage of the irradiated fuel. As such, postulated accidents involving failure or malfunction of the reactor, reactor coolant system, or supporting systems are no longer applicable at BRP.

During reactor decommissioning, the principal radiological risks are associated with the storage of spent fuel onsite, as well as the inventory of radioactive liquids, activated reactor components, and contaminated materials. In its August 10, 2018 (ADAMS Accession No. ML18222A394), exemption request, BRP noted that because all of the spent fuel is stored in dry fuel storage casks in an ISFSI, a fuel handling accident and a zirconium fire caused by drain down of the spent fuel

pool are no longer considered credible events. In the current state of decommissioning at BRP, no liquid and airborne effluent releases resulting from decommissioning activities are considered credible events. In addition, decontamination activities have been completed and the site lands other than those associated with the ISFSI have been released from the BRP part 50 license. The licensee stated that this results in a significant reduction in the number and severity of potential accidents involving a significant adverse effect on public health and safety.

In addition, given that all the irradiated fuel assemblies at BRP have already been moved into storage at the onsite ISFSI, the fuel is no longer thermal-hydraulically capable of sustaining a zirconium fire, and can be air-cooled in all credible accident scenarios and fuel configurations. The NRC staff has previously authorized a lesser amount of onsite property damage insurance coverage based on an analysis of the zirconium fire risk. In SECY-96-256, "Changes to Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w)(1) and 10 CFR 140.11," dated December 17, 1996 (ADAMS Accession No. ML15062A483), the NRC staff recommended changes to the power reactor insurance regulations that would allow licensees to lower onsite insurance levels to \$50 million upon demonstration that the fuel stored in the spent fuel pool can be air-cooled and could account for the postulated rupture of a large liquid radiological waste tank at the site, should such an event occur.

In its Staff Requirements Memorandum to SECY-96-256, dated January 28, 1997 (ADAMS Accession No. ML15062A454), the Commission supported the staff's recommendation that, among other things, would allow permanently shutdown power reactor licensees to reduce commercial onsite property damage insurance coverage to \$50 million when the licensee was able to demonstrate the technical criterion that the spent fuel could be air-cooled if the spent fuel pool was drained of water, and could account for the postulated rupture of a large liquid radiological waste tank at the site. In SECY-96-256, the postulated large liquid radiological waste storage tank rupture event was determined to have a bounding onsite cleanup cost of approximately \$50 million. The staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (e.g., Fort Calhoun Station, published in the **Federal Register** on April 6, 2018 (83 FR 14898); and La Crosse Boiling Water

Reactor, published in the **Federal Register** on August 1, 2018 (83 FR 37532)). These prior exemptions were based on the licensees demonstrating that the spent fuel could be air-cooled, consistent with the technical criterion discussed above. Accordingly, for BRP, decommissioning of the site is complete and the site lands other than those associated with the ISFSI have been released for unrestricted use. Additionally, all SNF, SNM, and GTCC waste are stored in DFS casks at the ISFSI. Therefore, the NRC staff determined \$50 million to be an adequate level of onsite property damage insurance coverage for the BRP site, given that (1) all SNF, SNM, and GTCC waste is stored in the BRP ISFSI and the spent fuel is no longer susceptible to a zirconium fire; and (2) the inventory of radioactive liquids at the site has been eliminated such that liquid and airborne effluent releases are no longer considered credible events.

A. Authorized by Law

The regulation in 10 CFR 50.54(w)(1) requires each licensee to have and maintain onsite property damage insurance of either \$1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. In accordance with 10 CFR 50.12, the Commission may grant exemptions from the regulations in 10 CFR part 50, as the Commission determines are authorized by law.

As explained above, the NRC staff has determined that the licensee's proposed reduction in onsite property damage insurance coverage to a level of \$50 million is consistent with the basis provided in SECY-96-256 because there is no credible risk of a zirconium fire with all irradiated fuel stored in the onsite ISFSI, where it is air-cooled in all accident scenarios, all SNM and GTCC waste is stored in the ISFSI, and the inventory of radioactive liquids at the site has been eliminated such that liquid and airborne effluent releases are no longer considered credible events.

The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, or other laws, as amended. Therefore, based on its review of BRP's exemption request, as discussed above, and consistent with SECY-96-256, the NRC staff concludes that the exemption is authorized by law.

B. No Undue Risk to Public Health and Safety

The onsite property damage insurance requirements of 10 CFR 50.54(w)(1) were established to provide financial

assurance that following a significant nuclear accident, onsite reactor conditions could be stabilized, and the site decontaminated. The requirements of 10 CFR 50.54(w)(1) and the existing level of onsite insurance coverage for BRP are predicated on the assumption that the reactor is operating. However, the BRP reactor has been permanently shutdown, defueled, and removed from the site, with all SNF, SNM, and GTCC waste stored in an ISFSI, and the inventory of radioactive liquids at the site has been eliminated such that liquid and airborne effluent releases are no longer considered credible events. The permanently defueled status of the facility has resulted in a significant reduction in the number and severity of potential accidents, and correspondingly, a significant reduction in the potential for, and severity of, onsite property damage. The proposed reduction in the amount of onsite insurance coverage does not impact the probability or consequences of any potential accidents. The proposed level of insurance coverage is commensurate with the reduced risk and reduced cost consequences of potential nuclear accidents at BRP. Therefore, the NRC staff concludes that granting the requested exemption will not present an undue risk to the health and safety of the public.

C. Consistent With the Common Defense and Security

The proposed exemption would not eliminate any requirements associated with physical protection of the site and would not adversely affect BRP's ability to physically secure the site or protect special nuclear material. Physical security measures at BRP are not affected by the requested exemption. Therefore, the proposed exemption is consistent with the common defense and security.

D. Special Circumstances

Under 10 CFR 50.12(a)(2)(ii), special circumstances are present if the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.54(w)(1) is to provide reasonable assurance that adequate funds will be available to stabilize reactor conditions and cover onsite cleanup costs associated with site decontamination, following a reactor accident that results in the release of a significant amount of radiological material.

The BRP site is permanently shutdown and defueled, and source

terms have been removed by placing all SNF, SNM, and GTCC waste in DFS casks in an ISFSI. Decontamination activities associated with the operating reactor have been completed and site lands have been released from the BRP part 50 license for unrestricted use with only the area supporting the ISFSI remaining. Therefore, any radiological consequences of accidents that will remain possible at BRP in the decommissioned ISFSI-only condition are substantially lower than those at an operating plant. Accordingly, the staff concludes that the application of the current requirements in 10 CFR 50.54(w)(1), as exempted, for BRP to maintain \$500 million in onsite insurance coverage is not necessary to achieve the underlying purpose of the rule for the permanently shutdown and defueled BRP facility.

Under 10 CFR 50.12(a)(2)(iii), special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The NRC staff concludes that if the licensee was required to continue to maintain an onsite insurance level of \$500 million, the associated insurance premiums would be in excess of those necessary and commensurate with the radiological contamination risks posed by the site in its current configuration. In addition, such insurance levels would be significantly in excess of other decommissioning reactor facilities that have been granted similar exemptions by the NRC.

As such, the NRC staff finds that compliance with the existing rule would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted and are significantly in excess of those incurred by others similarly situated. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist for the BRP facility.

E. Environmental Considerations

The NRC approval of an exemption to insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Surety, insurance, or indemnity requirements.

The NRC staff determined that approval of the exemption request involves no significant hazards consideration because reducing the licensee's onsite property damage insurance for BRP does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of BRP. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure.

The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.*, potential amount of radiation in an accident), nor mitigation. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. The requirement for onsite property damage insurance involves surety, insurance, and indemnity matters. Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

The Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public

health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants BRP an exemption from the requirements of 10 CFR 50.54(w)(1), to permit the licensee to reduce its onsite property damage insurance coverage to a level of \$50 million.

Dated at Rockville, Maryland, this 26th day of July, 2019.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019-16316 Filed 7-30-19; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019-174 and CP2019-196]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 2, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).*: MC2019-174 and CP2019-196; *Filing Title*: USPS Request to Add First-Class Package Service Contract 101 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 25, 2019; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5; *Public Representative*: Christopher C. Mohr; *Comments Due*: August 2, 2019.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019-16267 Filed 7-30-19; 8:45 am]

BILLING CODE 7710-FW-P

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

POSTAL SERVICE**Product Change—First-Class Package Service Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 31, 2019.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 25, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 101 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2019-174, CP2019-196.

Sean Robinson,*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019-16236 Filed 7-30-19; 8:45 am]

BILLING CODE 7710-12-P**SECURITIES AND EXCHANGE COMMISSION****[SEC File No. 270-116 OMB, Control No. 3235-0109]****Submission for OMB Review; Comment Request**

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extensions:

Rule 12d1-3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Exchange Act Rule 12d1-3 (17 CFR 240.12d1-3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(d)) to be filed with the Commission. The information required

under Rule 12d1-3 must be filed with the Commission and is publicly available. We estimate that it takes approximately one-half hour to provide the information required under Rule 12d1-3 and that the information is filed by approximately 688 respondents annually for a total annual reporting burden of 344 burden hours (0.5 hours per response × 688 responses).

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

The public may view the background documentation for this information collection at the following website, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Lindsay.M.Abate@omb.eop.gov; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 26, 2019.

Jill M. Peterson,*Assistant Secretary.*

[FR Doc. 2019-16290 Filed 7-30-19; 8:45 am]

BILLING CODE 8011-01-P**SECURITIES AND EXCHANGE COMMISSION****Submission for OMB Review; Comment Request**

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

Form F-7, SEC File No. 270-331, OMB Control No. 3235-0383

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F-7 (17 CFR 239.37) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et*

seq.) used to register securities that are offered for cash upon the exercise of rights granted to a registrant's existing security holders to purchase or subscribe such securities. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Form F-7 takes approximately 4 hours per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of 4 hours per response (one hour) is prepared by the company for a total annual reporting burden of 5 hours (one hour per response × 5 responses).

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

The public may view the background documentation for this information collection at the following website, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Lindsay.M.Abate@omb.eop.gov; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 26, 2019.

Jill M. Peterson,*Assistant Secretary.*

[FR Doc. 2019-16294 Filed 7-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86473; File No. SR-NYSE-2019-40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List

July 25, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 12, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) revise the adding average daily share requirement for certain non-displayed orders that qualify for the Tier 3 Adding Credit in Tape A securities, and (2) adopt a new pricing tier, the Step Up Tier Adding Credit, in Tape A securities. The Exchange proposes to implement the fee changes effective July 12, 2019.⁴ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) revise the adding average daily share requirement for certain non-displayed orders that qualify for the Tier 3 Adding Credit in Tape A securities, and (2) adopt a new pricing tier, the Step Up Tier Adding Credit, in Tape A securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective July 12, 2019.

Competitive Environment

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁶ Indeed, equity trading is currently dispersed across 13 exchanges,⁷ 31 alternative trading systems,⁸ and numerous broker-dealer internalizers and wholesalers, all

competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in May 2019, the Exchange averaged less than 9.6% market share (excluding auctions) of executed volume of equity trades in all securities.¹⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The Exchange’s market share of intraday trading (*i.e.*, excluding auctions) declined from 9.6% for the month of May 2019 to 9.2% for the month of June 2019.¹¹ The proposed fee change is designed to attract additional order flow to the Exchange by making it easier to qualify for the Tier 3 Adding credit based on adding liquidity to the Exchange. The proposed fee change is also designed to attract additional order flow to the Exchange by offering a new pricing tier to incentivize member organizations to step up their liquidity-providing orders on the Exchange on all tapes.

Proposed Rule Change

The Exchange currently has several levels of credits for orders that provide displayed and non-displayed liquidity to the Exchange based on the amount of volume of orders that member organizations send to the Exchange. The tiered adding credits (Tier 1 Adding Credit, Tier 2 Adding Credit, Tier 3 Adding Credit, and Tier 4 Adding Credit) range from \$0.0022 to \$0.0015.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at http://markets.cboe.com/us/equities/market_share/.

¹⁰ See *id.*

¹¹ See *id.*

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

⁶ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁸ See FINRA ATS Transparency Data (June 3, 2019), available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of May 31, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on July 1, 2019 (SR-NYSE-2019-38). SR-NYSE-2019-38 was subsequently withdrawn and replaced by this filing.

As described in greater detail below, the Exchange proposes the following changes:

- A reduction of the average daily volume (“ADV”) requirement in Mid-Point Passive Liquidity orders (“MPL Orders”)¹² that encourages member organizations to qualify for the Tier 3 Adding Credit; and
- a new pricing tier to incentivize member organizations to step up their liquidity-providing order by providing a credit of \$0.0019 per share where the member organization contributes certain amounts of adding ADV to the Exchange over that member organization’s baseline of adding liquidity as measured in March 2019. The Exchange also proposes to offer an additional \$0.00005 per share to member organizations meeting the requirements of the proposed step up tier that add a certain amount of displayed liquidity in Tapes B and C securities.¹³

Tier 3 Adding Credit

Under current Tier 3, a member organization that adds liquidity to the Exchange in securities with a share price of \$1.00 or more would be entitled to a per share credit of \$0.0018 if the criteria in A or B are satisfied, as follows:

- A.
 - (i) The member organization has an Adding ADV¹⁴ equal to at least 0.40% of NYSE CADV, and
 - (ii) The member organization executes market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders equal to at least 0.05% of NYSE CADV.
- B.
 - (i) The member organization has an Adding ADV equal to at least 0.35% of NYSE CADV,
 - (ii) The member organization executes MOC and LOC orders equal to at least 0.05% of NYSE CADV, and
 - (iii) The member organization has an Adding ADV in MPL orders of at least 400,000 shares.

The Exchange proposes to amend the Adding ADV requirement in MPL Orders for the second of the two alternative methods described above to qualify for the credit by reducing the share requirement from 400,000 to

200,000 shares. As proposed, the first method to qualify for the credit would not change and the amount of the credit would also not change.

The purpose of the proposed change is to increase the incentive for order flow providers to send liquidity-providing orders to the Exchange. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that, if it reduces the requirement to qualify for a tiered credit, more member organizations will choose to route their liquidity-providing orders to the Exchange to qualify for the credit. The Exchange cannot predict with certainty how many member organizations would avail themselves of this opportunity, but believes that at least 4 member organizations could qualify for the tier.¹⁵ Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

Step Up Tier Adding Credit

The Exchange proposes to adopt a “Step Up Tier Adding Credit” that would offer a higher credit to member organizations that qualify for the tier. The proposed tier would also offer an additional credit for member organizations providing displayed liquidity in Tapes B and C securities.

As proposed, a member organization that sends orders, except MPL and Non-Display Reserve orders, that add liquidity in Tape A securities would receive a credit of \$0.0019 if:

- The member organization has Adding ADV, excluding any liquidity added by a Designated Market Maker (“DMM”), that is at least 0.45% of NYSE CADV, and
- the member organization has Adding ADV, excluding any liquidity added by a DMM, that is at least 0.20% of NYSE CADV for the billing month over the member organization’s March 2019 Adding ADV as a percentage of NYSE CADV in March 2019.

In addition, a member organization that meets these requirements, and thus qualifies for the \$0.0019 credit in Tape A securities, would be eligible to receive an additional \$0.00005 per share if trades in Tapes B and C securities against the member organization’s orders that add liquidity, excluding orders as a Supplemental Liquidity Provider (“SLP”), equal to at least 0.20% of Tape B and Tape C CADV

combined. The proposed additional credit mirrors the additional credits offered in current Tier 1, Tier 2, Tier 3 and Tier 4 for trades in Tapes B and C securities against a member organization’s orders that add liquidity, excluding orders as an SLP, equal to at least a specified percentage of Tape B and Tape C CADV combined.

For example, assume a member organization has:

- In March 2019, Adding ADV, excluding any liquidity added by a DMM, of 8.75 million shares when NYSE CADV was 3.5 billion shares, which is an Adding ADV of 0.25% of NYSE CADV.
- In the applicable billing month, the NYSE CADV remains at 3.5 billion shares, and therefore 0.20% of that NYSE CADV is 7 million shares.
- For that billing month, that member organization, excluding any liquidity added by a DMM, has Adding ADV of 17.5 million shares when NYSE CADV was 3.5 billion shares, which is an Adding ADV of 0.50% of NYSE CADV.

The member organization in the example would qualify for the Step Up Tier Adding Credit in the billing month because it both (1) meets the Adding ADV requirement of 0.45% of NYSE CADV, and (2) meets the Adding ADV increase over that firm’s March 2019 Adding ADV by at least 0.20% (Adding ADV of 0.50% of NYSE CADV in the billing month minus the Adding ADV of 0.25% of NYSE CADV in the baseline month is a step up of 0.25% Adding ADV of NYSE CADV).

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in Tape A securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange’s fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange proposes a higher credit compared with Adding Tier 3 under the proposed Step Up Tier to provide an incentive for member organizations to send more orders because they would then qualify for the credit. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add

¹² An MPL Order is an undisplayed Limit Order that automatically executes at the mid-point of the protected best bid or offer (“PBBO”). See Rule 13(d)(1).

¹³ The Exchange also proposes non-substantive changes to add punctuation to the Tier 1 Adding Credit, Tier 2 Adding Credit, Tier 3 Adding Credit, and Tier 4 Adding Credit.

¹⁴ Footnote 2 to the Price List defines ADV as “average daily volume” and “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month. The Exchange is not proposing to change these definitions.

¹⁵ In the month of June 2019, 6 member organizations not meeting the current Tier 3 requirements were within 0.20% of the Adding ADV requirement.

liquidity to the Exchange. Because, as proposed, the tier requires a member organization to increase the volume of its trades against orders that add liquidity over that member organization's March 2019 baseline, the Exchange believes that the proposed higher credit would provide an incentive for member organizations to route additional liquidity to the Exchange in order to qualify for it.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently no firms that could qualify for the proposed higher Step Up Tier Adding Credit based on their current trading profile on the Exchange, but believes that at least 6 member organizations could qualify for these tiers if they so choose.¹⁶ However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Each of the proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues

and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹⁹

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."²⁰ Indeed, equity trading is currently dispersed across 13 exchanges,²¹ 31 alternative trading systems,²² and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).²³ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in May 2019, the Exchange averaged less than 9.6% market share (excluding auctions) of executed volume of equity trades in all securities.²⁴

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. As noted, the Exchange's market share of intraday

trading (*i.e.*, excluding auctions) declined from 9.6% for the month of May 2019 to 9.2% for the month of June 2019.²⁵

Specifically, the Exchange believes that the proposed revision to the adding average daily share requirement in order to qualify for the Tier 3 Adding Credit is reasonable because it would make it easier for member organizations to qualify for the credit, thereby encouraging the submission of additional liquidity to a national securities exchange. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed Step Up Tier would provide an incentive for member organizations to route additional liquidity-providing orders to the Exchange in Tape A securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide a higher credit for orders that provide additional liquidity. Similarly, the Exchange believes that it is reasonable to provide an incremental credit to member organizations that meet the requirements of the Step Up Tier that add additional liquidity in UTP securities on Pillar.

Since the proposed Step Up Tier would be new with a requirement for increased Adding ADV over the baseline month, no member organization currently qualifies for the proposed pricing tier. As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby

¹⁹ See Regulation NMS, 70 FR at 37499.

²⁰ See Transaction Fee Pilot, 84 FR at 5253.

²¹ See Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

²² See FINRA ATS Transparency Data (June 3, 2019), available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of May 31, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

²³ See Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/.

²⁴ See *id.*

²⁵ See *id.*

¹⁶ In the month of June 2019, 6 member organizations that did not meet the requirements of the Adding Tiers had an Adding ADV of NYSE CADV of at least 0.15%.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) & (5).

contributing to depth and market quality on the Exchange.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

First, the Exchange is not proposing to adjust the amount of the Tier 3 Adding Credit, which will remain at the current level for all market participants. Rather, the proposal would continue to encourage member organizations to send MPL Orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The Exchange believes that, for the reasons discussed above, lowering the adding ADV in MPL Orders requirement would make it easier for liquidity providers to qualify for the Tier 3 Adding Credit, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange notes that there are currently 5 firms qualifying for Tier 3 Adding Credit and that, based on current participation on the Exchange, no additional firms would initially qualify with the lower requirements. Without having a view of a member organization's activity on other exchanges and off-exchange venues, the Exchange believes the proposed lower of the adding ADV in MPL Orders requirement would provide an incentive for market participants to increase liquidity to meet the new lower requirement and submit additional adding liquidity to the Exchange. In addition, based on the profile of liquidity-providing firms generally, the Exchange believes that 6 firms could qualify for these tiers if they choose to direct order flow to, and increase quoting on, the Exchange.

Finally, the Exchange believes that the proposed Step Up Tier is equitable because the magnitude of the additional credit is not unreasonably high relative to the other adding tier credits, which noted above range from \$0.0015 to \$0.0022, in comparison to the credits paid by other exchanges for orders that

provide additional step up liquidity.²⁶ The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery.

Since the proposed Step Up Tier would be new, no member organization currently qualifies for it. As noted, there are currently no member organizations that could qualify for the proposed higher credit, but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Member organizations that add liquidity to the Exchange that equals at least 0.35% of NYSE CADV, trade against such member organization's MOC and LOC orders equal to at least 0.05% of NYSE CADV, and that have Adding ADV in MPL orders is at least 200,000 shares would be eligible for the Tier 3 Adding Credit by satisfying the lowered threshold, and because the lower threshold would apply equally to all similarly situated member organizations. Similarly, member organizations that currently qualify for adding liquidity credits will continue to receive credits when they provide liquidity to the Exchange.

With the proposed new Step Up Tier, all member organizations would be eligible to qualify for the higher credit if they increase their Adding ADV over their own baseline of order flow. The Exchange believes that offering a higher step up credit for providing liquidity if the step up requirements for Tape A securities are met, will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently

qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposal to lower the adding ADV in MPL Orders requirement also neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the lower threshold would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees.

The Exchange believes it is not unfairly discriminatory to provide a higher per share step up credit, as the proposed credit would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up Tier's requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide an additional incremental credit to member organizations that satisfy the Step Up Tier requirements and add liquidity in UTP securities. Further, the Exchange believes the proposed Step Up Tier credit would incentivize member organizations that meet the current tiered requirements to send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

²⁶ See Cboe BZX Fee Schedule, which has adding credits ranging from \$0.0020 to \$0.0032, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁸

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange notes that for the month of May 2019, the Exchange's market share of intraday trading (excluding auctions) was 9.6%.²⁹ In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change

can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)³⁰ of the Act and subparagraph (f)(2) of Rule 19b-4³¹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-40 and should be submitted on or before August 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-16218 Filed 7-30-19; 8:45 am]

BILLING CODE 8011-01-P

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ Regulation NMS, 70 FR at 37498-99.

²⁹ See note 9, *supra*.

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(2).

³² 15 U.S.C. 78s(b)(2)(B).

³³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-42, OMB Control No. 3235-0047]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:
Rule 204-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 204-3 (17 CFR 275.204-3) under the Investment Advisers Act of 1940." (15 U.S.C. 80b). Rule 204-3, the "brochure rule," requires advisers to deliver their brochures and brochure supplements at the start of an advisory relationship and to deliver annually thereafter the full updated brochures or a summary of material changes to their brochures. The rule also requires that advisers deliver amended brochures or brochure supplements (or just a statement describing the amendments) to clients only when disciplinary information in the brochures or supplements becomes materially inaccurate.

The brochure assists the client in determining whether to retain, or continue employing, the adviser. The information that rule 204-3 requires to be contained in the brochure is also used by the Commission and staff in its enforcement, regulatory, and examination programs. This collection of information is found at 17 CFR 275.204-3 and is mandatory.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204-3 imposes a burden of approximately 3.7 hours annually based on advisers having a median of 78 clients each. Our latest data indicate that there were 13,173 advisers registered with the Commission as of March 31, 2019. Based on this figure, the Commission estimates a total annual burden of 49,090 hours for this collection of information.

Rule 204-3 does not require recordkeeping or record retention. The

collection of information requirements under the rule are mandatory. The information collected pursuant to the rule is not filed with the Commission, but rather takes the form of disclosures to clients and prospective clients. Accordingly, these disclosures are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: lindsay.m.abate@omb.eop.gov; and (ii) Charles Riddle, Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 26, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-16291 Filed 7-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86470; File No. 4-618]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Between Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAx PEARL, LLC, MIAx Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX, Inc., NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and Long-Term Stock Exchange, Inc.

July 25, 2019.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on July 15, 2019, pursuant to Rule 17d-2 of the Act,² by Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BATS Y"), BOX Exchange LLC ("BOX"), Cboe Exchange, Inc. ("Cboe"), Cboe C2 Exchange, Inc. ("C2"), NYSE Chicago, Inc. ("CHX"), Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX"), Investors Exchange LLC ("IEX"), Miami International Securities Exchange, LLC ("MIAx"), MIAx PEARL, LLC ("MIAx PEARL"), MIAx Emerald, LLC ("MIAx Emerald"), The Nasdaq Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX, Inc. ("PHLX"), NYSE National, Inc. ("NYSE National"), New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), NYSE Arca, Inc. ("NYSE Arca"), and Long-Term Stock Exchange, Inc. ("LTSE") (each, a "Participating Organization," and, together, the "Participating Organizations" or the

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

“Parties”). This Agreement amends and restates the agreement by and among the Participating Organizations approved by the Commission on February 4, 2019.³

I. Introduction

Section 19(g)(1) of the Act,⁴ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.⁵ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.⁸ Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility

rules. On its face, Rule 17d–1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.¹⁰ Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On December 3, 2010, the Commission approved the SRO participants’ plan for allocating regulatory responsibilities pursuant to Rule 17d–2.¹¹ On October 29, 2015, the Commission approved an amended plan that added Regulation NMS Rules 606, 607, and 611(c) and (d) and added additional Participating Organizations that are options markets to the Plan.¹² On August 11, 2016, the Commission approved an amended plan that added IEX and ISE Mercury as Participating Organizations.¹³ On February 2, 2017, the Commission approved an amended plan that added MIAX PEARL as a Participating Organization.¹⁴ On February 4, 2019, the Commission approved an amended plan that added

MIAX Emerald as a Participating Organization and reflected name changes of certain Participating Organizations.¹⁵

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Participating Organization.¹⁶ The Plan provides for the allocation of regulatory responsibility according to whether the covered rule pertains to NMS stocks or NMS securities. For covered rules that pertain to NMS stocks (*i.e.*, Rules 607, 611, and 612), FINRA serves as the “Designated Regulation NMS Examining Authority” (“DREA”) for common members that are members of FINRA, and assumes certain examination and enforcement responsibilities for those members with respect to specified Regulation NMS rules. For common members that are not members of FINRA, the member’s DEA serves as the DREA, provided that the DEA exchange operates a national securities exchange or facility that trades NMS stocks and the common member is a member of such exchange or facility. Section 1(c) of the Plan contains a list of principles that are applicable to the allocation of common members in cases not specifically addressed in the Plan. An exchange that does not trade NMS stocks would have no regulatory authority for covered Regulation NMS rules pertaining to NMS stocks. For covered rules that pertain to NMS securities, and thus include options (*i.e.*, Rule 606), the Plan provides that the DREA will be the same as the DREA for the rules pertaining to NMS stocks. For common members that are not members of an exchange that trades NMS stocks, the common member would be allocated according to the principles set forth in Section 1(c) of the Plan.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “Covered Regulation NMS Rules”) that lists the federal securities laws, rules, and regulations, for which the applicable DREA would bear examination and enforcement responsibility under the Plan for common members of the Participating Organization and their associated persons.

Specifically, the applicable DREA assumes examination and enforcement responsibility relating to compliance by common members with the Covered

³ See Securities Exchange Act Release No. 85046, 84 FR 2643 (February 7, 2019).

⁴ 15 U.S.C. 78s(g)(1).

⁵ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ See Securities Exchange Act Release No. 63430, 75 FR 76758 (December 9, 2010).

¹² See Securities Exchange Act Release No. 76311, 80 FR 68377 (November 4, 2015).

¹³ See Securities Exchange Act Release No. 78552, 81 FR 54905 (August 17, 2016).

¹⁴ See Securities Exchange Act Release No. 79928, 82 FR 9814 (February 8, 2017).

¹⁵ See Securities Exchange Act Release No. 85046, 84 FR 2643 (February 7, 2019).

¹⁶ The proposed 17d–2 Plan refers to these members as “Common Members.”

Regulation NMS Rules. Covered Regulation NMS Rules do not include the application of any rule of a Participating Organization, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.¹⁷ Under the Plan, Participating Organizations retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving their own marketplace.¹⁸

III. Proposed Amendment to the Plan

On July 15, 2019, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add LTSE as a Participant to the Plan and to reflect the name change of Chicago Stock Exchange, Inc. to NYSE Chicago, Inc.

The text of the proposed amended 17d–2 Plan is as follows (additions are in italics; deletions are in brackets):

* * * * *

Agreement for the Allocation of Regulatory Responsibility for the Covered Regulation NMS Rules Pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(d), and Rule 17d–2 Thereunder

This agreement (the “Agreement”) by and among Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BATS Y”), BOX Exchange LLC (“BOX”), Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), NYSE Chicago [Stock Exchange], Inc. (“CHX”), Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq MRX, LLC (“MRX”), Investors Exchange LLC (“IEX”), Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), MIAX Emerald, LLC (“MIAX Emerald”), The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq BX, Inc. (“BX”), Nasdaq PHLX, Inc. (“PHLX”), NYSE National, Inc. (“NYSE National”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), [and] NYSE Arca, Inc. (“NYSE Arca”) and Long-Term Stock Exchange, Inc. (“LTSE”) (each, a “Participating Organization,” and together, the “Participating Organizations”), is made pursuant to

§ 17(d) of the Securities Exchange Act of 1934 (the “Act” or “SEA”), 15 U.S.C. 78q(d), and Rule 17d–2 thereunder, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (“SROs”). Upon approval by the Securities and Exchange Commission (“Commission” or “SEC”), this Agreement shall amend and restate the agreement by and among the Participating Organizations approved by the SEC on [February 2, 2017] *February 4, 2019*.

Whereas, the Participating Organizations desire to: (a) Foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; and (d) eliminate duplication in their examination and enforcement of SEA Rules 606, 607, 611 and 612 (the “Covered Regulation NMS Rules”);

Whereas, the Participating Organizations are interested in allocating regulatory responsibilities with respect to broker-dealers that are members of more than one Participating Organization (the “Common Members”) relating to the examination and enforcement of the Covered Regulation NMS Rules; and

Whereas, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC this plan for the above stated purposes pursuant to the provisions of § 17(d) of the Act, and Rule 17d–2 thereunder, as described below.

Now, therefore, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. *Assumption of Regulatory Responsibility.* The Designated Regulation NMS Examining Authority (the “DREA”) shall assume examination and enforcement responsibilities relating to compliance by Common Members with the Covered Regulation NMS Rules to which the DREA is allocated responsibility (“Regulatory Responsibility”). A list of the Covered Regulation NMS Rules is attached hereto as Exhibit A.

a. For Covered Regulation NMS Rules Pertaining to “NMS stocks” (as defined in Regulation NMS) (*i.e.*, Rules 607, 611 and 612): FINRA shall serve as DREA for Common Members that are members of FINRA. The Designated Examining Authority (“DEA”) pursuant to SEA Rule 17d–1 shall serve as DREA for Common Members that are not members

of FINRA, provided that the DEA operates a national securities exchange or facility that trades NMS stocks and the Common Member is a member of such exchange or facility. For all other Common Members, the Participating Organizations shall allocate Common Members among the Participating Organizations (other than FINRA) that operate a national securities exchange that trades NMS stocks based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member. (A Participating Organization that operates a national securities exchange that does not trade NMS stocks has no regulatory responsibilities related to Covered Regulation NMS Rules pertaining to NMS stocks and will not serve as DREA for such Covered Regulation NMS Rules.)

b. For Covered Regulation NMS Rules Pertaining to “NMS securities” (as defined in Regulation NMS) (*i.e.*, Rule 606), the DREA shall be same as the DREA for Covered Regulation NMS Rules pertaining to NMS stocks. For Common Members that are not members of a national securities exchange that trades NMS stocks and thus have not been appointed a DREA under paragraph a., the Participating Organizations shall allocate the Common Members among the Participating Organizations (other than FINRA) that operate a national securities exchange that trades NMS securities based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member with respect to Covered Regulation NMS Rules pertaining to NMS securities. The allocation of Common Members to DREAs (including FINRA) for all Covered Regulation NMS Rules is provided in Exhibit B.

c. For purposes of this paragraph 1, any allocation of a Common Member to a Participating Organization other than as specified in paragraphs a. and b. above shall be based on the following principles, except to the extent all affected Participating Organizations consent to one or more different principles and any such agreement to different principles would be deemed an amendment to this Agreement as provided in paragraph 22:

i. The Participating Organizations shall not allocate a Common Member to a Participating Organization unless the Common Member is a member of that Participating Organization.

¹⁷ See Securities Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018) (File No. 4–566) (notice of filing and order approving and declaring effective an amendment to the insider trading 17d–2 plan).

¹⁸ See paragraph 1(d) of the Plan.

ii. To the extent practicable, Common Members shall be allocated among the Participating Organizations of which they are members in such a manner as to equalize, as nearly as possible, the allocation among such Participating Organizations.

iii. To the extent practicable, the allocation will take into account the amount of NMS stock activity (or NMS security activity, as applicable) conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participating Organizations of which they are members. The allocation will also take into account similar allocations pursuant to other plans or agreements to which the Participating Organizations are party to maintain consistency in oversight of the Common Members.¹

iv. The Participating Organizations may reallocate Common Members from time-to-time and in such manner as they deem appropriate consistent with the terms of this Agreement.

v. Whenever a Common Member ceases to be a member of its DREA (including FINRA), the DREA shall promptly inform the Participating Organizations, who shall review the matter and reallocate the Common Member to another Participating Organization.

vi. The DEA or DREA (including FINRA) may request that a Common Member be reallocated to another Participating Organization (including the DEA or DREA (including FINRA)) by giving 30 days written notice to the Participating Organizations. The Participating Organizations shall promptly consider such request and, in their discretion, may approve or disapprove such request and if approved, reallocate the Common Member to such Participating Organization.

vii. All determinations by the Participating Organizations with respect to allocations shall be by the affirmative vote of a majority of the Participating Organizations that, at the time of such determination, share the applicable Common Member being allocated; a Participating Organization shall not be entitled to vote on any allocation related to a Common Member unless the Common Member is a member of such Participating Organization.

d. The Participating Organizations agree that they shall conduct meetings among them as needed for the purposes of ensuring proper allocation of Common Members and identifying issues or concerns with respect to the regulation of Common Members. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibility" does not include, and each of the Participating Organizations shall retain full responsibility for, examination, surveillance and enforcement with respect to trading activities or practices involving its own marketplace unless otherwise allocated pursuant to a separate Rule 17d-2 Agreement.

2. *No Retention of Regulatory Responsibility.* The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by the DREA under the terms of this Agreement. Nothing in this Agreement will be interpreted to prevent a DREA from entering into Regulatory Services Agreement(s) to perform its Regulatory Responsibility.

3. *No Charge.* A DREA shall not charge Participating Organizations for performing the Regulatory Responsibility under this Agreement.

4. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

5. *Customer Complaints.* If a Participating Organization receives a copy of a customer complaint relating to a DREA's Regulatory Responsibility as set forth in this Agreement, the Participating Organization shall promptly forward to such DREA a copy of such customer complaint. It shall be such DREA's responsibility to review and take appropriate action in respect to such complaint.

6. *Parties to Make Personnel Available as Witnesses.* Each Participating Organization shall make its personnel available to the DREA to serve as testimonial or non-testimonial witnesses as necessary to assist the DREA in fulfilling the Regulatory Responsibility allocated under this Agreement. The DREA shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling

conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that the DREA requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

7. *Sharing of Work-Papers, Data and Related Information.*

a. *Sharing.* A Participating Organization shall make available to the DREA information necessary to assist the DREA in fulfilling the Regulatory Responsibility assumed under the terms of this Agreement. Such information shall include any information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member ("Regulatory Information"). This Regulatory Information shall be used by the DREA solely for the purposes of fulfilling the DREA's Regulatory Responsibility.

b. *No Waiver of Privilege.* The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Special or Cause Examinations and Enforcement Proceedings.* Nothing in this Agreement shall restrict or in any way encumber the right of a Participating Organization to conduct special or cause examinations of a Common Member, or take enforcement proceedings against a Common Member as a Participating Organization, in its sole discretion, shall deem appropriate or necessary.

9. *Dispute Resolution Under this Agreement.*

a. *Negotiation.* The Participating Organizations will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the Participating Organizations shall refer the dispute to binding arbitration.

b. *Binding Arbitration.* All claims, disputes, controversies, and other matters in question between the Participating Organizations to this

¹ For example, if one Participating Organization was allocated responsibility for a particular Common Member pursuant to a separate Rule 17d-2 Agreement, that Participating Organization would be assigned to be the DREA of that Common Member, unless there is good cause not to make that assignment.

Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the Participating Organizations will be resolved through binding arbitration. Unless otherwise agreed by the Participating Organizations, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in a city selected by the DREA in which it maintains a principal office or where otherwise agreed to by the Participating Organizations in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney. The arbitrators shall be appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

10. *Limitation of Liability.* As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except: (a) As otherwise provided for under the Act; (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization; or (c) in instances of a breach of confidentiality obligations owed to another Participating Organization. The Participating Organizations understand and agree that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

11. *SEC Approval.*

a. The Participating Organizations agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the

explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of the Agreement and of its impact on their members.

12. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) Confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

13. *Assignment.* No Participating Organization may assign this Agreement without the prior written consent of the DREAs performing Regulatory Responsibility on behalf of such Participating Organization, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign the Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of such Participating Organization's DREAs. No assignment shall be effective without Commission approval.

14. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

15. *Termination.* Any Participating Organization may cancel its participation in the Agreement at any time upon the approval of the Commission after 180 days written notice to the other Participating Organizations (or in the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose). The cancellation of its participation in this Agreement by any Participating

Organization shall not terminate this Agreement as to the remaining Participating Organizations.

16. *General.* The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

17. *Written Notice.* Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, or by a comparable means of electronic communication to each Participating Organization entitled to receipt thereof, to the attention of the Participating Organization's representative at the Participating Organization's then principal office or by email.

18. *Confidentiality.* The Participating Organizations agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement, provided, however, that each Participating Organization may disclose such documents or information as may be required to comply with applicable regulatory requirements or requests for information from the SEC. Any Participating Organization disclosing confidential documents or information in compliance with applicable regulatory or oversight requirements will request confidential treatment of such information. No Participating Organization shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement.

19. *Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d-2 thereunder, the Participating Organizations request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations which are participants in this Agreement that are not the DREA as to a Common Member of any and all responsibilities with respect to the matters allocated to the DREA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

20. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the Participating Organizations hereby consents to submit to the jurisdiction of the courts of the State of New York in

connection with any action or proceeding relating to this Agreement.

21. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by the DREA and any expiration of this Agreement shall survive and continue.

22. *Amendment.*

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, by an amendment executed by all applicable DREAs and such new Participating Organization. All other Participating Organizations expressly consent to allow such DREAs to jointly add new Participating Organizations to the Agreement as provided above. Such DREAs will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be approved by each Participating Organization. All amendments, including adding a new Participating Organization but excluding changes to Exhibit B, must be filed with and approved by the Commission before they become effective.

23. *Effective Date.* The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and Rule 17d-2 thereunder.

24. *Counterparts.* This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement among the Participating Organizations.

* * * * *

Exhibit A

Covered Regulation NMS Rules

SEA Rule 606—Disclosure of Order Routing Information.*

SEA Rule 607—Customer Account Statements.

SEA Rule 611—Order Protection Rule.

SEA Rule 612—Minimum Pricing Increment.

* Covered Regulation NMS Rules with asterisks (*) pertain to NMS securities. Covered Regulation NMS Rules without asterisks pertain to NMS stocks.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4-618 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 4-618. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of the Participating Organizations. 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 4-618 and should be submitted on or before August 21, 2019.

V. Discussion

The Commission finds that the Plan, as amended, is consistent with the factors set forth in Section 17(d) of the Act¹⁹ and Rule 17d-2(c) thereunder²⁰ in that the proposed amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission

¹⁹ 15 U.S.C. 78q(d).

²⁰ 17 CFR 240.17d-2(c).

believes that the proposed amended Plan should reduce unnecessary regulatory duplication by allocating to the applicable DREA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by multiple Parties. Accordingly, the proposed amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Parties will coordinate their regulatory functions in accordance with the proposed amended Plan, the amended Plan should promote investor protection.

The Commission is hereby declaring effective a plan that allocates regulatory responsibility for certain provisions of the federal securities laws, rules, and regulations as set forth in Exhibit A to the Plan. The Commission notes that any amendment to the Plan must be approved by the relevant Parties as set forth in Paragraph 22 of the Plan and must be filed with and approved by the Commission before it may become effective.²¹

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. In particular, the purpose of the amendment is to add LTSE as a Participating Organization and to reflect the name change of Chicago Stock Exchange, Inc. to NYSE Chicago, Inc. The Commission notes that the most recent prior amendment to the Plan was published for comment and the Commission did not receive any comments thereon.²² The Commission believes that the current amendment to the Plan does not raise any new regulatory issues that the Commission has not previously considered, and therefore believes that the amended Plan should become effective without any undue delay.

VI. Conclusion

This order gives effect to the amended Plan filed with the Commission that is contained in File No. 4-618.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan, as amended, filed with the Commission pursuant to Rule 17d-2 on July 15,

²¹ See Paragraph 22 of the Plan. The Commission notes, however, that changes to Exhibit B to the Plan (the allocation of Common Members to DREAs) are not required to be filed with, and approved by, the Commission before they become effective.

²² See Securities Exchange Act Release No. 79928 (February 2, 2017), 82 FR 9814 (February 8, 2017).

2019, is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DREA as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DREA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-16214 Filed 7-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86479; File No. SR-FINRA-2019-021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exemptions From the Order Audit Trail System Recording and Reporting Requirements

July 25, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² notice is hereby given that on July 12, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act, ³ which renders the proposal effective upon receipt of this filing by the Commission. 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 Rule 7470 (Exemption to the Order Recording and Data Transmission Requirements) to extend for three years FINRA's ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System (“OATS”)

Rules (“OATS Rules”) for manual orders received by the member.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7000. Clearing, Transaction and Order Data Requirements, and Facility Charges

* * * * *

7400. Order Audit Trail System

* * * * *

7470. Exemption to the Order Recording and Data Transmission Requirements

(a) through (b) No Change.
(c) This Rule shall be in effect until July [10]11, 2022[2019].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The OATS Rules impose obligations on FINRA members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members relating to OTC equity securities and NMS stocks. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is then used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws and regulations.

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, gave FINRA the authority to grant exemptive relief from the OATS reporting

requirements for manual orders.⁴ In 2006, FINRA's exemptive authority was expanded to include the authority to exempt manual orders received by members from the OATS recording requirements.⁵ Under Rule 7470, at a minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) The member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in any security subject to the OATS Rules; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.⁶ An exemption granted by FINRA pursuant to Rule 7470 is for a maximum of two years; however, a member that continues to meet the criteria may request subsequent exemptions at or prior to the expiration of a grant of exemptive relief.⁷

Rule 7470 also includes a sunset provision. As initially adopted, the exemptive provision expired as of July 10, 2011, which was five years from the original effective date of the rule.⁸ In 2011, FINRA filed a proposed rule change to extend the sunset provision until July 10, 2015, noting that FINRA adopted this exemptive authority so that it would have the ability to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense

⁴ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005) (Order Approving File No. SR-NASD-00-23).

⁵ See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006) (Order Approving File No. SR-NASD-2006-040). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

⁶ See Rule 7470(a).

⁷ See Rule 7470(b).

⁸ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005) (Order Approving File No. SR-NASD-00-23).

²³ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

or hardship.⁹ FINRA noted that these concerns continued to be present for many firms and concluded it was appropriate to allow firms that have received an exemption from OATS to continue to rely on their current exemption (or request an additional two-year exemption) until the scope and application of the SEC's consolidated audit trail (CAT) was determined.¹⁰ In 2015,¹¹ FINRA filed a proposed rule change to extend the sunset provision until July 10, 2019, noting that an additional four years was appropriate given the current state of the CAT. FINRA discussed the possibility that not all member firms reporting to OATS or relying on an exemption from OATS reporting would be reporting to the CAT by July 10, 2019, and the extension would allow member firms relying on the exemption to continue to do so provided they meet the criteria to qualify.

On July 18, 2012, the SEC adopted Rule 613 under Regulation NMS, which requires FINRA and the national securities exchanges ("SROs") to jointly file an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository (the "CAT NMS Plan").¹² The CAT NMS Plan was published for comment in the *Federal Register* on May 17, 2016,¹³ and approved by the Commission, as modified, on November 15, 2016.¹⁴ Under Rule 613 and the CAT NMS Plan, all broker-dealers that are members of FINRA or a national securities exchange must report order information to the central repository. FINRA expects that all FINRA members captured by this requirement will be reporting to the CAT by December 2021.

FINRA believes that extending the sunset provision in Rule 7470 for an additional three years is appropriate given the current CAT reporting timeline.¹⁵ Specifically, FINRA expects

that all of those FINRA member firms currently reporting to OATS or relying on an exemption from OATS reporting will be reporting to the consolidated audit trail no later than December 2021. Thus, FINRA believes it is appropriate to extend the sunset provision in Rule 7470 so that those firms relying on the exemption may continue to do so provided they meet the criteria to qualify. FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption because FINRA believes that the criteria continue to ensure that only those firms with limited revenue, no recent final disciplinary actions, and limited business models will be eligible.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ 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 enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA believes that the proposed rule change is particularly appropriate given that it is narrowly tailored to the CAT reporting timeline, which specifies that all member firms currently reporting to OATS or relying on an exemption from OATS will report to the CAT by December 2021.

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. As noted above, FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA notes that the compliance burden on these firms will be imposed for only a short period of time as these firms are required to develop a means to report order information to the central repository of the CAT.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁹ However, Rule 19b-4(f)(6)²⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that granting this request is consistent with the protection of investors and the public interest because the extension would allow qualifying member firms to continue to rely on the exemption from the date of filing of this proposed rule change until

⁹ See Securities Exchange Act Release No. 64717 (June 21, 2011), 76 FR 37384 (June 27, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-029).

¹⁰ The SEC proposed Rule 613 under Regulation NMS regarding the consolidated audit trail on May 26, 2010. See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

¹¹ See Securities Exchange Act Release No. 75160 (June 11, 2015), 80 FR 34727 (June 17, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-016) ("2015 Filing").

¹² See 17 CFR 242.613(a); see also Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

¹³ Securities Exchange Act Rel. No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁴ Securities Exchange Act Rel. No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("Approval Order").

¹⁵ See Timelines, CAT Reporting Timelines, <https://www.catnmsplan.com/timelines/>. FINRA

notes that the instant filing would not impact the CAT reporting timeline or any other CAT reporting obligation.

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has requested that the Commission waive this requirement. The Commission hereby grants this request.

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ *Id.*

July 11, 2022. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be effective and operative upon filing.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2019-021 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-2019-021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2019-021 and should be submitted on or before August 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-16238 Filed 7-30-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86471; File No. SR-EMERALD-2019-26]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Corrective Edits to Exchange Rule 503, Openings on the Exchange

July 25, 2019.

Pursuant to the provisions of 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 16, 2019, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 503, Openings on the Exchange, to make minor non-substantive corrective edits to the rule text.

The text of the proposed rule change is available on the Exchange's website at

<http://www.miaxoptions.com/rule-filings/emerald> at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, to make minor non-substantive corrective edits to the rule text. Currently, subsection (b) of Exchange Rule 503 provides as follows:

The procedure described in this Rule will be used to reopen an option class after a trading halt. The order types that may participate in the opening process are set forth in Rule 516 (the "Opening Process"). Post-Only OQs may participate in the Opening Process, however, the Post-Only instruction will be ignored for Post-Only OQs that participate in the Opening Process.

The Exchange proposes to relocate the parenthetical "(the 'Opening Process'))" from the end of the second sentence in subsection (b) to immediately follow the first time the lowercased words "opening process" appear in that subsection. This is because the term "Opening Process" is a capitalized, defined term that is used throughout the rest of the rule text. Further, Exchange Rule 516 is titled "Order Types Defined," and is not the correct rule citation for the Opening Process. Accordingly, because it is not the correct title for the citation to Exchange Rule 516, the Exchange also proposes to relocate the parenthetical "(the 'Opening Process'))" from the end of the second sentence of subsection (b) and replace it with the correct text for the title of Exchange Rule 516, Order Types Defined. With the proposed changes, subsection (b) will provide as follows:

²¹ For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The procedure described in this Rule will be used to reopen an option class after a trading halt. The order types that may participate in the opening process (the "Opening Process") are set forth in Rule 516, Order Types Defined. Post-Only OQs may participate in the Opening Process, however, the Post-Only instruction will be ignored for Post-Only OQs that participate in the Opening Process.

The Exchange does not propose to make any further changes or substantive changes.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to relocate the parenthetical "(the 'Opening Process'))" from the end of the second sentence in subsection (b) of Exchange Rule 503 and then replace the citation to Exchange Rule 516 with the correct title, removes impediments to and perfects the mechanisms of a free and open market by providing an accurate citation to Exchange Rule 516 and accurately defining a capitalized term throughout the Exchange's rulebook. The Exchange believes clarity and transparency benefits investors and the public and allows investors and the public to make informed decisions regarding the submission of orders to the Exchange and eliminates the potential for confusion.

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. The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the proposed rule changes make minor, non-substantive corrective edits to the rule text and clarify a citation in Exchange Rule 503 to Exchange Rule

516, as well as to the defined term, the "Opening Process."

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the proposed changes affect all market participants equally, and only seek to clarify an incorrect citation in the Exchange's rulebook and capitalize a defined term. The Exchange does not believe that the proposed changes impose a burden on intra-market competition as the proposed changes are designed to provide clarity in the Exchange's rules and are not intended to influence competition among Members or market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6)⁶ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-EMERALD-2019-26 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-EMERALD-2019-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMERALD-2019-26 and should be submitted on or before August 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-16217 Filed 7-30-19; 8:45 am]

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⁷ 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86488; File No. SR-OCC-2019-804]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Related to The Options Clearing Corporation's Vanilla Option Model and Smoothing Algorithm

July 26, 2019.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),³ notice is hereby given that on June 28, 2019, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed in connection with proposed changes to formalize and update OCC's models for: (1) Generating theoretical values, implied volatilities and certain risk sensitivities for plain vanilla listed options ("Vanilla Option Model") and (2) estimating fair or "smoothed" prices of plain vanilla listed options based on their bid and ask price quotes ("Smoothing Algorithm").

The proposed changes to Chapter 17 (Vanilla Option Model) and Chapter 18 (Smoothing Algorithm) of OCC's Margins Methodology are contained in confidential Exhibits 5A and 5B of the filing. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text. OCC also has included backtesting and impact analysis of the proposed model changes in confidential Exhibit 3. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁴

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed change and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations ("STANS"), is OCC's proprietary risk management system that calculates Clearing Member margin requirements.⁵ STANS utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a Clearing Member's margin requirement.⁶ The STANS margin requirement is calculated at the portfolio level of Clearing Member legal entity marginable net positions tier account (tiers can be customer, firm, or market maker) and consists of an estimate of a 99% two-day expected shortfall ("99% Expected Shortfall") and an add-on for model risk (the concentration/dependence stress test charge). The STANS methodology is used to measure the exposure of portfolios of options and futures cleared by OCC and cash instruments in margin collateral.

STANS margin requirements are comprised of the sum of several components, each reflecting a different aspect of risk. The base component of the STANS margin requirement for each account is obtained using a risk measure known as 99% Expected Shortfall. Under the 99% Expected Shortfall calculation, an account has a base

margin excess (deficit) if its positions in cleared products, plus all existing collateral—whether of types included in the Monte Carlo simulation or of types subjected to traditional "haircuts"—would have a positive (negative) net worth after incurring a loss equal to the average of all losses beyond the 99% value at risk (or "VaR") point. This base component is then adjusted by the addition of a stress test component, which is obtained from consideration of the increases in 99% Expected Shortfall that would arise from market movements that are especially large and/or in which various kinds of risk factors exhibit perfect or zero correlations in place of their correlations estimated from historical data, or from extreme adverse idiosyncratic movements in individual risk factors to which the account is particularly exposed.⁷

Two primary components of STANS are the Vanilla Option Model, which is used to generate theoretical values, implied volatilities, and certain risk sensitivities for plain vanilla listed options, and the Smoothing Algorithm, which is used to estimate fair prices of listed option contracts based on their bid and ask price quotes. OCC's current Vanilla Option Model and Smoothing Algorithm and proposed changes thereto are discussed in detail below.

Vanilla Option Model

The Vanilla Option Model is OCC's model for generating theoretical values, implied volatilities and certain risk sensitivities for plain vanilla listed options.⁸ The theoretical values generated by OCC's Vanilla Option Model are the estimated values (as opposed to current market prices) of plain vanilla options derived from algorithms that use a series of predetermined inputs, such as the price of the stock or index underlying the option, the option's exercise price, the risk-free interest rate, the amount of time until the option's expiration and the volatility of the option. For European options (including FLEX options), the Vanilla Option Model generates theoretical values using a

⁷ STANS margins may also include other add on charges, which are considerably smaller than the base and stress test components, and many of which affect only a minority of accounts.

⁸ With respect to the Vanilla Option Model, "plain vanilla listed options" are (1) all listed vanilla European and American options on equities, exchange traded funds and exchange traded notes (collectively, "ETPs"), equity indices, futures on equity indices, currencies or commodities, and (2) vanilla flexible exchange options ("vanilla FLEX options"). Collectively, these plain vanilla options account for about 95 percent of the total contracts cleared by OCC.

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a et seq.

⁴ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

⁵ See Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR-OCC-2004-20). A detailed description of the STANS methodology is available at <http://optionsclearing.com/risk-management/margins/>.

⁶ See OCC Rule 601.

pricing algorithm that is based on the Black-Scholes formula. For American options, the Vanilla Option Model generates theoretical values using a modified Jarrow-Rudd (“JR”) binomial tree.⁹

The implied volatility of an option is a measure of the expected future volatility of the option’s underlying security at expiration, which is reflected in the current option premium in the market. The implied volatilities are used in STANS to generate price scenarios for estimating potential losses of clearing members’ portfolios. Given the current market price for a plain vanilla option, the aforementioned pricing algorithms for European and American options will generate the implied volatility of the price of the option’s underlying asset.

The risk sensitivities calculated by the Vanilla Option Model are certain values—namely, Delta, Gamma and Vega—that measure the risk of a plain vanilla option in relation to underlying variables.¹⁰

Smoothing Algorithm

In the absence of OCC’s Smoothing Algorithm, the end-of-day “fair price” of a plain vanilla listed option contract would simply be the closing mid-point price (*i.e.*, the mid-point between the bid and ask prices) for such contract. However, there often is a wide difference between the closing bid and ask price quotes for option contracts, which could result in a closing mid-point price that may contain arbitrage opportunities. Closing bid and ask price quotes also tend to be “noisy,” meaning that quotes can fluctuate randomly in a way that is not reflective of the contract’s fair value, which similarly could result in a closing mid-point price that may contain arbitrage opportunities. Therefore, OCC uses its Smoothing Algorithm in an attempt to minimize the impact of wide and/or noisy closing price quotes on individual plain vanilla listed option contracts, thereby producing a more fair or “smoothed” price. The Smoothing Algorithm works by attempting to simultaneously estimate fair values for put and call prices on all plain vanilla listed options included in the Vanilla Option Model, as well as options on

non-equity securities,¹¹ with the same underlying and expiration date.

The Smoothing Algorithm consists of four steps. The first step is a preprocessing procedure, which is used to filter out “bad” price quotes.¹² The second step is an implied forward price calculation, which estimates the forward prices of securities underlying the options by using the prices from the near-the-money options on the same securities at all tenors or expiration dates. The third step¹³ performs the smoothing, in which theoretical prices are generated for all plain vanilla listed options at all strikes by using corresponding bid and ask price quotes and forward prices (which were calculated in step two).¹⁴ The fourth step consists of constructing a volatility surface¹⁵ based on linear interpolation¹⁶ of total variance¹⁷ among the smoothed prices and performing any necessary post-processing.¹⁸

OCC’s Smoothing Algorithm is intended to ensure that the option

¹¹ *E.g.*, the Cboe Volatility (VIX) Index.

¹² The Smoothing Algorithm filters out certain poor-quality price quotes. The price quotes are excluded from the algorithm if they meet one or more of the following conditions: (i) Prices for options that expired or have a remaining maturity of less than a certain number of days, where that number is specified by a control parameter; (ii) prices for options that have only “one-sided contracts” (*i.e.*, contracts for which prices exist only for either the call or the put, but not for both); (iii) prices for options whose ask prices are zero; (iv) prices for options with negative bid and ask spreads; or (v) prices for any American options if the ask price is less than the intrinsic value of the option.

¹³ The third step as described applies to European options. For American options, the Smoothing Algorithm first extracts the European option prices from the American prices (or “de-Americanizes” the prices) using the Vanilla Option Model, then performs smoothing on the resultant European prices, and finally converts the smoothed European prices into American prices (or “re-Americanizes” the prices) using the Vanilla Option Model.

¹⁴ The theoretical prices in step three are generated by solving an optimization problem, which ensures that the theoretical prices generated satisfy both arbitrage-free conditions and bid and ask spread constraints.

¹⁵ A “volatility surface” is a three-dimensional graph showing the levels of the implied volatilities for all the options listed on the same underlying security with different strikes or maturity dates.

¹⁶ “Linear interpolation” is a mathematical method of curve fitting by using linear polynomials to construct new data points within the range of a discrete set of known data points.

¹⁷ The “total variance” of a random variable is defined as the sum of the variances over a given period of time. If the variance is a constant, the total variance is a simple product of its value and length of the time period.

¹⁸ Post-processing addresses contracts that are filtered out of the smoothing process during preprocessing due to either bad or missing price quotes. In post-processing, the theoretical prices for these contracts are approximated from the implied volatility data that are already obtained by the smoothing algorithm.

prices generated are smooth, free of arbitrage opportunities and within bid and ask price spreads. The fair value prices that result from the Smoothing Algorithm are used by OCC in calculating margin requirements, risk sensitivities, stress testing and calculation of the Clearing Fund. In addition, the end-of-day fair value prices of options contracts produced by the Smoothing Algorithm are published to all Clearing Members, as well as to other market participants.

Proposed Changes

OCC is proposing to enhance its margin methodology by addressing a series of limitations that presently exist in each of the Vanilla Option Model and the Smoothing Algorithm, as described below.

Vanilla Option Model Proposed Changes

The Vanilla Option Model has five limitations that would be addressed by the proposed changes. First, the Vanilla Option Model uses constant interest rates—the published London Inter-bank Offered Rate (“LIBOR”) for maturities up to 12 months and published swap rates from maturities two to ten years—as opposed to an interest rate yield curve.¹⁹ By using constant interest rates, the Vanilla Option Model assumes that interest rates remain constant during the lifetime of an option (*i.e.*, the interest rates remain constant at each time-step or node in the JR binomial tree). To address this limitation, OCC proposes to change the Vanilla Option Model to instead use an interest rate curve generated by using OCC’s chosen benchmark rate(s) (currently LIBOR), Eurodollar futures prices and swap rates. The use of an interest rate curve will allow the Vanilla Option Model to assume variable interest rates over the lifetime of an option (*i.e.*, interest rates can vary at each time-step or node in the binomial tree).

Second, the Vanilla Option Model uses either a constant yield (for index options for all tenors) or a constant projection (for single-name stock options for all tenors) determined by the issuer’s last paid or announced dividend. However, an issuer’s last paid or announced dividend is not always an accurate prediction of an issuer’s future dividends, whereas forecasted dividends are the result of a more comprehensive analysis of the issuer’s fundamentals, resulting in a dividend projection that is more sensitive to the

¹⁹ The “swap rate” is the fixed interest rate that a swap counterparty demands in exchange for the uncertainty of having to pay the short-term floating rate over time.

⁹ OCC uses a modified JR binomial tree for American options because the algorithm based on the Black-Scholes formula does not work for valuing American options, due to their early exercise feature.

¹⁰ “Delta” measures the change in the option value with respect to a change in the price of an underlying asset. “Gamma” measures the change in Delta in response to a 1% change in the price of the underlying asset. “Vega” measures the change in the option value corresponding to a 1% change in the underlying asset’s volatility.

particular issuer's circumstances. To address this limitation, OCC proposes to change the Vanilla Option Model to use a schedule of forecasted dividends, received from an established industry data service provider, instead of relying on the issuer's last paid or announced dividend.²⁰

Third, the Vanilla Option Model currently does not use borrowing costs,²¹ which could allow for potential inconsistencies in implied volatilities for calls and puts in options with the same strike and tenor. To address this limitation, OCC proposes to modify the Vanilla Option Model to use borrowing costs as an input in the valuation of plain vanilla options.²²

Fourth, as stated above, for pricing American options the Vanilla Option Model is based on a 49-step modified JR binomial tree; however, the fixed number of steps is not large enough for accurately evaluating long-dated options (e.g., FLEX options). To address this limitation, OCC proposes that the Vanilla Option Model instead price American options using a variable number of steps²³ that increases linearly with the expiration of the option. In addition, OCC proposes to replace the JR binomial tree with the Leisen-Reimer ("LR") binomial tree, which has a higher rate of convergence than the JR binomial tree.

Fifth, the Vanilla Option Model only calculates a limited number of risk sensitivities for the price of options (i.e., Delta, Gamma and Vega) with respect to market variables; the model, however, is limited in that it does not calculate Theta and Rho.²⁴ The proposed

enhancements to the Vanilla Option Model would enable the model to calculate Theta and Rho, in addition to Delta, Gamma and Vega.²⁵

Smoothing Algorithm Enhancements

Presently, the Smoothing Algorithm has five limitations that would be addressed by the proposed enhancements. First, though the Smoothing Algorithm uses the Vanilla Option Model as a component for generating smoothed prices, the Smoothing Algorithm uses a LR binomial tree, whereas the Vanilla Option Model uses a JR binomial tree. The JR binomial tree used in the current Vanilla Option Model does not account for implied forward prices as generated in the Smoothing Algorithm. This inconsistency in binomial trees allows for unequal put and call volatilities and thus for potential violations of put and call parity in margin calculations. The proposed change to the Vanilla Option Model to use a LR binomial tree, as previously described, would not only enhance the Vanilla Option Model but would eliminate the current inconsistency between the Vanilla Option Model and Smoothing Algorithm by using a LR binomial tree for both models.

Second, the Smoothing Algorithm uses index futures to approximate theoretical spot prices for the plain vanilla listed options on certain indices, but this method suffers from the absence of synchronization between the futures market and the market for the underlying indices.²⁶ Trading in the underlying indices closes at 3:00 p.m. Central Time, but trading in the index futures and plain vanilla listed options on those indices closes at 3:15 p.m. The difference in closing times could result in poorly smoothed prices whenever the options trading between 3:00 p.m. and 3:15 p.m. is volatile. Poorly smoothed prices could result in implied volatilities of poorer quality, and this could create problems in OCC's margin and risk calculations. In order to address this limitation, the Smoothing Algorithm would use basis futures on

calculating Delta and Gamma, which is less efficient than calculating Delta and Gamma from the same tree.

²⁵ The Vanilla Option Model presently calculates Delta and Gamma using the perturbation method. The perturbation method requires the use of two binomial trees, which introduces instability issues. The proposed changes would result in Delta and Gamma being calculated from a single binomial tree, which results in improved stability.

²⁶ Using the 3:00 p.m. index futures price suffers from another shortcoming in that the 3:00 p.m. price is not an official closing price, but rather it is the last trade price before 3:00 p.m. (as observed in a manual process by OCC employees).

the same indices to approximate theoretical spot prices. Trading in basis futures has the benefit of closing at 3:00 p.m., which would allow OCC to use a reported closing price.²⁷ Basis futures prices represent the spreads between the futures prices and the underlying price; these spreads are relatively stable throughout the day, including between their closing at 3:00 p.m. and the closing of the index options market at 3:15 p.m., thereby providing a better approximation of the theoretical spot prices in the plain vanilla options at 3:15 p.m.

Third, the Smoothing Algorithm deals with unacceptably high volatilities that are sometimes generated in the out-of-the-money regions by capping these volatilities to a lower value. This leads to a jump in the rate of change of the volatility with respect to the strike and may create negative convexity of the option prices versus strike, i.e., butterfly arbitrage opportunities. The proposed changes to the Smoothing Algorithm would still cap unacceptably high volatilities generated in out-of-the-money regions to a lower value, but the capping would be done in a more gradual manner. By capping unacceptable high volatilities in a more gradual manner, changes in the convexity of prices would not be as discontinuous as in the current Smoothing Algorithm, which would eliminate the opportunities for butterfly arbitrage.

Fourth, to generate prices for short-dated FLEX options, the Smoothing Algorithm combines the prices calculated from the prior day's implied volatilities for all FLEX options with current market prices. By combining the prior day's implied volatilities with current market prices, the Smoothing Algorithm may not generate prices that are consistent with then-current market prices.²⁸ In order to address this limitation, OCC proposes to change the Smoothing Algorithm to use volatilities implied from current market prices of plain vanilla listed options to price short-dated FLEX options.²⁹

Fifth, the Smoothing Algorithm currently does not have the ability to use borrowing costs as an independent

²⁰ In the event the primary data source for these dividends is unavailable, OCC has a backup data provider for forecasted dividends.

²¹ Borrowing costs are the costs that may be incurred by an option buyer or seller to borrow the underlying security of the option.

²² The borrowing costs used by the Vanilla Option Model would be calculated from market prices of options or futures.

²³ The number of LR tree steps would vary between minimum and maximum parameters, depending on an option's tenor. OCC would initially set these minimum and maximum parameters at 51 and 501, respectively, and they would be subject to change based on OCC's determination. OCC would modify the minimum and maximum parameters to achieve a balance between pricing accuracy and speed of pricing calculations. The larger the number of the steps, the more accurate the pricing, but the longer the calculation time. For example, OCC's initial choice of a maximum 1001 steps did not result in an optimal balance between accuracy and speed; therefore, OCC reduced the maximum number of steps to 501.

²⁴ "Theta" measures the change in the option value for a one day change in the time to expiration of the option. "Rho" measures the change in the option value with respect to a 1 basis point change in the interest rate.

The Vanilla Option Model has a further limitation in that it relies on a perturbation method of

²⁷ By using the reported closing price for basis futures, the proposed changes to the Smoothing Algorithm also would eliminate the algorithm's reliance on a manual process to observe pre-close futures prices.

²⁸ The reason that the Smoothing Algorithm uses the prior day's implied volatilities is that the implied volatilities are received from a third-party data service provider; the provider's quotes are delayed by one day.

²⁹ The Smoothing Algorithm for long-dated FLEX options would remain unchanged.

input.³⁰ To address this limitation, OCC proposes to modify the Smoothing Algorithm to provide for the ability to use borrowing costs as an independent input in the pricing of plain vanilla listed options. Under the proposed changes, the borrowing costs for each underlying security would be implied from at-the-money (or near at-the-money) options listed on such security.

Clearing Member Outreach

To inform Clearing Members of the proposed change, OCC has provided overviews of the proposed changes to its Financial Risk Advisory Council³¹ and, prior to implementing the proposed change, will provide overviews to the OCC Roundtable,³² as well as through Information Memoranda to all Clearing Members describing the proposed change.

Given that changes in margins are expected,³³ OCC expects to conduct an extended parallel implementation for Clearing Members prior to implementation. Additionally, OCC will perform targeted and direct outreach with Clearing Members that would be most impacted by the proposed change and would work closely with such

³⁰ The Smoothing Algorithm currently combines borrowing costs and dividends into a single input, referred to as “implied dividends,” which is then used to price plain vanilla listed options. However, the combined “implied dividends” input can differ from the actual dividend, and this difference can result in potential mispricing of certain types of options.

³¹ The Financial Risk Advisory Council is a working group comprised of exchanges, Clearing Members and indirect participants of OCC.

³² The OCC Roundtable was established to bring Clearing Members, exchanges and OCC together to discuss industry and operational issues. It is comprised of representatives of the senior OCC staff, participant exchanges and Clearing Members, representing the diversity of OCC’s membership in industry segments, OCC-cleared volume, business type, operational structure and geography.

³³ OCC expects that the proposed changes, in aggregate, would reduce total margins by a small amount. In particular, margin reductions are expected for Clearing Members who hold risk offsetting positions. However, the ultimate impact on any particular Clearing Member’s margin requirements would necessarily vary based on trading strategies and market conditions. More specifically, backtesting results for the period from March 2018 through February 2019 showed small reductions to total margins, in aggregate, with an average difference of 1.3% between the proposed model and the production model. At the Clearing Member level, the difference in margin requirements between the proposed model and the production model for Clearing Members comprising 99% of OCC’s total daily margin (such Clearing Members, the “top Clearing Members”) on most days of the backtesting period was less than 10%. The largest increase and decrease to daily margin requirements observed within top Clearing Members during the backtesting period was 42% and 30%, respectively. On average, only 5% of the top Clearing Members experienced a daily margin decrease or increase of 10% or greater under the proposed model over the same period.

Clearing Members to coordinate the implementation and associated funding for such Clearing Members resulting from the proposed change.³⁴

Implementation Timeframe

OCC expects to implement the proposed changes to the Vanilla Option Model and Smoothing Algorithm no sooner than August 1, 2019 and no later than one hundred eighty (180) days from the date OCC receives all necessary regulatory approvals for the filings. OCC will announce the implementation date of the proposed change by an Information Memo posted to its public website no less than 6 weeks prior to implementation.

Expected Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented by OCC because they would enhance two of the primary components of OCC’s STANS methodology by addressing five limitations of the Vanilla Option Model and five limitations of the Smoothing Algorithm.

With respect to the Vanilla Option Model, the proposed changes would incorporate interest rate yield curves, forecasted dividends and borrowing costs into the theoretical pricing of plain vanilla listed options. Including these three inputs improves the Vanilla Option Model’s theoretical pricing and helps to preserve the consistency between implied call volatility and implied put volatility in options at the same strike price and same maturity. The proposed changes also would introduce the LR binomial tree to replace the fixed, 49-step JR binomial tree for pricing of American options. The LR binomial tree would use a variable number of steps that increases linearly with the expiration of an option, to more accurately price long-dated American options. The LR binomial tree also converges at a considerably higher rate than the JR binomial tree. The proposed changes would also enable OCC to calculate two additional risk sensitivities—namely, Theta and Rho—for plain vanilla listed options.

With respect to the Smoothing Algorithm, the proposed changes would improve implied volatility smoothing by eliminating the inconsistency between the binomial trees used by the Vanilla Option Model and the Smoothing Algorithm and by eliminating the

synchronization issue from using the 3:00 p.m. index futures price to approximate theoretical spot prices for plain vanilla listed options on certain indices. The proposed changes also would improve the Smoothing Algorithm by more gradually capping unacceptably high volatilities sometimes generated in the out-of-the-money regions, which would eliminate the opportunities for butterfly arbitrage, and by using borrowing costs in the pricing of plain vanilla listed options.

The proposed model would be used by OCC to calculate margin requirements designed to limit its credit exposures to participants, and OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members from losses as a result of the default and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products. Accordingly, OCC believes the proposed changes would promote robust risk management for plain vanilla listed options and promote safety and soundness consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.³⁵

For the foregoing reasons, OCC believes that the proposed change would enhance OCC’s management of risk and reduce the nature or level of risk presented to OCC.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.³⁶ Section 805(a)(2) of the Clearing Supervision Act³⁷ also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act³⁸ states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- Promote safety and soundness;
- Reduce systemic risks; and

³⁵ 12 U.S.C. 5464(b).

³⁶ 12 U.S.C. 5461(b).

³⁷ 12 U.S.C. 5464(a)(2).

³⁸ 12 U.S.C. 5464(b).

³⁴ Specifically, OCC will discuss with those Clearing Members how they plan to satisfy any increase in their margin requirements associated with the proposed change.

- Support the stability of the broader financial system.

OCC believes the proposed changes are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.³⁹ As described above, STANS margin requirements are comprised of the sum of several components, each reflecting a different aspect of risk. Two primary components of STANS are the Vanilla Option Model, which is used to generate theoretical values, implied volatilities and certain risk sensitivities for plain vanilla listed options, and the Smoothing Algorithm, which is used to estimate fair prices of listed option contracts based on their bid and ask price quotes. As explained above, OCC proposes certain changes to address certain existing limitations in the Vanilla Option Model and the Smoothing Algorithm. By addressing the aforementioned limitations of the Vanilla Option Model, OCC believes that the model will produce more accurate theoretical valuations of plain vanilla listed options, including improved theoretical valuations for long-dated American options. By addressing the aforementioned limitations of the Smoothing Algorithm, OCC believes that the proposed change will enhance implied volatility smoothing, improve the approximate theoretical spot prices for plain vanilla listed options on certain indices and eliminate opportunities for butterfly arbitrage. As a result, OCC believes the proposed change would promote robust risk management and safety and soundness while reducing systemic risks and would thereby support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act, which include Commission Rules 17Ad-22(b)(2) and (e)(6).⁴⁰

Rule 17Ad-22(b)(2)⁴¹ requires, in part, that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed use margin requirements to limit its credit

exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. As noted above, OCC uses STANS as its risk-based margin methodology. The proposed changes would enhance STANS by addressing several limitations in two of the primary components of STANS: The Vanilla Option Model and the Smoothing Algorithm. With respect to the Vanilla Option Model, OCC believes the proposed changes would enable the model to produce more accurate theoretical valuations of plain vanilla listed options, and for American options, would enable the model to more accurately evaluate long-dated options. With respect to the Smoothing Algorithm, OCC believes the proposed changes will enhance the model's implied volatility smoothing by improving the approximate theoretical spot prices for plain vanilla listed options on certain indices and by eliminating opportunities for butterfly arbitrage. Accordingly, OCC believes the proposed changes would improve the methodology used to calculate margin requirements designed to limit OCC's credit exposures to participants under normal market conditions in a manner consistent with Rule 17Ad-22(b)(2).⁴²

Rule 17Ad-22(e)(6)(i) and (iii)⁴³ further requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that: (1) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and (2) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. As noted above, the proposed changes would address certain existing limitations in the Vanilla Option Model and the Smoothing Algorithm, each of which is a primary component of OCC's STANS methodology. By addressing the aforementioned limitations of the Vanilla Option Model, OCC believes that the model will produce more accurate theoretical valuations of plain vanilla listed options, including improved theoretical valuations for long-dated American options. By addressing the aforementioned limitations of the Smoothing Algorithm, OCC believes that the proposed changes will enhance implied volatility

smoothing, improve the approximate theoretical spot prices for plain vanilla listed options on certain indices and eliminate opportunities for butterfly arbitrage. Accordingly, OCC believes the proposed changes are consistent with Rule 17Ad-22(e)(6)(i) and (iii).⁴⁴

The changes are not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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

³⁹ 12 U.S.C. 5464(b).

⁴⁰ 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) ("Clearing Agency Standards"); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) ("Standards for Covered Clearing Agencies"). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5) and therefore OCC must comply with section (e) of Rule 17Ad-22.

⁴¹ 17 CFR 240.17Ad-22(b)(2).

⁴² *Id.*

⁴³ 17 CFR 240.17Ad-22(e)(6)(i) and (iii).

⁴⁴ *Id.*

• Send an email to rule-comments@sec.gov. Please include File Number SR–OCC–2019–804 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2019–804. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 self-regulatory organization.

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–OCC–2019–804 and should be submitted on or before August 15, 2019.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–16312 Filed 7–30–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33578]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 26, 2019.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2019. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail.

Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Branch Chief, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Causeway ETMF Trust [File No. 811–23294]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 13, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$40,272 incurred in connection with the liquidation were paid by applicant's investment adviser. Applicant also has retained \$37,826 for

the purpose of paying certain outstanding liabilities.

Filing Dates: The application was filed on June 19, 2019, and amended on July 11, 2019.

Applicant's Address: 11111 Santa Monica Boulevard, c/o Causeway Capital Management LLC, 15th Floor, Los Angeles, California 90025.

Cohen & Steers Institutional Global Realty Shares, Inc. [File No. 811–21902]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Cohen & Steers Global Realty Shares, Inc., and on March 20, 2018, made a final distribution to its shareholders based on net asset value. Expenses of \$239,751 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on March 27, 2019, and amended on July 2, 2019 and July 12, 2019.

Applicant's Address: 280 Park Avenue, 10th Floor, New York, NY 10017.

Dreyfus Manager Fund I [File No. 811–21386]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 27, 2017, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$5,500 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on June 10, 2019, and amended on July 8, 2019.

Applicant's Address: c/o BNY Mellon Investment Adviser, Inc., 240 Greenwich Street, New York, New York 10286.

Dreyfus TMT Opportunities Fund, Inc. [File No. 811–22996]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on June 28, 2019.

Applicant's Address: c/o BNY Mellon Investment Adviser, Inc., 240 Greenwich Street, New York, New York 10286.

Eaton Vance Municipal Bond Fund Massachusetts Merger Subsidiary, LLC [File No. 811–23398]

Summary: Applicant, a closed-end investment company, seeks an order

declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Bond Fund, and on December 14, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately \$31,640 incurred in connection with the reorganization were paid by Eaton Vance Massachusetts Municipal Bond Fund, which merged into applicant prior to the applicant's merger with Eaton Vance Municipal Bond Fund.

Filing Date: The application was filed May 16, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Managed Duration Investment Grade Municipal Fund [File No. 811-21359]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 6, 2018, September 21, 2018 and September 24, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$166,255 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained \$6,073.30 for the purpose of paying certain shareholders unsundered shares in connection with the liquidation.

Filing Dates: The application was filed April 30, 2019, and amended on June 27, 2019.

Applicant's Address: 200 Park Avenue, 7th Floor, New York, New York 10166.

Mandatory Exchangeable Trust [File No. 811-23158]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 3, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$3,250 incurred in connection with the liquidation were paid by West Raptor Holdings, LLC.

Filing Dates: The application was filed June 18, 2019, and amended on July 11, 2019.

Applicant's Address: c/o Donald J. Puglisi, Managing Trustee, 850 Library Avenue, Suite 204, Newark, Delaware 19711.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-16317 Filed 7-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Form 18-K, SEC File No. 270-108, OMB Control No. 3235-0120

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 18-K (17 CFR 249.318) is an annual report form used by foreign governments or political subdivisions of foreign governments with securities listed on a United States exchange. The information to be collected is intended to ensure the adequacy and public availability of information available to investors. The information provided is mandatory. Form 18-K is a public document. We estimate that Form 18-K takes approximately 8 hours to prepare and is filed by approximately 36 respondents for a total annual reporting burden of 288 hours (8 hours per response × 36 responses).

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

The public may view the background documentation for this information collection at the following website, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Lindsay.M.Abate@omb.eop.gov; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

July 26, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-16292 Filed 7-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-447, OMB Control No. 3235-0504]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Rule 19b-4(e) and Form 19b-4(e)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 19b-4(e) (17 CFR 240.19b-4(e)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Act").

Rule 19b-4(e) permits a self-regulatory organization ("SRO") to list and trade a new derivative securities product without submitting a proposed rule change pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), so long as such product meets the criteria of Rule 19b-4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded on the SROs, Rule 19b-4(e) requires an SRO to file a summary form, Form 19b-4(e), to notify the Commission when the SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission. Form 19b-4(e) should be submitted within five business days after an SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change. In addition, Rule 19b-4(e) requires an SRO to maintain, on-site, a copy of Form 19b-4(e) for a prescribed period of time.

This collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded on the SROs that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule

19b–4(e). The Commission reviews SRO compliance with Rule 19b–4(e) through its routine inspections of the SROs.

The respondents to the collection of information are SROs (as defined by the Act), all of which are national securities exchanges. As of March 29, 2019 there are twenty-two entities registered as national securities exchanges with the Commission. The Commission receives an average total of 5,122 responses per year, which corresponds to an estimated annual response burden of 5,122 hours. At an average hourly cost of \$71, the aggregate related internal cost of compliance with Rule 19b–4(e) is \$363,662 (5,122 burden hours multiplied by \$71/hour).

Compliance with Rule 19b–4(e) is mandatory. Information received in response to Rule 19b–4(e) shall not be kept confidential; the information collected is public information.

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

The public may view background documentation for this information collection at the following website, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to:

lindsay.m.abate@omb.eop.gov; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 26, 2019.

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2019–16293 Filed 7–30–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 10838]

Certification Pursuant to Section 6(A) of the Nicaragua Human Rights and Anticorruption Act of 2018

By virtue of the authority vested in me as the Deputy Secretary of State, and pursuant to section 6(a) of the Nicaragua Human Rights and Anticorruption Act of 2018 (Pub. L. 115–335) and Department of State Delegation of

Authority 245–2, I hereby certify that the Government of Nicaragua is not taking effective steps to:

- Strengthen the rule of law and democratic governance, including the independence of the judicial system and electoral council;
- combat corruption, including by investigating and prosecuting cases of public corruption;
- protect civil and political rights, including the rights of freedom of the press, speech, and association, for all people of Nicaragua, including political opposition parties, journalists, trade unionists, human rights defenders, indigenous peoples, and other civil society activists;
- investigate and hold accountable officials of the Government of Nicaragua and other persons responsible for the killings of individuals associated with the protests in Nicaragua that began on April 18, 2018; and
- hold free and fair elections overseen by credible domestic and international observers.

This determination shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: July 6, 2019.

John J. Sullivan,
Deputy Secretary of State.

[FR Doc. 2019–16349 Filed 7–30–19; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice No. 10837]

Foreign Affairs Policy Board; Notice of Charter Renewal

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix, and 41 CFR 102–3.65, the Department of State hereby provides notice of the renewal of the charter of the Foreign Affairs Policy Board (“the Board”).

The Foreign Affairs Policy Board provides the Secretary of State with advice, real-time feedback, and perspectives from outside leaders and innovators, in support of the Department formulation and execution of policy. It taps external expertise to provide advice and recommendations regarding critical challenges in the dynamic and competitive global environment in order to enhance the power and influence of American diplomacy.

The Board’s activities are advisory only. The Board is established under the general authority of the Secretary of State and the Department of State as set

forth in Title 22 of the United States Code, in particular Section 2656 of that Title and consistent with Federal Advisory Committee Act.

For additional information, contact Shawanesh Underwood in the Office of Policy Planning, U.S. Department of State, at email UnderwoodSN@state.gov.

Dated: July 24, 2019.

Kiron K. Skinner,
Director, Office of Policy Planning,
Department of State.

[FR Doc. 2019–16348 Filed 7–30–19; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 10834]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: “Michelangelo: Mind of the Master” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be exhibited in the exhibition “Michelangelo: Mind of the Master,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Cleveland Museum of Art, Cleveland, Ohio, from on or about September 22, 2019, until on or about January 5, 2020, The J. Paul Getty Museum, Los Angeles, California, from on or about February 25, 2020, until on or about June 7, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999,

and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,
Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–16205 Filed 7–30–19; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States
Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: Effective August 23, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately \$16 billion (the \$16 billion action) as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The Trade Representative's determination included a decision to establish a product exclusion process. The Trade Representative initiated the exclusion process in September 2018, and stakeholders have submitted requests for the exclusion of specific products. This notice announces the Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of the August 23, 2018 effective date of the \$16 billion action, and will extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimbail, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), and 84 FR 29576 (June 24, 2019). Effective August 23, 2018, the Trade Representative imposed additional 25 percent duties on goods of China classified in 279 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$16 billion. See 83 FR 40823. The Trade Representative's determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$16 billion action from the additional duties. The Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. See 83 FR 47236 (the September 18 notice).

Under the September 18 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the \$16 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to

“Made in China 2025” or other Chinese industrial programs.

The September 18 notice stated that the Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The September 18 notice required submission of requests for exclusion from the \$16 billion action no later than December 18, 2018, and noted that the Trade Representative would periodically announce decisions. The Office of the United States Trade Representative regularly updates the status of each pending request and posts the status within the web pages for the respective tariff action they apply to at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions>.

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the September 18 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex to this notice, the exclusions are reflected in 69 specially prepared product descriptions, which cover 292 separate exclusion requests.

In accordance with the September 18 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(4) are conforming amendments to the HTSUS reflecting the modification made by the Annex to this notice.

As stated in the September 18 notice, the exclusions will apply as of the August 23, 2018 effective date of the \$16 billion action, and extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn

from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. By inserting the following new heading 9903.88.12 in numerical sequence, with the material in the new heading inserted in the columns of the

HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
“9903.88.12	Articles the product of China, as provided for in U.S. note 20(o) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable subheading”.	.....	.....

2. by inserting the following new U.S. note 20(o) to subchapter III of chapter 99 in numerical sequence:

“(o) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.02 and provided for in U.S. notes 20(c) and (d) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.02. See 83 FR 40823 (August 16, 2018) and 83 FR 47236 (September 18, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.02 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) Chlorinated polyethylene elastomer, in white or pale yellow powder form, containing 28 to 44 percent by weight of chlorine (described in statistical reporting number 3901.90.1000)
- (2) Polytetrafluoroethylene ((C₂F₄)_n), having a particle size of 5 to 500 microns and a melting point of 315 to 329 degrees Celsius (described in statistical reporting number 3904.61.0090)
- (3) Expandable plastics beads, 0.30 to 0.50 mm in diameter, consisting of copolymers of methylmethacrylate (62 to 64 percent by weight) and styrene (26 to 28 percent by weight) (described in statistical reporting number 3906.90.2000)
- (4) Polyol blends containing 92 percent or more by weight of polyether polyol (CAS number 9049–71–2) and 2.5% or more by weight of N,N-dimethylcyclohexamine (described in statistical reporting number 3907.20.0000)

- (5) Hot melt flat shapes of biaxially oriented polypropylene (BOPP) film with an acrylic emulsion (described in statistical reporting number 3919.90.5060)
- (6) Polyethylene film, 20.32 to 198.12 cm in width, and 30.5 to 2000.5 m in length, coated on one side with solvent acrylic adhesive, clear or in transparent colors, whether or not printed, in rolls (described in statistical reporting number 3919.90.5060)
- (7) Polyvinyl chloride film, coated on one side with pressure sensitive solvent-acrylic adhesive that allows for easy removal from a flat glass or flat, rigid, clear plastics surface, 106.7 cm, 137.2 cm or 152.4 cm in width, and 30.38 m or 49.99 m in length, with regular perforations measuring 1.5 to 1.6 mm in diameter, where the perforations cover 30, 40 or 50 percent of the surface area (described in statistical reporting number 3919.90.5060)
- (8) Printed rectangular polyethylene sheets depicting images on one side, with self-adhesive edges protected with peel-off liners on the other side, measuring 30.5 cm by 45.7 cm or 30.5 cm by 25.4 cm (described in statistical reporting number 3919.90.5060)
- (9) Self-adhesive colored or printed polyvinyl chloride film with a peelable liner, in rolls, measuring 30.5 cm or 50.8 cm in width and 3.05 m to 6.10 m in length, of a kind used for lining shelves or drawers (described in statistical reporting number 3919.90.5060)
- (10) Printed, nonpermeable plastic film of ethylene designed for use in packaging personal care products such as baby wipes, adult wipes

and similar wet stack products (provided for in statistical reporting number 3920.10.0000)

- (11) Polyethylene film of a kind used for wrapping perishable foods, in rolls measuring 30.5 cm in width and up to 76.2 m in length, with a starter edge tab, put up in retail packages incorporating a built-in slide cutter and grip strip for holding the film in place until subsequent use (described in statistical reporting number 3920.10.0000)
- (12) Rectangular sheets of high-density or low-density polyethylene, 111.75 cm to 215.9 cm in width, and 152.4 cm to 304.8 cm in length, with a sticker attached to mark the center of each sheet, of a kind used in hospital or surgery center operating rooms (described in statistical reporting number 3920.10.0000)
- (13) Spark-ignition rotary or reciprocating internal combustion piston engines to be installed in agricultural or horticultural machinery or equipment, 4,476 W or more but not more than 37.6 kW, each valued not over \$180 (described in statistical reporting number 8407.90.1020)
- (14) Gasoline or liquid propane (LP) engines each having a displacement of more than 2 liters but not more than 2.5 liters (described in statistical reporting number 8407.90.9010)
- (15) Spark-ignition internal combustion piston engines, not elsewhere specified or included, 746 W or greater but not exceeding 4,476 W, with an engine displacement of not more than 430 cc (described in statistical reporting number 8407.90.9040)

- (16) Heat guns (described in statistical reporting number 8419.89.9585)
- (17) Heated tissue preparation microscope slide flattening tables (described in statistical reporting number 8419.89.9585)
- (18) Tissue sample paraffin floatation baths (described in statistical reporting number 8419.89.9585)
- (19) Air amplifiers powered solely by an external source of compressed air, which is routed through the apparatus in such a manner as to draw in ambient air, increase its speed and direct the air through an output port, each such apparatus not exceeding 1 kg in weight (described in statistical reporting number 8424.89.9000)
- (20) Apparatus capable of generating and projecting liquid particles of a size that simulates haze, fog or snow (depending on the composition of the liquid or powdered source), whether or not incorporating laser or other lighting apparatus (described in statistical reporting number 8424.89.9000)
- (21) Apparatus capable of mechanically generating and projecting bubbles from a liquid source, each apparatus weighing more than 2.5 kg but not more than 6.5 kg (described in statistical reporting number 8424.89.9000)
- (22) Aroma-spraying sets, each of which includes a battery-powered aerosol apparatus and a glass bottle containing not more than 25 ml of essential oil solution, each set weighing not more than 300 g (described in statistical reporting number 8424.89.9000)
- (23) Collars of a size suitable for dogs or cats, fitted with a means to provide a stimulus to the animal, by means of a sprayer, whether or not combined with a static electric discharge device or sound emitter; and such collars capable of being controlled by an external transmission device, whether or not the controller is presented with the collar as a set (described in statistical reporting number 8424.89.9000)
- (24) Dispensers of hand-cleaning or hand-sanitizing solutions, whether employing a manual pump or a proximity-detecting battery-operated pump, each article weighing not more than 3 kg (described in statistical reporting number 8424.89.9000)
- (25) Oral irrigators (dental water-jet machines) (described in statistical reporting number 8424.89.9000)
- (26) Parts washers, each consisting of a steel basin having a capacity no greater than 100 liters, steel drain plug, support legs and a shelf, a recirculating centrifugal pump assembly, a power cord incorporating an electrical fusible link, a gooseneck spigot assembly, with a steel lid held by a "piano-type" hinge and by a lid support bracket incorporating a mechanical fusible link (described in statistical reporting number 8424.89.9000)
- (27) Rotary surface washers, consisting of a tube, at one end of which is a fitting suitable for connection to an external power washer and a handle for controlling the position of the apparatus, and at the other end of which is an assembly of one or more rotating brushes that receive the output of the external power washer (described in statistical reporting number 8424.89.9000)
- (28) Wet- and dry-diffusion apparatus fitted for incorporation into scent-releasing machines (described in statistical reporting number 8424.89.9000)
- (29) Walk behind rotary tillers, electric powered, individually weighing less than 14 kg (described in statistical reporting number 8432.29.0060)
- (30) Fertilizer distributors with a capacity not exceeding 40 kg (described in statistical reporting number 8432.42.0000)
- (31) Benchtop drill presses, each with a power rating of less than 750 watts and valued under \$1,000 each (described in statistical reporting number 8465.95.0055)
- (32) Bearing housings each valued over \$2000 (described in statistical reporting number 8483.30.8020)
- (33) AC motors, of 18.65 W or more but not exceeding 37.5 W, each with attached actuators, crankshafts or gears (described in statistical reporting number 8501.10.6020)
- (34) C-frame 2-pole AC electric motors, of 18.65 W or more but not exceeding 37.5 W, each valued not over \$4 (described in statistical reporting number 8501.10.6020)
- (35) Electric motors, of 18.65 W or more but not exceeding 37.5 W, each valued over \$28 but not over \$35 (described in statistical reporting number 8501.10.6080)
- (36) Amorphous silicon solar chargers with a power output of 100 W or less (described in statistical reporting number 8501.31.8010)
- (37) Electric motors, each with an output rating not exceeding 800 W (described in statistical reporting number 8501.52.4000)
- (38) Armature shafts for electric motors of heading 8501 (described in statistical reporting number 8503.00.9520)
- (39) Windshield wiper motor covers and shafts (described in statistical reporting number 8503.00.9520)
- (40) Leakage current detection and interruption (LCDI) cords (described in statistical reporting number 8536.30.8000)
- (41) Control boards for stoves, ranges and ovens of heading 8516 (described in statistical reporting number 8537.10.3000)
- (42) Zener diodes, each valued not over \$0.25 (described in statistical reporting number 8541.10.0050)
- (43) Position or speed sensors for motor vehicle transmission systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
- (44) Wheel speed sensors for anti-lock motor vehicle braking systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
- (45) Antenna amplifiers, each valued not over \$15 (described in statistical reporting number 8543.70.9960)
- (46) Antenna noise suppressors, each valued not over \$5 (described in statistical reporting number 8543.70.9960)
- (47) Apparatus using passive infrared detection sensors designed for turning lights on and off (described in statistical reporting number 8543.70.9960)
- (48) Audio controllers, each valued not over \$100 (described in statistical reporting number 8543.70.9960)
- (49) Audio mixers, each valued not over \$75 (described in statistical reporting number 8543.70.9960)
- (50) Devices incorporating sensors and monitors for identifying encoded television and radio signal information of survey participants (described in statistical reporting number 8543.70.9960)
- (51) Electrically powered cat noise control devices (described in statistical reporting number 8543.70.9960)
- (52) Electrically powered combs of a kind used on pets (described in statistical reporting number 8543.70.9960)
- (53) Electrically powered dog training, controlling, repelling or locating apparatus whether or not put up in kits, including dog collars fitted with GPS or other transmitting or receiving devices and electrical barrier transmitter devices (described in statistical reporting number 8543.70.9960)
- (54) Electrically powered insect control apparatus (described in statistical reporting number 8543.70.9960)

- (55) Electrically powered static-emitting plastic strips designed for use in training or controlling pets (described in statistical reporting number 8543.70.9960)
- (56) LED lamps for flash curing nail polish (described in statistical reporting number 8543.70.9960)
- (57) Liquid leak detectors (described in statistical reporting number 8543.70.9960)
- (58) Multiple device remote controls, other than radio remote control, each valued not over \$2 (described in statistical reporting number 8543.70.9960)
- (59) Robots, programmable, measuring not more than 40 cm high by 22 cm wide by 27 cm deep, incorporating an LCD display, camera and microphone but without “hands” (described in statistical reporting number 8543.70.9960)
- (60) Couplers, knuckles and yokes and parts thereof for vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
- (61) Motorcycles (including mopeds), with reciprocating internal combustion piston engine of a cylinder capacity not exceeding 50 cc, valued not over \$500 each (described in statistical reporting number 8711.10.0000)
- (62) Polarizing film, of triacetate, with a pressure sensitive adhesive backing (described in statistical reporting number 9001.20.0000)
- (63) Digital clinical thermometers, valued not over \$11 each (described in statistical reporting number 9025.19.8040)
- (64) Cooking thermometers, including candy and deep-fry thermometers (described in statistical reporting number 9025.19.8080)
- (65) Infrared thermometers (described in statistical reporting number 9025.19.8080)
- (66) Combined thermometer and hygrometer devices (described in statistical reporting number 9025.80.1000)
- (67) Pulse output gas meters of a kind that can be read remotely (described in statistical reporting number 9028.10.0000)
- (68) Pulse output water meters, of cast stainless steel (described in statistical reporting number 9028.20.0000)
- (69) Fingertip pulse oximeters (described in statistical reporting number 9029.20.4080)”

3. by amending the last sentence of the first paragraph of U.S. note 20(d) to subchapter III of chapter 99 by:

a. Inserting “, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.12 and U.S. note 20(o) to subchapter III of chapter 99” after the phrase “heading 9903.88.02 applies to all products of China that are classified in the following 8-digit subheadings”, where it appears at the end of the sentence.

4. by amending the article description of heading 9903.88.02:

a. By inserting “Except as provided in heading 9903.88.12,” before “Articles the product of China, as provided for in U.S. note 20(c) to this subchapter and as provided for in the subheadings enumerated in U.S. note 20(d)”.

[FR Doc. 2019–16256 Filed 7–30–19; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare Environmental Impact Statement for the I–270/U.S. 15 Multi-Modal Corridor Study in Montgomery County and Frederick County, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that it is rescinding its Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the I–270/U.S. 15 Multi-Modal Corridor Study in Montgomery County and Frederick County, Maryland. The NOI was published in the **Federal Register** on December 10, 1997. This rescission is based on no plans to advance this study.

FOR FURTHER INFORMATION CONTACT:

Gregory Murrill, Division Administrator, Federal Highway Administration, Maryland Division, George H. Fallon Federal Building, 31 Hopkins Plaza, Suite 1520, Baltimore, Maryland 21201; Telephone: (410) 962–4440.

SUPPLEMENTARY INFORMATION: The FHWA, as the lead Federal agency, in cooperation with the Maryland Department of Transportation State Highway Administration (MDOT SHA) as the joint lead agency and local project sponsor, Federal Transit Administration (FTA), and MDOT Maryland Transit Administration (MDOT MTA), published an NOI on December 10, 1997, to prepare an EIS on a proposal

to provide multi-modal transportation improvements along the I–270/U.S. 15 corridor in Montgomery and Frederick Counties, Maryland for a distance of approximately 35 miles. The FHWA, MDOT SHA, FTA, and MDOT MTA made a Draft EIS available to the public on May 14, 2002, and held public hearings on June 25 and June 27, 2002. The FHWA, MDOT SHA, FTA, and MDOT MTA prepared an Alternatives Analysis/Environmental Assessment (AA/EA) in May 2009 as a companion to the 2002 DEIS, which addressed the addition of Express Toll Lanes on I–270 as alternatives for the roadway component. The 2009 AA/EA was released to the public and public hearings were held on June 16 and June 18, 2009. In 2011, FHWA and FTA jointly agreed that the transit component (Corridor Cities Transitway—CCT) of the Multi-Modal Corridor Study had independent utility and was advanced separately from the roadway (I–270) component. An EA was published for the CCT in August 2017. Since 2009, there has been no further effort on the EIS for the I–270/U.S. 15 Multi-Modal Corridor Study, and FHWA has not issued a NEPA decision.

The FHWA is rescinding the NOI because the local sponsor has no plans to advance the EIS. A separate NEPA study is being undertaken to evaluate potential improvements to U.S. 15 within the corridor, from I–70 to Maryland Highway 26. The FHWA and MDOT SHA will initiate new NEPA studies, as appropriate, to assess the potential environmental impacts of future actions that involve I–270. Comments and questions concerning this action should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48; 23 CFR 771.111 and 771.123)

Issued on: July 24, 2019.

Gregory Murrill,

Division Administrator, Federal Highway Administration, Baltimore, Maryland.

[FR Doc. 2019–16311 Filed 7–30–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****Solicitation of Proposals for the National Rural Transit Assistance Program**

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of funding opportunity.

SUMMARY: The Federal Transit Administration (FTA) is soliciting proposals under the agency's Formula Grants for Rural Areas Program to select an entity to administer a National Rural Transit Assistance Program (RTAP). The National RTAP will carry out activities to design and implement training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in rural areas, including Indian Country. Primary activities will include the development of information and materials for use by local operators and State administering agencies, and supporting research and technical assistance projects of national interest.

DATES: Complete proposals for funding opportunity FTA-2019-005-TPM-NRTAP must be submitted electronically through *GRANTS.GOV*. All applications must be received by 11:59 p.m. Eastern time on August 30, 2019.

FOR FURTHER INFORMATION CONTACT: Marianne Stock, FTA Office of Program Management, (202) 366-6508 or marianne.stock@dot.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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- B. Federal Award Information
- C. Eligibility Information
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A. Program Description

The Formula Grants for Rural Areas Program, authorizes the Secretary of Transportation to carry out a Rural Transportation Assistance Program (RTAP) in rural areas.

FTA's National RTAP is funded under the Formula Grants for Rural Areas Program to enhance the delivery of public transportation services provided by State Departments of Transportation (DOTs) and operators of rural public transportation. Since 1979, FTA has provided grants to States under the Formula Grants for Rural Areas Program and its predecessor programs to establish and maintain transit systems in communities with populations of less

than 50,000 individuals. Rural transit systems and community transit drivers, dispatchers, maintenance workers, managers, and board members need special skills and knowledge to provide quality service to their diverse customers across large, rural service areas. The National RTAP was created in 1997 to carry out projects of a national scope that provide transportation assistance in these areas.

The National RTAP provides for the development of information and materials for use by local operators, State DOTs and State funded transit agencies, and supports research and technical assistance projects of national interest. The FTA carries out the objectives of the National RTAP through a cooperative agreement that establishes and provides financial assistance for these activities. FTA selected the current recipient to administer the National RTAP in 2014. Consistent with the Uniform Administrative Requirements of 2 CFR200, every 5 years the FTA competes the administration of the National RTAP.

FTA also supports assistance for local RTAP activities through funding apportionments to the States. The State RTAPs develop and implement training and technical assistance in conjunction with the State's administration of the Formula Grants for Rural Areas Formula Program. The State RTAPs and National RTAP complement each other and both are funded under the Formula Grants for Rural Areas program.

The objectives of the National RTAP are:

- *Objective 1:* To promote the delivery of safe, effective and efficient public transportation in rural areas.
- *Objective 2:* To support State and local governments in addressing the training and technical assistance needs of the rural transportation community.
- *Objective 3:* To conduct research, including analysis of data reported to FTA's National Transit Database, and to maintain current profiles of the characteristics of rural transit as well as the inventory of providers of rural, tribal and specialized transportation providers.

Since its inception, the National RTAP has developed and distributed training materials, provided technical assistance, generated reports, published best practices, produced scholarships, conducted research, and offered peer assistance with the goal of improved mobility for the millions of Americans living in rural communities. The National RTAP also has developed tools for use by rural transit providers in providing their service, and provided access to scholarship, research and

training through sponsorship of and participation in conferences attended by a variety of constituents with interest in rural and tribal transit. For more information on the various programs and services provided by the National RTAP, visit the National RTAP website at: <http://www.nationalrtap.org/AboutUs.aspx>.

B. Federal Award Information

FTA is authorized to use two percent of funds appropriated for its Formula Grants for Rural Areas Program for research, technical assistance, training, and related support services in rural areas. Of this amount, FTA expects to award the administration of the National RTAP as a cooperative agreement. FTA will fund the cooperative agreement for up to five (5) years, subject to availability of funds, and the apportioned balance to the States to carry out State RTAP activities.

FTA intends to fund the National RTAP with \$1,936,904 in Fiscal Year (FY) 2018 funds for the first year. FTA may extend funding for this center for up to five (5) years; however, subsequent funding will depend upon: (1) Future authorization and appropriations; (2) decisions and program priorities established by the Secretary of Transportation related to implementation of the National Rural Transportation Assistance program; and (3) annual performance reviews. Congress apportioned an additional \$2,097,966 for National RTAP in FY 2019.

C. Eligibility Information

Eligible proposers are non-profit organizations with rural and tribal transportation experience that have the capacity to provide public transportation-related technical assistance and the ability to deliver a national technical assistance and training program. There is no local match or cost sharing requirement for this program.

D. Application and Submission Information**1. Address**

Applications must be submitted electronically through *GRANTS.GOV*, as described above. General information for registering and submitting applications through *GRANTS.GOV* can be found at <https://www.grants.gov/web/grants/applicants.html> along with specific instructions for the forms and attachments required for submission. Mail and fax submissions will not be accepted. A complete proposal submission will consist of at least two

files: (1) The SF-424 Mandatory form (downloaded from *GRANTS.GOV*); and (2) a narrative application document in Microsoft Word, Adobe Acrobat, or compatible file format. The narrative application should be in the format outlined in Section 2 below. Once completed, the narrative application must be placed in the attachments section of the SF-424 Mandatory form. Proposers must attach the narrative application file to their submission in *GRANTS.GOV* to successfully complete the proposal process. A proposal submission may contain additional supporting documentation as attachments.

2. Content and Form of Application Submission

Proposals must be submitted in a Microsoft Word, Adobe Acrobat, or compatible file format, double-spaced using Times New Roman, 12-point font. The proposal must contain the following components and adhere to the specified maximum lengths:

a. Cover sheet (1 page).

The cover sheet must include the name of the entity submitting the proposal, the principal's name, title, and contact information (e.g., address, phone, fax, and email), and the name and contact information for the key point of contact for all five activities (if different from principal).

b. Abstract (not to exceed 4 pages).

The abstract must include the following sections: background, purpose, methodology, intended outcomes, and plan for evaluation.

c. Detailed budget proposal and budget narrative (not to exceed 3 pages).

d. Project narrative (not to exceed 25 pages)

The project narrative must include the following information:

i. The methodology for addressing the goals and objectives;

ii. Objectives, activities, deliverables, milestones, timeline and intended outcomes for achieving the goals outlined in the scope for the first year;

iii. The existing and future capacity of the organization to address the issues outlined in the proposal and the organization's ability to implement goals and objectives;

iv. A detailed plan for communication, technical assistance, and outreach at the State and local levels;

v. A plan to work with stakeholders and build partnerships at the national level and;

vi. Staff qualifications, including: (1) Prior experience providing technical assistance, especially related to public transit in rural areas, (2) prior

experience implementing the other tasks outlined in this solicitation, (3) staff members' knowledge of issues related to public transit in rural areas, and (4) a one-page biographical sketch for each staff member.

e. Plan for evaluation of National RTAP activities and performance measures (not to exceed 5 pages).

f. Supplemental materials, such as bios and letters of support, can be included in an appendices section that is beyond the page limits above but may not exceed 15 additional pages.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must: (1) Register in SAM before applying; (2) provide a valid unique SAM entity identifier in its application; and (3) continue to maintain an active SAM registration with current information, during which the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant: (1) Is excepted from the requirements under 2 CFR 25.110(b) or (c); or (2) has an exception approved by FTA under 2 CFR 25.110(d). The FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit www.sam.gov.

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* and must be received by 11:59 p.m. Eastern time on August 30, 2019. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered under extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV*: (1) Confirmation of successful transmission to *GRANTS.GOV*; and (2) confirmation of successful validation by *GRANTS.GOV*.

If confirmation of successful validation is not received or a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

The FTA urges applicants to submit proposals at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website. Deadlines will not be extended due to scheduled website maintenance.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants still may be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in the SAM is renewed annually; and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions. How to Register to Apply through *Grants.gov*. To register and for detailed instructions, please see the "APPLICANTS" tab in *Grants.gov* (<https://www.grants.gov/web/grants/applicants.html>). To be eligible to apply for this opportunity, organizations must have a Data Universal Numbering System (DUNS) Number, active SAM registration, and an established *Grants.gov* account. Creating a *Grants.gov* account can be completed online in minutes, but DUNS and SAM registrations may take several weeks. Therefore, an organization's registration should be done in sufficient time to ensure it does not impact the entity's ability to meet required application submission deadlines. Complete organization instructions can be found on *Grants.gov*: <https://www.grants.gov/web/grants/applicants/organization-registration.html>.

E. Application Review Information

Proposals will be evaluated by an internal review team based on each applicant's response to the following criteria: (1) Methodology to Meet the

Goals of the National RTAP; (2) Qualifications of Key Personnel, Experience, and Knowledge; (3) Communication, Technical Assistance, and Outreach Strategy; (4) Technical, Legal, and Financial Capacity; (5) Ability to Work with Stakeholders and Build Partnerships at the National Level; and (6) Plan to Evaluate the NRTAP activities. The criteria are explained below:

1. Methodology To Meet the Goals of the National RTAP

The FTA is seeking innovative and effective approaches and strategies to accomplish the project objectives. Proposals will be evaluated based on the proposed methodology for addressing the goals and objectives of the National RTAP, as well as the capacity of the organization to address the issues outlined in the proposal. The proposal should clearly explain the objectives, activities, deliverables, milestones, timeline and intended outcomes for achieving the goals outlined in the scope for the first year, and how the organization intends to implement them.

2. Qualifications of Key Personnel, Experience, and Knowledge

The proposal should demonstrate that key personnel have the appropriate skills and experience to carry out the activities. The FTA will evaluate the qualifications and experience of the key staff detailed in the proposal for their: (1) Prior experience providing technical assistance, especially related to public transit in rural areas, (2) prior experience implementing the other tasks outlined in this solicitation, (3) knowledge of issues related to public transit in rural areas.

3. Communication, Technical Assistance, and Outreach Strategy

The proposal should demonstrate the ability to execute a technical assistance program with a national scope, as well as strategies for delivering targeted assistance to State, regional, and local stakeholders. Proposing organizations are encouraged to think innovatively about this technical assistance delivery.

The proposal also should demonstrate the ability to carry out outreach, dissemination, and information management activities. These activities will include capturing and sharing useful and best practices in rural transportation operations, as well as supporting activities related to FTA's tribal transit program. The proposal should demonstrate innovative approaches, such as the use of communication that is accessible

through social media and other information technologies, to accomplish effective stakeholder strategies that both manage and plan the engagement. Rural and tribal communities have unique needs, and the proposal should reflect engagement touchpoints and the ability to meaningfully engage with these communities in order to produce successful transportation outcomes.

4. Technical, Legal, and Financial Capacity

The proposal must include an effective project management plan to administer and manage the National RTAP and must demonstrate that the applicant has the technical, legal, and financial capacity to carry out the plan. FTA will evaluate the applicant's:

- a. Technical capacity to administer and manage the services proposed;
- b. Total budget and staffing; and
- c. Evidence of understanding of the National RTAP mission and comprehensive technical approach to delivering the National RTAP.

The proposal should indicate a strong organizational capability to address the issues and activities outlined in the proposal. In addition, the proposal should indicate experience in managing and monitoring sub-recipients and contractors, if any are included in the proposal. The recipient selected must be an eligible recipient for a cooperative agreement with FTA and able to sign the required certifications and assurances.

5. Ability To Work With Stakeholders and Build Partnerships at the National Level

The proposal must include a plan for effective and meaningful stakeholder engagement. The proposal will be evaluated based in the quality and effectiveness of the plan for engaging and supporting stakeholder engagement to drive the activities of the National RTAP.

6. Plan To Evaluate the National RTAP Activities

FTA will evaluate the effectiveness of proposed performance measures and the plan for collecting and reporting on data related to the National RTAP's products activities, and outcomes.

F. Federal Award Administration

1. Federal Award Notices

Final award decisions will be made by the FTA Administrator. In making these decisions, the Administrator will take into consideration:

- a. Recommendations of the review panel;

b. past performance of the applicant regarding programmatic and grants management compliance;

c. the reasonableness of the estimated cost to the government considering the available funding and anticipated results; and

d. the likelihood that the proposed project will result in the transportation outcomes expected.

The FTA will notify the successful organization and may announce the selection on its website <https://www.transit.dot.gov>. Following notification, the successful entity will be required to submit its application through the FTA Transit Award Management System (TrAMS). The FTA will work with the successful applicant to develop a detailed cooperative agreement and may require modifications to the proposal before a cooperative agreement is awarded. The FTA will award and manage a cooperative agreement through TrAMS.

2. Award Administration

(A) Grant Requirements

The successful applicant will apply for a cooperative agreement through TrAMS and adhere to the customary FTA grant requirements of Section 5311(b)(3)(C).

(B) Competitive grants and cooperative agreements greater than \$500,000 will go through the Congressional notification and release process. Assistance regarding these requirements is available from FTA.

(C) Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the cooperative agreement issued for its project with the FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and that modifications may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a cooperative agreement if it does not have current certifications on file.

3. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports

in TrAMS on a quarterly basis. Documentation is required for payment. Additional reporting may be required specific to the National Rural Transportation Assistance Program and the recipient may be expected to participate in events or peer networks related to rural transit. The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Sub Award Reporting System (<http://www.FSRS.gov>) for all sub-awards and sub-contracts issued for \$25,000 or more, as well as addressing executive compensation for both grantee and sub-award organizations.

Additionally, FTA may evaluate and report on the success of the program. Applicants may be required to provide information for this purpose indicating the need, problem, or opportunity addressed by activities of the program. The national significance and relevance to the public transportation industry must also be clearly demonstrated.

4. Legal Capacity

Applicants must certify that there are no legal issues which would impact their eligibility and authority to apply for FTA funds, or prevent their acceptance of FTA funds.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Technical Assistance program manager Marianne Stock by phone at 202-366-2677, or by email at marianne.stock@dot.gov. A TDD is available for individuals who are deaf or hard of hearing at 800-877-8339.

Issued in Washington, DC.

K. Jane Williams,
Acting Administrator.

[FR Doc. 2019-16301 Filed 7-30-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019-0014]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information

collection: National Transit Asset Management (TAM) System.

DATES: Comments must be submitted before September 30, 2019.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website:* www.regulations.gov. Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at www.regulations.gov. Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202-366-7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to www.regulations.gov. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit www.regulations.gov. **Docket:** For access to the docket to read background documents and comments received, go to www.regulations.gov at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mshadoni Smith (202) 366-1651 or email: mshadoni.smith@dot.gov.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: National Transit Asset Management (TAM) System

(OMB Number: 2132-0579)

Background: Transit asset management (TAM) is a business model that prioritizes funding based on the condition of transit assets to achieve and maintain a state of good repair for the nation's public transportation assets. Federal requirements for transit asset management applies to all recipients and sub-recipients of chapter 53 funds that own, operate, or manage public transportation capital assets. It is a framework for transit agencies to monitor and manage public transportation assets, improve safety, increase reliability and performance, and establish performance measures in order to help agencies keep their systems operating smoothly and efficiently. Transit agencies are required to develop TAM plans and submit their performance measures and targets to the National Transit Database.

Respondents: All recipients and sub-recipients of chapter 53 funds that own, operate, or manage public transportation capital assets.

Estimated Annual Number of Respondents: 987 (Tier I—164; Tier II—823) respondents.

Estimated Total Annual Burden: 404,233 hours.

Frequency: Annual.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2019-16302 Filed 7-30-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD-2019-0118]****Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SAMBA (Power Vessel); Invitation for Public Comments****AGENCY:** Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 30, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2019-0118 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0118 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0118, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453,

Washington, DC 20590. Telephone 202-366-9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SAMBA is:

—*Intended Commercial Use of Vessel:*

“Week long instructional charters for prospective purchasers of a Nordhavn Motor Yacht. Instruction in Nordhavn boat systems, navigation and seamanship. We currently have a MARAD exemption for the waters of Alaska excluding Prince William Sound and South East Alaska. We are applying to include the waters of South East Alaska so as to be able to better serve clients interested in purchasing a Nordhavn.”

—*Geographic Region Including Base of Operations:* “Alaska” (Base of Operations: Kodiak, AK)—*Vessel Length and Type:* 54’ power vessel

The complete application is available for review identified in the DOT docket as MARAD-2019-0118 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0118 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121).

* * * * *

Dated: July 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2019-16211 Filed 7-30-19; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD-2019-0124]****Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LADIS FIRST (Motor Vessel); Invitation for Public Comments****AGENCY:** Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 30, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2019-0124 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0124 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0124, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453,

Washington, DC 20590. Telephone 202-366-9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LADIS FIRST is:

—*Intended Commercial Use of Vessel:* “Charters for 12 passengers”

—*Geographic Region Including Base of Operations:* “Puerto Rico” (Base of Operations: Salinas, PR)

—*Vessel Length and Type:* 66’ motor vessel

The complete application is available for review identified in the DOT docket as MARAD-2019-0124 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0124 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * * * *

Dated: July 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019-16210 Filed 7-30-19; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD-2019-0122]****Requested Administrative Waiver of the Coastwise Trade Laws: Vessel RENAISSANCE (Motor Vessel); Invitation for Public Comments****AGENCY:** Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no

more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 30, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0122 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2019–0122 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0122, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email Bianca.carr@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RENAISSANCE is:

- Intended Commercial Use of Vessel:* “recreational charters”
- Geographic Region Including Base of Operations:* “Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey” (Base of Operations: Fort Lauderdale, FL)
- Vessel Length and Type:* 28’ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0122 at <http://www.regulations.gov>.

www.regulations.gov. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2019–0122 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * * * *

Dated: July 25, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–16212 Filed 7–30–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple TTB Information Collection Requests.

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before August 30, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov and (2) Treasury PRA

Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Jennifer Quintana by emailing PRA@treasury.gov, calling (202) 622-0489, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

Title: Application for Extension of Time for Payment of Tax.

OMB Control Number: 1513-0093.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 6161 authorizes the Secretary of the Treasury to grant taxpayers up to 6 months of additional time to pay taxes on any return required under the IRC. Under that authority, the Alcohol and Tobacco Tax and Trade Bureau (TTB) has issued form TTB F 5600.38, which taxpayers complete to apply for an extension of time to pay excise taxes collected by TTB. A taxpayer uses that form to identify themselves and the specific excise tax for which an extension of time for payment is requested, and to explain the reasons why the tax payment cannot be made on time. TTB uses the information collected on the form and in any attachments to evaluate the extension request, and it notifies the taxpayer of its decision regarding the extension request by returning a copy of the approved or disapproved form to the taxpayer.

Form: TTB F 5600 .38.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 30.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 30.

Estimated Time per Response: .25 hours per response.

Estimated Total Annual Burden Hours: 8

Title: Supporting Data for Nonbeverage Drawback Claims.

OMB Control Number: 1513-0098.

Type of Review: Revision of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 5111-5114 and 7652(g), persons using distilled spirits to produce medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume may claim drawback (refund) of all but

\$1.00 per proof gallon of the Federal excise tax paid on the distilled spirits used to make such nonbeverage products, subject to regulations prescribed by the Secretary of the Treasury. As required by the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations in 27 CFR parts 17 and 26, when submitting nonbeverage product drawback claims to TTB, respondents are required to report certain supporting data regarding the distilled spirits used and the products produced, using form TTB F 5154.2. Collection of this information is necessary to protect the revenue as it allows TTB to verify the validity of nonbeverage product drawback claims.

Form: TTB F 5154.2.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 550.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 3,300.

Estimated Time per Response: .97 hours per response.

Estimated Total Annual Burden Hours: 3,190.

Title: Form 4136—Credit for Federal Tax Paid on Fuels.

OMB Control Number: 1513-0106.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5741 requires all manufacturers and importers of tobacco products, processed tobacco, or cigarette papers and tubes, and all export warehouse proprietors to keep records as the Secretary of the Treasury prescribes by regulation, subject to government inspection during business hours. Under that authority, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations in 27 CFR part 41 require importers of tobacco products or processed tobacco to maintain the usual and customary records kept during the normal course of business showing the receipt and disposition of imported tobacco products or processed tobacco. This information collection is necessary to protect the revenue, as it allows TTB to verify that the appropriate Federal excise taxes are paid on imported tobacco products and detect diversion of processed tobacco, which is not taxed, to taxable tobacco product manufacturing.

Form: None.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 480.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 480.

Estimated Time per Response: 0 hours per response.

Estimated Total Annual Burden Hours: 0.

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

Dated: July 26, 2019.

Jennifer P. Quintana,
Treasury PRA Clearance Officer.

[FR Doc. 2019-16248 Filed 7-30-19; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before August 30, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Jennifer Quintana by emailing PRA@treasury.gov, calling (202) 622-0489, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Financial Crimes Enforcement Network (FinCen)

Title: Expansion of Special Information Sharing Procedures to Deter

Money Laundering and Terrorist Activity.

OMB Control Number: 1506.0049.

Type of Review: Extension without change of a currently approved collection.

Description: The relevant Bank Secrecy Act (“BSA”) information sharing rules that allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions. The rule also clarifies that FinCEN itself, on its own behalf and on behalf of other appropriate components of the Department of the Treasury, may submit such requests. Modification of the information sharing rules is a part of the Department of the Treasury’s continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

Form: None.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 14,643.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 14,643.

Estimated Time per Response: 42 hours per response.

Estimated Total Annual Burden Hours: 615,006.

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

Dated: July 26, 2019.

Jennifer P. Quintana,

Treasury PRA Clearance Officer.

[FR Doc. 2019–16247 Filed 7–30–19; 8:45 am]

BILLING CODE 4810–10–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, VA is providing notice of a new matching program between VA and the Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) entitled “Disclosure of Information to Support the Veterans Affairs’ ‘Seek to Prevent Fraud, Waste, and Abuse Initiative.’”

DATES: Comments on this matching program must be received no later than August 30, 2019. If no public comment is received during the period allowed

for comment or unless otherwise published in the FR by VA, the new Agreement will become effective a minimum of 30 days after date of publication in the FR. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to “Disclosure of Information to Support the Veteran Affairs’ Seek to Prevent Fraud, Waste, and Abuse Initiative.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (not a toll-free number). In addition, comments may be viewed online at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Maggie Drye, Director, VA Office of Business Oversight Program Integrity Office, 1615 Woodward Street, Austin, TX 78744, (512) 386–2218.

SUPPLEMENTARY INFORMATION: This Agreement establishes the terms, conditions, and procedures under which CMS will provide certain data to VA that supports the VA’s Seek to Prevent Fraud, Waste, and Abuse initiative. The data will be provided from CMS’ database of enrolled Medicare providers and suppliers (System of Records Notice [SORN] No. 09–70–0532, *Provider Enrollment, Chain, and Ownership System [PECOS]*). Using PECOS data in a matching program for this purpose will provide VA prompt access to extant information, using an efficient process that both eliminates the need to manually compare substantial numbers of data-intensive files and enables VA to leverage, instead of duplicating, the costly Advance Provider Screening process that CMS uses to check suitability of Medicare providers and generate the data in PECOS.

Participating agencies: VA and CMS.
Authority for conducting the matching program: This Agreement is executed pursuant to the Privacy Act (5 United States Code [U.S.C.] 552a) and

the regulations and guidance promulgated thereunder; Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act*, published at 81 FR 94424 (December 23, 2016); and OMB guidelines pertaining to computer matching published at 54 FR 25818 (June 19, 1989). Title 38 U.S.C. 7301(b) states that the primary function of VA is to provide a complete medical and hospital service for the care of eligible Veterans. In carrying out this function, including through contracts with external entities and providers, VA has an obligation to (1) ensure providers furnish care that is appropriate and safe and meets or exceeds professional standards for quality and (2), in the case of external providers, maintain billing integrity and compliance with contractual terms. The VA Accountability First Act of 2017 provides the VA Secretary the authority to expeditiously remove, demote, or suspend any VA employee, including Senior Executive Service employees, for performance or misconduct.

Purpose(s): Under this matching program, VA internal and external providers will be matched against the database of Medicare providers and suppliers who have been revoked by CMS pursuant to 42 Code of Federal Regulations (CFR) 424.535. VA intends to review the information provided, perform additional validation, and if deemed appropriate, conduct further investigation or refer the matter to the VA Office of the Inspector General (OIG) for further investigation. Based on additional validation or investigation, should VA determine VA program requirements have been violated, VA intends to take action (or refer to the OIG for action) against the VA internal and external providers. Such action may be based on activities that endanger VA patients and/or reflect improper or erroneous billing practices related to claims for health care provided to VA beneficiaries. Actions VA may take include (1) terminating or modifying existing contractual or provider agreements; (2) stopping referral of VA patients to the VA external providers; (3) referring the VA internal and external providers to the OIG; (4) performing pre- or post-payment reviews of claims paid or submitted; or (5) taking disciplinary actions or removing, demoting, or suspending VA internal providers.

Categories of individuals: VA internal and external health care providers will be matched against the database of Medicare providers who have been revoked by CMS under 42 CFR 424.535.

“Provider” is defined by 42 CFR 400.202 as a “hospital, a Critical Access Hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish partial hospitalization services.”

Categories of records: VA will provide CMS electronic files, in a format defined by CMS, containing identifying information required to match VA records with CMS records. Data fields will include one or more of the following elements: (1) Name of Provider/Business; (2) Tax Identification Number (TIN) (EIN, ITIN or SSN); (3) National Provider Identifier (NPI); (4) State(s) in which the provider is providing services; and (5) Specialty Code or Taxonomy Code. Upon matching the TIN or NPI, CMS will provide VA the matched data elements above and the following additional fields: (1) NPI (for individuals) where VA provided a TIN; (2) Current Enrollment Status; (3) Current Enrollment Status Effective Date; (4) Status Reason (PECOS codes used to denote the specific reason(s) on which the final revocation was based); and (5) Flag indicating if provider has current enrollment.

System(s) of records: VA will provide information covered by SORN 77VA10A4, *Health Care Provider Credentialing and Privileging Records-VA*, last published in full at 80 FR 36595 (June 25, 2015), Routine Uses No. 1 and 2; SORN 23VA10NB3, *Non-VA Care (Fee) Records-VA*, published at 80 FR 45590 (July 30, 2015), Routine Use No. 2 and 30; and SORN 02VA135, *Applicants for Employment under Title 38, U.S.C.-VA*, published at 42 FR 49728 (September 27, 1997), Routine Uses No. 1 and 2. CMS will provide information covered by SORN 09–70–0532, *Provider Enrollment, Chain, and Ownership System (PECOS)*, last published in full at 71 FR 60536 (October 13, 2006) and updated at 78 FR 32257 (May 29, 2013) and 83 FR 6591 (February 14, 2018) (see Routine Use No. 2 published in 71 FR 60536 and the unnumbered Routine Use added by 78 FR 32257); and SORN 09–70–0555, *National Plan and Provider Enumeration System*, last published in full at 75 FR 30411 (June 1, 2010) and updated at 78 FR 32257 (May 29, 2013) and 83 FR 6591 (February 14, 2018) (see

the unnumbered Routine Use added by 78 FR 32257).

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs approved this document on June 28, 2019 for publication.

Dated: July 25, 2019.

Amy L. Rose,

*Program Analyst, VA Privacy Service,
Department of Veterans Affairs.*

[FR Doc. 2019–16213 Filed 7–30–19; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nomination for Appointment to the National Research Advisory Council

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment as a member of the National Research Advisory Council for the 2020 membership cycle.

DATES: Nominations for membership on the Council must be received no later than 4:00 p.m. EST on September 15, 2019.

ADDRESSES: All nomination packages should be sent to the Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW (10X2), Washington, DC 20420, faxed to (202) 495–6156, or emailed (recommended) to Avery.Rock@va.gov.

FOR FURTHER INFORMATION CONTACT: Mrs. Avery Rock and/or Rashelle Robinson, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW (10X2), Washington, DC 20420, Telephone (202) 461–9760. A copy of the Council’s charter and list of the current memberships can be obtained by contacting Mrs. Rock or Ms. Robinson or by accessing the website: <https://www.va.gov/ADVISORY/NRAC.asp>.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Council’s responsibility includes, but are not limited to:

(1) Providing advice to the Secretary of Veterans Affairs and the Under Secretary for Health (USH) and makes

recommendations on the nature and scope of research and development sponsored and/or conducted by the Veterans Health Administration (VHA).

(2) Providing rapid response to changing health care needs, while maintaining the stability of the research infrastructure.

Authority: The Council is authorized by 5 U.S.C., App. 2, to provide advice to the Secretary of Veterans Affairs (Secretary) and the Under Secretary for Health (USH) and makes recommendations on the nature and scope of research and development sponsored and/or conducted by the Veterans Health Administration (VHA) to include: (1) The policies and projects of the Office of Research and Development (ORD); (2) the focus of research on the high priority health care needs of Veterans; (3) the balance of basic, applied, and outcomes research; (4) the scientific merit review process; (5) the appropriate mechanisms by which ORD can leverage its resources to enhance the research financial base; (6) the rapid response to changing health care needs, while maintaining the stability of the research infrastructure; and (7) the protection of human subjects of research.

Membership Criteria: The Council is currently composed of 12 members. By statute, the Council consists of members appointed by the Secretary from the general public, including individuals who have demonstrated civic or professional achievement; and have experience with the provision of Veterans benefits and services by VA.

The membership will include: (1) Individuals from a wide variety of geographic areas and ethnic backgrounds; (2) individuals from Veterans service organizations; (3) individuals with combat experience; and (4) women. In addition to the above criteria, VA seeks knowledgeable VA- and non-VA experts, with special qualifications and competence to deal effectively with research and development issues. Appropriate categories of primary expertise that may be represented include: (1) Basic biomedical research; (2) rehabilitation research and development; (3) health services research and development; (4) clinical research; (5) geriatric care; (6) primary care; (7) special Veterans population health issues; (8) occupational and environmental health research; (9) mental health and behavioral research; and (10) surgery.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted. Non-

Veterans are also eligible for nomination.

The Secretary will appoint members for overlapping 2-year terms of service and may reappoint members for one additional term. The Secretary will appoint the Chair for a term of not more than 3 years and may reappoint the Chair for one additional term. Several members may be regular government employees, but the majority of the Council's membership will be special government employees.

The Council meets at least four times annually, which may include a site visit to a VA field location. In accordance with Federal Travel Regulation, VA will cover travel expenses—to include per diem—for all members of the Council, for any travel associated with official Council duties.

In accordance with recently revised guidance regarding the ban on lobbyists serving as members of advisory boards and commissions, Federally-registered lobbyists are prohibited from serving on Federal advisory Councils in an individual capacity. Additional information regarding this issue can be found at www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-Councils-boards-and-commissions.

The Department makes every effort to ensure that the membership of its

Advisory Committees is fairly balanced, in terms of points of view represented. In the review process, consideration is given to nominees' potential to address the Council's demographic needs (regional representation, race/ethnicity representation, professional expertise, war era service, gender, former enlisted or officer status, branch of service, etc.). Other considerations to promote a balanced membership include: Longevity of military service, significant deployment and research experience, ability to handle complex issues, experience running large organizations, special qualifications and competence to deal effectively with research and development issues in the VA and ability to contribute to the Office of Research and Development's mission to advance the healthcare of Veterans and ensure that research professionalism and protection of Veterans' rights are top priorities.

Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Requirements for Nomination Submission: Nomination packages must be typed (12-point font) and include: (1) A cover letter from the nominee, and (2) A current curriculum vitae. The cover

letter must summarize: The nominees' interest in serving on the Council and contributions she/he can make to the work of the Council; any relevant Veterans service activities she/he is currently engaged in; the military branch affiliation and timeframe of military service (if applicable). To promote inclusion and demographic balance of membership, please include as much information related to your race, national origin, disability status, or any other factors that may give you a diverse perspective on National Research Advisory Council matters. Finally, please include in the cover letter the nominee's complete contact information (name, address, email address, and phone number); and a statement confirming that she/he is not a Federally-registered lobbyist. The resume should show professional work experience, publications, academic affiliations and Veterans service involvement; especially service that involves National Research Advisory Council's issues.

Dated: July 25, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019-16209 Filed 7-30-19; 8:45 am]

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Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 11, 41, et al.

Setting and Adjusting Patent Fees During Fiscal Year 2020; Proposed Rule

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Parts 1, 11, 41, and 42**

[Docket No. PTO-P-2018-0031]

RIN 0651-AD31

Setting and Adjusting Patent Fees During Fiscal Year 2020

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to set or adjust patent fees as authorized by the Leahy-Smith America Invents Act (Act or AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The USPTO is a business-like operation where the demand for patent products and services and the cost of our operations are affected by external factors, such as the economy, legislation, court decisions, and increases in the costs of supplies and contract services, as well as internal factors, such as changes in patent examination processes and procedures. The proposed fee adjustments are needed to provide the Office with a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations in future years (based on current projections) and to allow the Office to continue progress towards achieving strategic goals.

DATES: The Office solicits comments from the public on this proposed rule. Written comments must be received on or before September 30, 2019 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the internet addressed to: fee.setting@uspto.gov. Comments may also be submitted by postal mail addressed to: Mail Stop—Office of the Chief Financial Officer, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of “Brendan Hourigan.” Comments may also be sent by electronic mail message over the internet via the Federal eRulemaking Portal at <https://www.regulations.gov>. See the Federal eRulemaking Portal website for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by

electronic mail message over the internet, which allows the Office to more easily share comments with the public. Electronic comments are preferred to be submitted in plain text, but also may be submitted in portable document format (PDF) or a word processing format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into portable document format.

The comments will be available for public inspection via the Office’s internet website (<https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>) and at <https://www.regulations.gov>. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT:

Brendan Hourigan, Director of the Office of Planning and Budget, by telephone at (571) 272-8966; or Dianne Buie, Office of Planning and Budget, by telephone at (571) 272-6301.

SUPPLEMENTARY INFORMATION:**I. Executive Summary****A. Purpose of This Action**

The Office proposes this rule under section 10 of the AIA (Section 10). Public Law 112-29, 125 Stat. 284, as amended by the SUCCESS Act Public Law 115-273, 132 Stat. 4158, which authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee (PPAC) and congressional oversight.

B. Summary of Provisions Impacted by This Action

Consistent with Federal fee setting standards, the Office conducted a biennial review of fees, costs, and

revenues that began in 2017, and concluded that fee adjustments are necessary to provide the resources needed to improve patent operations, including implementing the USPTO 2018–2022 Strategic Plan (Strategic Plan). As a result, the 295 proposed fee adjustments outlined in this proposed rule align directly with the Office’s strategic goals and four key fee setting policy factors, discussed in detail in Part V.

The fee schedule in this proposed rule will recover the aggregate estimated costs of patent operations, including achieving the Office’s strategic goals as detailed in the Strategic Plan, available at https://www.uspto.gov/sites/default/files/documents/USPTO_2018-2022_Strategic_Plan.pdf. The Strategic Plan defines the USPTO’s mission, vision, and long-term goals and presents the actions the Office will take to realize those goals. This proposed fee setting rule supports the patent-related strategic goal to optimize patent quality and timeliness, which includes optimizing patent application pendency and examination timeframes, issuing highly reliable patents, fostering innovation through business effectiveness, and enhancing the operations of the Patent Trial and Appeal Board (PTAB). To the extent that the aggregate revenue generated by this rule will be used to pay for all patent-related costs of the USPTO, this proposed rule also supports USPTO’s goal to provide domestic and global leadership to improve intellectual property (IP) policy protection and enforcement, as well as the mission support goal to deliver organizational excellence, which includes optimizing speed, quality, and cost-effectiveness of IT delivery to achieve business value and ensuring financial sustainability to facilitate effective USPTO operations. The Office intends to issue a final rule on fee changes in FY 2020 after receipt and analysis of public comments.

During a formal process closely tied to the annual budget process, the USPTO reviewed and analyzed the overall balance between the Office’s estimated revenue and costs over the next five years (based on current projections), and also reviewed individual fee changes and new fee proposals to assess their alignment with the Office’s strategic goals and fee structure philosophy, both of which aim to provide sufficient financial resources to facilitate the effective administration of patent operations. Specifically, the Office assessed how well each proposal aligned with four key fee setting policy factors: Promote innovation strategies, align fees with the full cost of products

and services, set fees to facilitate the effective administration of the patent systems, and offer processing options for applicants.

In this proposed rule, the Office proposes to set or adjust 295 patent fees for large, small and micro entities (any reference herein to “large entity” includes all entities other than those that have established entitlement to either a small or micro entity fee discount). The fees for small and micro entity rates are tiered with small entities at a 50 percent discount and micro entities at a 75 percent discount. Small entity fee eligibility is based on the size or certain non-profit status of the applicant’s business and that of any other party holding rights in the invention. Micro entity fee eligibility is described in Section 10(g) of the AIA. The Office also proposes introducing 11 new fees and discontinuing three fees.

Overall, the routine fees to obtain a patent (*i.e.*, filing, search, examination, and issue fees) will increase under this Notice of Proposed Rulemaking (NPRM) relative to the current fee schedule in order to ensure financial sustainability and accommodate increases needed to improve the predictability and reliability of patent IP protection (which are discussed in detail below). Applicants who meet the definition for small or micro entity discounts will continue to pay a reduced fee for the fees eligible for a discount under Section 10(b). Additional information describing the proposed fee adjustments is included in Part V: Individual Fee Rationale in this rulemaking and in the “Table of Patent Fees—Current, Proposed and Unit Cost” (hereinafter “Table of Patent Fees”) available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

As background, Section 10 of the AIA changed the Office’s fee setting model and authorized the USPTO to set or adjust patent fees within the regulatory process. Section 10 better equips the Office to respond to changing circumstances. In FY 2013 and FY 2018, the USPTO used the AIA’s fee setting authority to achieve key fee setting policy factors—to promote innovation strategies, align fees with the full cost of products and services, set fees to facilitate the effective administration of the patent systems, and offer patent processing options for applicants—and to generate sufficient resources needed to meet the Office’s strategic patent priorities. With the additional fees collected as a result of the January 2013 Setting and Adjusting Patent Fees Final Rule (hereinafter “the January 2013 Final Rule”) (78 FR 4212) and the

January 2018, Setting and Adjusting Patent Fees in Fiscal Year 2017 Final Rule (hereinafter “the January 2018 Final Rule”) (82 FR 52780), the Office made considerable progress in reducing backlog and pendency.

Since the development of the USPTO fee schedule currently in effect, a number of the assumptions on which the cost and revenue projections supporting that rulemaking have changed. Notably, since the January 2018 Final Rule was published, (a) USPTO’s projected patent examination costs have increased and (b) fee collections have been lower than anticipated due to lower than expected application filings, small declines in maintenance fee renewal rates, and a later than planned implementation of the January 2018 Final Rule. The higher fees proposed in this current rulemaking are needed as the Office continues its efforts towards accomplishing its mission and responding to the demands of both the domestic and international economies for robust and timely IP products and services. The proposed fee adjustments account for both the lower than anticipated revenue being generated under the existing fee schedule and also keeping pace with the rising costs of operations in the future, including growing the operating reserve.

The Office continues its efforts towards accomplishing its mission and responding to the demands of both the domestic and international economies for robust and timely IP products and services. The USPTO must continually challenge itself to reinforce the predictability, reliability, and quality of those IP rights. The Office needs to foster the utmost confidence in the legal durability of its products in order to inspire greater innovation and further economic growth.

The Office’s strategic goal to optimize patent quality and timeliness recognizes the importance of innovation as the foundation of American economic growth and national competitiveness. Through this goal, the Office diligently works to balance timely examination with improvements in patent quality; particularly, the reliability of issued patents. One of these improvements is a comprehensive analysis of examination time, known as the Examiner Time Analysis (ETA). The last comprehensive review of examination time was completed over 40 years ago. Since then, significant changes to the examination process have occurred, including the emergence of new, more complex technologies; a growth of available prior art that must be searched; impacts of new electronic tools on the examination process; the

challenges of transitioning to a new patent classification system; and changes in the legal landscape or examination practices. As the USPTO plans for the future, the Office considered how changes such as these impact the amount of time it takes to examine an application.

The USPTO is also working towards improving patent quality by providing increased clarity on patentable subject matter eligibility under section 101 of title 35 U.S.C. The Office continues to strive to create consistency and increased clarity through this guidance. The Office is also focusing efforts on improving the initial search and availability of the best prior art to examiners. This aspect takes a variety of forms and the Office is working on many possible approaches. Overall, presenting more comprehensive search results to the examiners initially will lead to more efficient examination, a decrease in the information gap between the examination phase and the later challenge or litigation phases during the life of a patent, and increase the reliability of the patent grant overall. Effecting the changes in the examination process needed to ensure the issuance of reliable patents, while also issuing those patents in a timely manner, means recognizing a potential increase in the core operating costs for future years.

Another major component of the overall patent process is the work carried out by the PTAB. On April 24, 2018, the U.S. Supreme Court issued its decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018). Changes related to the SAS decision, along with other implementations, will increase the average cost to conduct each proceeding. These changes are discussed in detail in section V. Individual Fee Rationale.

As a production-oriented entity, the USPTO relies upon IT as a mission-critical enabler for every aspect of its operation. The quality, efficiency, and productivity of patent operations correlate to the performance of IT systems. To accomplish its performance-based strategies, the USPTO continuously engages in multi-year efforts to upgrade its business systems and the IT infrastructure supporting those systems in order to keep pace with emerging business, legislative, and court needs and technology standards. Since the last patent fee setting effort, the USPTO has made significant progress on IT tools, including continued development and implementation of the Patent End-to-End (PE2E) IT capability. For example, the Office continues to work on releasing systems such as Patent Center

which will modernize the transaction systems by combining EFS Web and PAIR in a single interface. The Office has also made progress on the continued development and deployment of the PTAB-End-to-End (PTAB E2E) IT capabilities, which will expand the use of intelligent data to support appeal decisions and process *inter partes* review (IPR) proceedings, post-grant review (PGR) proceedings, covered business method review (CBM) proceedings, and derivation (DER) proceedings. Other IT efforts are underway to stabilize, modernize, or replace the USPTO's legacy systems and aging infrastructure. To this end, the Office is conducting a wholesale review of all technology resources and is in the process of changing over the oldest infrastructure. Consequently, the Office is taking a fresh look at the IT systems from top to bottom. This provides USPTO with the opportunity to fundamentally transform the Office's IT systems with state-of-the-art technology.

The Office invests a considerable amount of resources in IT modernization and stabilization each year, and the FY 2020 Budget does not anticipate that costs will increase beyond levels previously foreseen. However, given updated revenue and spending projections, this proposed fee increase is needed to support continuing IT investments at previously planned levels. Without an increase in USPTO's aggregate revenue, resources available for IT investment will inevitably be curtailed.

Lastly, the USPTO has taken steps to establish and maintain operating reserves to facilitate execution of multi-year plans. Using fee setting authority and other tools, the USPTO continuously refines its multi-year planning and budgeting. The fee setting authority prescribed in the AIA, as amended by the SUCCESS Act, allows the Office to effectively engage the stakeholder community on proposed fee adjustments; fully recover the aggregate costs of its planned operations, including the development and maintenance of sufficient operating reserves; invest in strategic agency initiatives; and respond to changing market needs and other external factors.

Research has shown that large fee-funded, business-like agencies without an operating reserve are at risk of cash flow stress. USPTO's operating reserves enable the Office to mitigate this risk. For instance, earlier in FY 2019, certain federal government departments and agencies, including the Department of Commerce, shut down as a result of a lapse in appropriations. The USPTO received special consideration to remain

open using funds available from the operating reserves. This allowed the USPTO to continue operations, thus preventing a significant degradation in services levels, such as patent pendency timeframes. This example provides an ongoing compelling case for the operating reserves' significant value. The USPTO assesses risk annually, and determines the minimum level of reserves necessary to shield core operations against known financial risks. Based on current cost and revenue assumptions, the FY 2020 Budget projects that the USPTO's patent operating reserve will fall well below this minimum level in FY 2019 and FY 2020. Both external factors and internal decisions impacting the spending and revenue projections mentioned above have impacted the Office's ability to grow the operating reserve to the levels anticipated in the January 2018 Final Rule. Absent the proposed fee increase, the USPTO's patent operating reserve will be exhausted by FY 2024, which would leave the Office vulnerable to changes in the economy that reduce annual revenue, government wide fiscal events, unexpected cost increases, and a number of other financial risks.

The USPTO also acutely recognizes that fees cannot simply increase for every improvement the Office deems desirable. The USPTO has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. The Office's Financial Advisory Board (FAB) focuses on financial risk management and determining what expenses are truly necessary. Each year the FAB reviews multiple scenarios to determine what level of fee collections are expected and what the hiring and spending levels should be in order to effectively carry out the Office's mission. The FAB also regularly reviews USPTO activities to identify opportunities for cost savings and resources that can be redirected to higher priority efforts. As a result of the USPTO's careful financial management and prudent use of fee setting authority, the Congress recognized the Office to be good stewards of fee setting authority and extended that authority through the SUCCESS Act.

In order to continue building on the progress made over the past seven years, and consistent with the USPTO's biennial fee review policy, the Office proposes the fee schedule detailed herein to continue to focus on the fundamental purpose of the USPTO, which is to foster innovation, competitiveness, and job growth by recognizing and securing IP rights, through the delivery of high quality and

timely patent examination and review proceedings in order to produce reliable and predictable intellectual property rights. This proposed rule seeks to provide the USPTO sufficient financial resources to facilitate the effective administration of the U.S. IP system. The proposal includes targeted fee adjustments in addition to an approximately five percent across the board adjustment. This proposed rule is needed because actual fee collections have not materialized as expected in the January 2018 Final Rule, projected fee collections have been lowered as a result, and critical costs to the Office continue to increase. The proposed fees set forth in this proposed rule will help replenish and grow the patent operating reserve and stabilize USPTO's finances, enabling the Office to deliver reliable and predictable service levels, even in times of financial fluctuations. A more robust patent operating reserve will also position the Office to identify and continue to undertake capital improvements, such as adapting to an ever-increasing technological future. The operating reserve will be managed carefully; if the projected operating reserve were to exceed the targeted optimal level by ten percent for two consecutive years, it is USPTO policy to examine the contributing factors and determine whether it would be advisable to lower fee rates. The fees proposed in this NPRM intend to position the Office well to deliver on known commitments and address unknown risks in the future.

C. Summary of Costs and Benefits of This Action

The proposed rule is economically significant and results in a need for a Regulatory Impact Analysis (RIA) under Executive Order 12866 Regulatory Planning and Review, (Sept. 30, 1993). The Office prepared a RIA to analyze the costs and benefits of the NPRM over a five-year period, FY 2020–FY 2024. The RIA includes an analysis of four alternatives for how well they aligned to the Office's rulemaking strategies and goals, which include strategic priorities (goals, objectives, and initiatives) from the Strategic Plan and the Office's fee setting policy factors. From this conceptual framework, the Office assessed the absolute and relative qualitative costs and benefits of each alternative. Consistent with OMB Circular A–4, "Regulatory Analysis," the rule involves a transfer payment from one group to another. The Office recognizes that it is very difficult to precisely monetize and quantify social costs and benefits resulting from deadweight loss of a transfer rule such

as the proposed rule. The costs and benefits that the Office identifies and analyzes in the RIA are strictly qualitative. Qualitative costs and benefits have effects that are difficult to express in either dollar or numerical values. Monetized costs and benefits, on the other hand, have effects that can be expressed in dollar values. The Office did not identify any monetized costs and benefits of the proposed rule, but found that the proposed rule has significant qualitative benefits with no identified costs.

The qualitative costs and benefits that the RIA assesses are: (1) Fee schedule design—a measure of how well the fee schedule aligns to the key fee setting policy factors; and (2) securing aggregate revenue to recover aggregate cost—a measure of whether the alternative provides adequate revenue to support the core mission and strategic priorities described in the NPRM, Strategic Plan, and FY 2020 Budget. Based on the costs and benefits identified and analyzed in the RIA, the fee schedule proposed in this NPRM offers the highest net benefits. As described throughout this document, the proposed fee schedule maintains the existing balance of below cost entry fees (e.g., filing, search, and examination) and above cost maintenance fees as one approach to foster innovation. Further, as detailed in Part V, the proposed fee changes are targeted in support of one or more fee setting policy factors. Lastly, the proposed rule secures the aggregate revenue needed to achieve the strategic priorities encompassed in the rulemaking goals and strategies (see Part III). The proposed fee schedule allows for optimizing patent quality and timeliness. This significantly increases the value of patents by advancing commercialization of new technologies sooner and reduces uncertainty regarding the scope of patent rights, which fosters innovation and has a positive effect on economic growth. Table 1 summarizes the RIA results.

TABLE 1—PROPOSED PATENT FEE SCHEDULE COSTS AND BENEFITS, CUMULATIVE FY 2020–FY 2024

Qualitative costs and benefits	
Costs:	
None Identified	Neutral.
Benefits:	
Secure Aggregate Revenue to Recover Aggregate Costs.	Significant.
Fee Schedule Design.	Significant.

TABLE 1—PROPOSED PATENT FEE SCHEDULE COSTS AND BENEFITS, CUMULATIVE FY 2020–FY 2024—Continued

Qualitative costs and benefits	
<i>Net Benefit</i>	Significant Benefit.

Additional details describing the costs and benefits are available in the RIA at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

II. Legal Framework

A. Leahy-Smith America Invents Act—Section 10

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. See Public Law 112–29, 125 Stat. 284. Section 10(a) of the Act authorizes the Director of the Office to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed by, or materials furnished by, the Office. Fees under title 35 U.S.C. may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials related to patents, including administrative costs to the Office with respect to such patent operations. See 125 Stat. at 316. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under Section 10 at, below, or above their respective cost. Section 10(e) of the Act requires the Director to publish the final fee rule in the **Federal Register** and the Official Gazette of the Patent and Trademark Office at least 45 days before the final fees become effective. Section 10(i) terminates the Director's authority to set or adjust any fee under Section 10(a) upon the expiration of the seven-year period that began on September 16, 2011.

B. The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018

The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act), was enacted into law on October 31, 2018. See Public Law 115–273, 132 Stat. 4158. Section 4 of the SUCCESS Act amended Section 10(i)(2) of the AIA by striking “7-year” and inserting “15-year” in reference to the expiration of fee setting authority. Therefore, the updated Section 10(i) of the AIA terminates the Director's authority to set or adjust any fee under Section 10(a)

upon the expiration of the 15-year period that began on September 16, 2011 and ends on September 16, 2026.

C. Small Entity Fee Reduction

Section 10(b) of the AIA requires the Office to reduce by 50 percent the fees for small entities that are set or adjusted under Section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

D. Micro Entity Fee Reduction

Section 10(g) of the AIA amended chapter 11 of title 35, U.S.C., by adding section 123 concerning micro entities. The Act provides that the Office must reduce by 75 percent the fees for micro entities for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. Micro entity fees were implemented through the previous patent fee rule, and the Office will maintain this 75 percent micro entity discount for the appropriate fees and proposes to implement micro entity fees for additional services as appropriate.

E. Patent Public Advisory Committee Role

The Secretary of Commerce established the PPAC under the American Inventors Protection Act of 1999. 35 U.S.C. 5. The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations.

When adopting fees under Section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on August 8, 2018, the Director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at <https://www.uspto.gov/about-us/performance->

and-planning/fee-setting-and-adjusting. The PPAC held a public hearing in Alexandria, Virginia, on September 6, 2018. Transcripts of the hearing are available for review at https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20180906.pdf. Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from this hearing and made all comments available to the public via the Fee Setting website, <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on October 29, 2018, and can be found online at https://www.uspto.gov/sites/default/files/documents/PPAC_Fee_Setting_Report_Oct2018_1.pdf. The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing this NPRM. Before a final rule is issued, this proposed rule provides the public with a 60-day period during which to provide comments to be considered by the USPTO.

III. Rulemaking Goals and Strategies

A. Fee Setting Strategy

The overall strategy of this proposed rule is to establish a fee schedule that generates sufficient multi-year revenue to recover the aggregate cost of maintaining USPTO operations and accomplishing the USPTO's strategic goals in accordance with the authority granted to the USPTO by AIA Section 10, as amended by the SUCCESS Act. The overriding principles behind this strategy are to operate within a sustainable funding model to avoid disruptions caused by fluctuations in financial operations, and to enable the USPTO to continue strategic improvements, such as optimizing patent application pendency, issuing highly reliable patents, fostering innovation through business effectiveness, enhancing operations of the PTAB, and optimizing speed, quality, and cost effectiveness of information technology delivery to achieve business value.

In addition to the overriding principles outlined above, as discussed earlier in this document, the Office also assesses alignment with the four key fee setting policy factors: Promoting

innovation strategies, aligning fees with the full cost of products and services, facilitating the effective administration of the U.S. patent system, and offering patent processing options to applicants. Each factor promotes a particular aspect of the U.S. patent system. Promoting innovation strategies seeks to ensure barriers to entry into the U.S. patent system remain low, and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity. Aligning fees with the full cost of products and services recognizes that as a fully fee-funded entity, the Office must account for all of its costs even as it elects to set certain fees below, at, or above cost. This factor also recognizes that some applicants may use particular services in a much more costly manner than other applicants (*e.g.*, patent applications cost more to process when more claims are filed). Facilitating effective administration of the patent system seeks to encourage patent prosecution strategies that promote efficient patent prosecution, resulting in compact prosecution and reduction in the time it takes to obtain a patent. Finally, the Office recognizes that patent prosecution is not a one-size-fits-all process; therefore, where feasible, the Office endeavors to fulfill its fourth policy factor of offering patent processing options to applicants.

B. Fee Setting Considerations

The balance of this sub-section presents the specific fee setting considerations the Office reviewed in developing the proposed patent fee schedule. Specific considerations are: (1) Historical costs of patent operations and investments to date in meeting the Office's strategic goals; (2) the balance between projected costs to meet the Office's operational needs and strategic goals and the projected future year fee collections; (3) fee schedule design; (4) sustainable funding; and (5) the comments, advice, and recommendations offered by the PPAC on the Office's initial fee setting proposal. Collectively, these considerations inform the Office's chosen rulemaking strategy.

(1) *Historical Cost*. To ascertain how to best align fees with the full cost of products and services, the Office considers unit cost data provided by the USPTO's Activity Based Information (ABI) program. Using historical cost data and forecasted application demands, the Office can align fees to the costs of specific patent products and services. The document entitled "USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—Activity

Based Information and Patent Fee Unit Expense Methodology," available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>, provides detail on the Office's costing methodology in addition to the last three years of historical cost data. Part IV of this proposed rule details the Office's methodology for establishing fees. Additionally, Part V describes the reasoning for setting some fees at cost, below cost, or above cost such that the Office recovers the aggregate cost of providing services through fees.

(2) *Projected Costs and Revenue*. In developing this NPRM, the USPTO considered its most current estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet the Office's strategic goals, all of which can be found in the FY 2020 Budget. The FY 2020 Budget and the Strategic Plan highlight the priorities of: Optimizing patent application pendency, issuing highly reliable patents, fostering innovation through business effectiveness, enhancing operations of the PTAB, optimizing speed, quality, and cost effectiveness of IT delivery to achieve business value, and ensuring financial sustainability to facilitate effective USPTO operations. This also enables the USPTO to continue to leverage nationwide talent to build, retain and effectively manage the highly educated and talented workforce it needs to properly serve its stakeholder community and the country.

(a) *Updated Revenue Estimates*. As is discussed in more detail in Part IV: Fee Setting Methodology, when setting fees at appropriate levels to recover aggregate costs, the USPTO must estimate future year demand for the USPTO's products and services through a careful analysis of economic conditions, potential changes in the legal and policy environment, and operational efficiency and productivity. Many of these factors fall outside the USPTO's control. Since the time that the USPTO published the January 2018 Final Rule, new information has become available that has resulted in adjustments to several of the assumptions underlying the Office's revenue projections. The result of this change is a lowering of revenue expectations under the existing fee schedule. This reduction is due to a number of factors, most significant of which is a reduction in the estimates for application filings and maintenance fee collections.

Actual Utility, Plant, and Reissue (UPR) application filings in FYs 2017 and 2018 were less robust than

expected. In the FY 2020 Budget, given the lower than expected previous year filings, and an analysis of domestic and global economic forecasts, the USPTO has lowered future year filing projections from what was expected when the January 2018 Final Rule was published. The lower level of filings also affects the multi-year workloads of the Office, and means that fixed costs, like those for IT development, get spread across a smaller pool of patent applications, which contributes to higher unit costs.

Further, in the time since the January 2018 Final Rule was published, the USPTO has refined its methodology for projecting maintenance fees. In FYs 2017 and 2018 maintenance fee collections were lower than expected. Based on the refined methodology and recent trends, the refreshed forecast included in the FY 2020 Budget has been lowered. Much of this reduction is due to a very slight downward adjustment in expected third stage maintenance fee renewal rates.

Absent the proposed increase in fees or an unsustainable reduction in operating costs, the USPTO would be forced to draw down its operating reserves and take on higher levels of financial risk.

(b) *Quality, Backlog, and Pendency.* The strategic goal to “optimize patent quality and timeliness” recognizes the importance of innovation as the foundation of American economic growth and national competitiveness. Through this goal, the Office will continually improve patent quality, particularly the predictability and reliability of issued patents. The USPTO is also committed to improving pendency to better ensure the timely delivery of innovative goods and services to market and the related economic growth and creation of new or higher-paying jobs.

The Office will continue to diligently make progress toward pendency targets and quality expectations to issue predictable and reliable patents, while also addressing the anticipated growth in application filings. The Office will work to optimize patent examination timeframes within the framework of Patent Term Adjustment (PTA) while continuing to monitor and report traditional pendency measures. This includes engaging customers to identify optimal pendency and examination timeframes, and making sure that the Office has the appropriate number of examiners to generate the level of production to meet those timeframes. This proposed rule will produce revenues adequate to continue the USPTO’s progress towards attaining its

strategic goal to optimize patent quality and timeliness.

The Office recognizes the importance of issuing high quality patents that provide reliable and predictable intellectual property protection. If the USPTO is to achieve its strategic objective of issuing highly reliable patents, patent examiners must be afforded sufficient time to conduct a thorough and complete examination of each application. In the time since fees were last adjusted, the USPTO has completed a comprehensive analysis of examination time, known as ETA, the result of which determined a need for updates to the allotment of examination time.

In the past, allotment of examination time for a particular application was determined by the most comprehensive claim, and could not account for multi-disciplinary inventions. Sometimes, patent applications of similar technologies would receive disparate time for examination as a result. This, together with significant changes in patent prosecution that have occurred since examination time goals were established over 40 years ago—such as advancements in the technological complexities of applications, a growing volume of prior art, and a changing legal landscape—have brought about the need for updates to the allotment of examination time. The time examiners are given to examine applications is the critical link between pendency and quality. These updates reflect internal and external stakeholders’ priorities and experiences as it relates to examination time, quality, and application complexity, and also enable optimal pendency and quality levels.

In addition to the changing legal landscape, increasing technical complexities of applications and the growing volume of prior art to be searched during examination, updates to examination time will also take into account the full scope of technology recited in an application as well as the particular attributes of the application, such as the number of claims, the size of the specification, and the number of references cited in any filed information disclosure statement. Based on technology examined, examiners that currently receive the lowest amount of time for examination will generally see the largest increases in examination time, and conversely, examiners that currently receive the highest amount of time may see little, if any, increase in examination time. Further, all examiners will be provided additional examination time based on the specific attributes of the application. Together, these changes improve the calibration of

the time needed to conduct a thorough examination, position the Office to better adjust time in the future as needed, and will stakeholders increased confidence in the certainty of any resultant patent rights.

Separate from the ETA findings, analysis of the Patent staffing model indicates an incremental decrease in examiners’ average net output over time, resulting in higher core patent examination costs than in previous estimates. One possible explanation for this reduction in output may be that the percentage of examiners receiving production awards has dropped, and a larger number of examiners are forgoing promotions and staying at lower grades. Additionally, applicants’ increased use of programs like After Final Consideration Pilot (AFCP) and interviews, along with increased training needs due to changes in legal landscape and examination practices, has increased the amount of non-examination time used by examiners, also leading to productivity losses.

Another area where essential operating costs have increased is the PTAB. The PTAB, as it currently exists, was established by the AIA in September 2012. The PTAB manages pendency for three different activities: AIA trials which, by statute, must be adjudicated within one year of filing; re-examination petitions which, by statute, must be completed with “special dispatch”; and *ex parte* appeals. The PTAB’s commitment is to timely resolve appeals and *inter partes* matters within statutory or USPTO timeframes, while streamlining processes and procedures throughout the PTAB. This entails retaining and leveraging nationwide talent. As the Office institutes operational changes at the PTAB to comply with the SAS decision and implement other improvements, as detailed in Part V, the average workload associated with each trial is increasing.

(c) *Business Effectiveness.* Given the estimates of costs and revenue in the FY 2020 Budget, absent efforts to boost future revenue, funding for other USPTO and stakeholder priorities, like IT modernization and other business improvement initiatives, would need to be reduced to well below planned levels in the coming years. To this end, revenue generated from the proposed fee structure will enable the USPTO to focus on how the Patent organization operates to foster business effectiveness. In fulfilling this objective, the Office will listen to customers and employees and then take patent-specific actions that will position the Office to meet expectations.

The USPTO will provide the cutting-edge tools that employees and customers need to efficiently and effectively accomplish their tasks, particularly through the continued implementation of Patents End-to-End. For example, this could entail the use of artificial intelligence or machine-learning efforts. Another key initiative that will enhance the work capabilities of both employees and customers is to improve searchable (text) access to domestic and international patent applications, including access to non-patent literature and prior art, and office actions.

(3) *Fee Schedule Design.* The proposed fee schedule was designed to set individual fees to further key policy considerations while taking into account the cost of the particular service. To encourage innovators to take advantage of patent protection, the Office continues its longstanding practice of setting basic “front-end” fees (e.g., filing, search, and examination) below the actual cost of carrying out these activities. Additionally, new fees are set, and existing fees are adjusted, in order to facilitate the effective administration of the patent system. Part IV of this proposed rule details the Office’s methodology for establishing fees, and Part V describes the reasoning for setting and adjusting individual fees, including fee schedule design benefits. The RIA, available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>, also discusses fee schedule design benefits.

(4) *Sustainable Funding.* A major component of sustainable funding is the creation and maintenance of a viable patent operating reserve that allows for effective management of the U.S. patent system and responsiveness to changes in the economy, unanticipated production workload, and revenue changes. As a fee-funded agency, the USPTO uses its reserves to mitigate the variability in its spending and revenue streams that can create volatility in patent operations and threaten the Office’s ability to support mission operations.

The USPTO aims to manage the operating reserve within a range of acceptable balances and assesses its options when projected balances fall either below or above that range. Minimum planning targets are assessed annually and are intended to address immediate unplanned changes in the economic or operating environments as the Office builds its reserve to the optimal level. The optimal reserve target, which is reviewed at least biennially, is established based on an

assessment of the likelihood and severity of an array of financial risks. A recent assessment of the Patent operating reserve relative to the current financial risk environment revalidated the optimal reserve level of three months’ operating expenses as the appropriate long-range target given various risk factors, such as the high percentage of fixed costs in the Patent business and recent and potential changes in the legal, judicial, and policy environments. For the Patent business line’s operating reserve, a minimum planning level of approximately \$300 million—just over one month’s operating expenses—has been established. The USPTO’s annual budget delineates prospective spending levels (aggregate costs) to execute core mission activities and strategic initiatives. In the FY 2020 Budget, the USPTO estimated that its aggregate patent operating costs for FY 2020, including administrative costs, would be \$3.2 billion and aggregate estimated patent fee collections and other income is \$3.1 billion, with the operating reserve making up the difference. The health of the operating reserve, which is expected to be below the minimum target through FY 2021 as the USPTO continues investments in mission-critical areas, is a key consideration as the USPTO sets its fees. Aided by the increased fees proposed in the NPRM, future year projections are anticipated to build the Patent operating reserve to an optimal level of three months operating requirements. These projections are based on point-in-time estimates and assumptions that are subject to change. For instance, the Budget includes assumptions about filing levels, renewal rates, whether or not the President will authorize or Congress will mandate employee pay raises, the productivity of the workforce, and many other factors. A change in any of these factors could have a significant cumulative impact on reserve balances. The operating reserve estimates do not reflect the 2019 1.9 percent pay raise as authorized in the Consolidated Appropriation Act, 2019, Public Law 116–6, 133 Stat. 13, which was passed after the cost estimates for the FY 2020 Budget were finalized. This new requirement will increase the patent budgetary requirements by approximately \$31–\$44 million per year. This will result in a cumulative impact of \$245 million over the budget horizon. As seen in Table 3, set forth in Part IV: Fee Setting Methodology, over a five-year planning horizon the operating reserve balance can change significantly; underscoring the Office’s financial vulnerability to varying risk

factors and the importance of fee setting authority.

The USPTO will continue to assess the patent operating reserve balance against its target balance annually, and at least every two years, the Office will evaluate whether the optimal target balance continues to be sufficient to provide the stable funding the Office needs. Per the Office’s operating reserve policy, if the operating reserve balance is projected to exceed the optimal level by ten percent for two consecutive years, the Office will consider fee reductions. Under the new fee structure, as in the past, the Office will continue to regularly review its operating budgets and long-range plans to ensure the USPTO uses patent fees prudently.

(5) *Comments, Advice, and Recommendations from the PPAC.* In the report prepared in accordance with AIA fee setting authority, the PPAC conveyed support for the USPTO in seeking the revenues it needs to increase the reliability and certainty of patent rights, provide timely examination, improve and secure its IT infrastructure and adequately fund its operating reserve. Specifically, the report stated, “As a general matter, we believe that increased revenue for the USPTO will be important to fulfill its Strategic Plan and implement the recommendations of the PPAC.” Patent Pub. Advisory Comm., Fee Setting Report (2018). However, the PPAC expressed concerns over some of the individual fee adjustments and their potential impacts on patent applicants and holders. The USPTO has included additional information in this NPRM to further address some of the concerns of PPAC and the public.

The PPAC expressed general support for the stated goals and an increase in patent fees. In general, the PPAC urged the Office to provide more detail and justification on how additional revenue will be used to enhance patent quality. The PPAC also suggested the USPTO should be clear as to how it will use revenues to modernize its IT infrastructure to increase stability and scalability, and to strengthen security, as well as to support more effective examination processes. Both the FY 2020 Budget and Part III: Rulemaking Goals and Strategies, and Part V: Individual Fee Rationale offer this additional information.

Regarding the proposed changes to the issue and maintenance fees, the PPAC expressed support for the rationale for weighting the increases toward the issue fee and first stage maintenance fee. The PPAC also suggested that the USPTO carefully consider elasticity for first stage

maintenance fees and its potential impact on revenue. The Office's elasticity study showed that first stage maintenance fees are among the least elastic patent-related fees. For more information see "USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates," available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

The PPAC supports the increases to the fees in post-grant proceedings (post grant review (PGR), *inter partes* review (IPR) and covered business methods (CBM) proceedings). The PPAC noted that they understand the impact of the *SAS Institute v. Iancu* 138 S. Ct. 1348 (2018) and *Aqua Products, Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017) decisions have on PTAB's workload and the additional resources needed to manage that increased workload. In the report, the PPAC suggested that the PTAB conduct data collection and analysis on the impact of these decisions on its processes so stakeholders can better appreciate the need for increased fees. The Office appreciates this suggestion and is currently collecting data on the impact of these decisions and will reevaluate the extent of the increase in costs once actual data become available. The PPAC also expressed support for the new fee for pro hac vice admissions noting, "It makes sense to recover the costs of processing these petitions from those in need of pro hac vice admission rather than from overall trial fees" PPAC, at 3.

The PPAC supports the surcharge on non-DOCX filings. The report expressed that "the USPTO should have the flexibility to incentivize applicants to use filing formats that maximize efficiency for both the USPTO and its stakeholders" PPAC, at 3.

The report noted opposition to the proposed increases for the Fee for Late Payment of a Maintenance Fee. The PPAC believes the magnitude of increase of the surcharge for late maintenance fee payments may be excessive. However, the PPAC agrees that it is desirable to have timely payment of maintenance fees to make clear to the public when patent rights will be extended and therefore agrees with a meaningful incentive to encourage timely payment. In response, the USPTO has reduced the proposed Maintenance Fee Surcharge from \$1,000 to \$500 for large entities. The PPAC suggested, "If the goal is to discourage late payments, then perhaps the USPTO should provide services to individuals and small businesses to make it simple to stay current on deadlines and pay in a timely fashion" PPAC, at 3. The

USPTO appreciates the PPAC's suggestion. The USPTO provides tools to help patent owners monitor due dates, such as the Patent Maintenance Fees Storefront, <https://fees.uspto.gov/MaintenanceFees>, with which anyone can see the payment windows for all patents. Additionally, customers with USPTO.gov accounts (*i.e.*, MyUSPTO) can create a "patent docket" and add patent or application numbers in order to keep track of due dates. Also, the weekly Official Gazette notices list the range of patents for which maintenance fees are now payable. In addition, with the availability of free electronic calendar applications, individuals are able to easily set up reminders of when maintenance fee payments are eligible for renewal (3, 7, 11 years from issue) and when they are due (3.5, 7.5, 11.5 years from issue).

The PPAC expressed a lack of support for the proposal to increase Request for Expedited Examination of a Design Application. The advisory body requested sufficient justification for such a large increase. In response to this concern, the USPTO has provided additional justification and data. Part V: Individual Fee Rationale offers this additional information.

The PPAC supported the active patent practitioner fee to make certain that the roll of registered practitioners is up-to-date and to defray the patent related costs of operating the Office of Enrollment and Discipline (OED). The PPAC noted that the proposed annual active practitioner fee attracted numerous comments. In the report, the PPAC requested further information from the USPTO about how the anticipated fee collections will offset the cost of operations of the OED and to what extent. The PPAC agreed that the annual active practitioner fee would better align the costs of OED services with those who receive the benefits. The PPAC believes that the OED fees would not create an unreasonable burden. In response to the report, the USPTO has made changes to the annual active practitioner fee.

In particular, some of the comments received suggested that offering a paper option would make the structure of the fee overly complicated and administratively burdensome. In view of these comments, the paper filing option has been removed. Only electronic payments will be accepted. Additionally, several of the comments received in the course of the PPAC hearing suggested that requiring practitioners to either retake the registration examination or make a showing that they continue to possess the qualifications necessary to practice

before the Office after they had been voluntarily inactive for two years, and to retake the examination after they had been inactive for five years, would be overly burdensome. Accordingly, the proposal has been changed; practitioners who are endorsed on the roster as voluntarily inactive will be liable for a fee of \$70 per year to cover OED's administrative costs in maintaining the register and updating their information, but will neither be required to make a showing of their qualifications, nor be required to take the examination. Practitioners may apply to become active by paying the reinstatement fee and making their request to the OED Director. In regards to the Continuing Legal Education (CLE) discount, the PPAC supports the USPTO's goal to improve the services provided by the patent bar to the public. The PPAC has requested more information supporting the effectiveness of such a CLE incentive. Part V: Individual Fee Rationale offers this additional justification for the CLE discount.

In summary, the USPTO appreciates the overall support for an increase in patent fees to meet sufficient funding levels provided by the PPAC and its stakeholders. After careful consideration of the comments, concerns, and suggestions provided in the report, and keeping in mind the goals of this proposed rule, the USPTO elected to make changes to two of the fee proposals initially presented to the PPAC. The fee structure proposed herein will ultimately allow the USPTO to maintain patent operations and continue on its path towards achieving the goals and objectives laid out in the Strategic Plan. The Office looks forward to receiving additional comments on this revised proposal during the public comment period.

C. Summary of Rationale and Purpose of the Proposed Rule

The Office estimates that the proposed patent fee schedule will produce aggregate revenues to recover the aggregate costs of patent operations, including the implementation of its strategic and mission support goals, objectives, and initiatives in FY 2021 and beyond. Using the Strategic Plan as a foundation, the proposed rule will provide sufficient aggregate revenue to recover the aggregate cost of patent operations, including optimizing patent application pendency, issuing highly reliable patents, fostering innovation through business effectiveness, enhancing the operations of the PTAB, optimizing the speed, quality, and cost-effectiveness of information technology

delivery to achieve business value, and ensuring financial sustainability to facilitate effective operations.

IV. Fee Setting Methodology

The Office carried out three primary steps in developing the proposed fees:

Step 1: Determine the prospective aggregate costs of patent operations over the five-year period, including the cost of implementing new initiatives to achieve strategic goals and objectives.

Step 2: Calculate the prospective revenue streams derived from the individual fee amounts (from Step 3) that will collectively recover the prospective aggregate cost over the five-year period.

Step 3: Set or adjust individual fee amounts to collectively (through executing Step 2) recover projected aggregate cost over the five-year period, while furthering key policy factors.

These three steps are iterative and interrelated. The following is a description of how the USPTO carries out these three steps.

Step 1: Determine Prospective Aggregate Costs

Calculating prospective aggregate costs is accomplished primarily through the annual USPTO budget formulation process. The budget is a five-year plan (that the Office prepares annually) for carrying out base programs and new initiatives to implement the USPTO's strategic goals and objectives.

The first activity performed to determine prospective aggregate cost is to project the level of demand for patent products and services. Demand for products and services depends on many factors that are subject to change, including domestic and global economic activity. The USPTO also takes into account overseas patenting activities, policies and legislation, and known process efficiencies. Because filing, search, and examination costs are the largest share of the total patent operating cost, a primary production workload driver is the number of patent application filings (*i.e.*, incoming work to the Office). The Office looks at indicators such as the expected growth in Real Gross Domestic Product (RGDP), the leading indicator of incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis

(www.bea.gov) and is forecasted each February by the OMB (www.omb.gov) in the Economic and Budget Analyses section of the Analytical Perspectives and twice annually by the Congressional Budget Office (CBO) (www.cbo.gov) in the Budget and Economic Outlook. A description of the Office's methodology for using RGDP can be found in Appendix I—Multi-year Planning by Business Line and Cost Containment of the FY 2020 Budget. The expected change in the required production workload must then be compared to the current examination production capacity to determine any required staffing and operating cost (*e.g.*, salaries, workload processing contracts, and publication) adjustments. The Office uses a patent pendency model that estimates patent production output based on actual historical data and input assumptions, such as incoming patent applications and overtime hours. An overview of the model, including a description of inputs, outputs, key data relationships, and a simulation tool is available at https://www.uspto.gov/patents/stats/patent_pend_model.jsp.

The second activity is to calculate the aggregate costs to execute the requirements. In developing its budget, the Office first looks at the cost of status quo operations (the base requirements). The base requirements are adjusted for anticipated pay increases and inflationary increases for the budget year and four out years (detailed calculations and assumptions for this adjustment can be found in the FY 2020 Budget). The Office then estimates the prospective cost for expected changes in production workload and new initiatives over the same period of time (refer to "Program Changes by Sub-Program" sections of the FY 2020 Budget). The Office reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. Finally, the Office estimates its three month target operating reserve level based on this aggregate cost calculation for the year to determine if operating reserve adjustments are necessary.

The FY 2020 Budget identifies that, during FY 2020, patent operations will cost \$3.170 billion (*see* Appendix II of the FY 2020 Budget), including \$2.153 billion for patent examining; \$93

million for patent trial and appeals; \$161 million for patent information resources; \$28 million for activities related to IP protection, policy, and enforcement; and \$734 million for general support costs necessary for patent operations (*e.g.*, the patent share of rent, utilities, legal, financial, human resources, other administrative services, and Office-wide IT infrastructure and IT support costs). In addition, the Office transfers \$2 million to the DOC Inspector General for audit support. The Office also estimates collecting \$37 million in other income associated with recoveries and reimbursable agreements (offsets to spending).

A detailed description of the operating requirements and related aggregate cost is located in the FY 2020 Budget. Table 2 below provides key underlying production workload projections and assumptions from the FY 2020 Budget used to calculate aggregate cost. Table 3 (*see* Step 2) presents the total budgetary requirements (prospective aggregate cost) for FY 2020 through FY 2024 and the estimated collections and operating reserve balances that would result from the proposed adjustments contained in this NPRM. Table 3 does not reflect the 2019 1.9 percent pay raise as authorized in the Consolidated Appropriation Act, 2019, Public Law 116–6, 133 Stat. 13, which was passed after the cost estimates for the FY 2020 Budget were finalized. This new requirement will increase the patent budgetary requirements by approximately \$31–\$44 million per year. This will result in a cumulative impact of \$245 million over the budget horizon. As the Budget notes, these projections are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in out-year budgetary requirements. A number of risks could materialize over the next several years (*e.g.*, associated with recompletions of major contracts, lease renewals, changing assumptions about Presidentially authorized or congressionally mandated employee pay raises, etc.) that could increase the USPTO's budgetary requirements in the short- to medium-term. These estimates are refreshed annually in the production of the USPTO's Budget.

TABLE 2—PATENT PRODUCTION WORKLOAD PROJECTIONS
[FY 2020–FY 2024]

Utility, plant, and reissue (UPR)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Applications *	611,158	612,614	621,450	629,204	636,625
Application Growth Rate	0.2%	0.2%	1.4%	1.2%	1.2%

TABLE 2—PATENT PRODUCTION WORKLOAD PROJECTIONS—Continued
[FY 2020–FY 2024]

Utility, plant, and reissue (UPR)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Production Units	607,252	597,025	612,487	624,005	625,527
Unexamined Patent Application Backlog	498,554	503,975	502,669	497,497	489,448
Examination Capacity **	8,313	8,686	9,046	9,174	9,297
Performance Measures (UPR):					
Avg. First Action Pendency (Months)	14.7	14.7	14.5	14.3	14.0
Avg. Total Pendency (Months)	22.8	22.8	22.9	22.7	22.4

* In this table, the patent application filing data includes requests for continued examination (RCEs).

** In this table, Examination Capacity is the UPR Examiners On-Board at End-of-Year, as described in the FY 2020 Budget.

Step 2: Calculate Prospective Aggregate Revenue

As described above in Step 1, the USPTO's FY 2020 requirements in the FY 2020 Budget include the aggregate prospective cost of planned production, anticipated new initiatives, and a contribution to the patent operating reserve required for the Office to maintain patent operations and realize its strategic goals and objectives for the next five years. The aggregate prospective cost becomes the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To calculate the aggregate revenue estimates, the Office first analyzes relevant factors and indicators to calculate or determine prospective fee workloads (e.g., number of applications and requests for services and products), growth in those workloads, and resulting fee workload volumes (quantities) for the five-year planning horizon. Economic activity is an important consideration when developing workload and revenue forecasts for the USPTO's products and services because economic conditions affect patenting activity.

The Office considers economic activity when developing fee workloads and aggregate revenue forecasts for its products and services. Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. The most relevant economic indicator that the Office uses is the RGDP, which is the broadest measure of economic activity and is anticipated to grow approximately two percent for FY 2020 based on CBO estimates.

These indicators correlate with patent application filings, which are a key driver of patent fees. Economic indicators also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and

post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the Office considers other influential factors including overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity, which for the purpose of this proposal measures how sensitive applicants and patentees are to changes in fee amounts. The higher the elasticity measure (in absolute value), the greater the applicant response to the relevant fee change. If elasticity is low enough (i.e., demand is *inelastic* or the elasticity measure is less than one in absolute value), a fee increase will lead to only a relatively small decrease in patent activities, and overall revenues will still increase. Conversely, if elasticity is high enough (i.e., demand is *elastic* or the elasticity measure is greater than one in absolute value), a fee increase will lead to a relatively large decrease in patenting activities such that overall revenues will decrease. When developing fee forecasts, the Office accounts for how applicant behavior will change at different fee amounts projected for the various patent services. The Office analyzed elasticity for nine broad patent fee categories: Filing/search/examination fees, excess independent claims fees, excess total claims fees, application size (excess page) fees, issue fees, request for continued examination (RCE) fees, appeal fees, AIA trial fees, and maintenance fees, including distinctions by entity size where applicable. Additional detail about the Office's elasticity estimates is available in "USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates," available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Aggregate Revenue Estimate Ranges

When estimating aggregate revenue, the USPTO prepares a high and a low range of fee collection estimates. This range accounts for the inherent uncertainty, sensitivity, and volatility of predicting fluctuations in the economy and market environment; interpreting policy and process efficiencies; and developing fee workload and fee collection estimates from assumptions. The Office estimates a range for all its major workload categories including application filings, extensions of time, PTAB fees, maintenance fees, patent cooperation treaty (PCT) filings, and trademark filings. Additional detail about the Office's aggregate revenue, including projected workloads by fee, is available in "USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—Aggregate Revenue Estimates Alternative 1: Proposed Alternative" available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Summary

Patent fees are collected for patent-related services and products at different points in time within the patent application examination process and over the life of the pending patent application and granted patent. Approximately half of all patent fee collections are from maintenance fees, which subsidize the cost of filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections, because fewer patent application filings means the Office collects fewer fees to devote to production-related costs. The resulting reduction in production activities also creates an out-year revenue impact because less production output in one year results in fewer issue and maintenance fee payments in future years.

The USPTO's five-year estimated aggregate patent fee revenue (see Table 3) is based on the number of patent applications it expects to receive for a

given fiscal year, work it expects to process in a given fiscal year (an indicator of future patent issue fee workload), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the Office adjusts individual fee rates up or down based on cost and policy decisions (*see* Step 3: Set Specific Fee Amounts), estimates the effective dates of new fee rates, and then

multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee. To calculate the aggregate revenue, the Office assumes that all proposed fee rates will become effective on January 1, 2021 except for the new Annual Active Patent Practitioner Fees, which are assumed to become effective January 1, 2022. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (*see* Table 3). The financial outlook

in Table 3 is different from the numbers contained in the FY 2020 Budget. At the time the FY 2020 Budget was prepared, the proposed fee adjustments were not finalized. Therefore, the revenue estimates in this NPRM and associated documents do not exactly match what was assumed in the FY 2020 Budget. Forecasted revenue for FY 2021 through FY 2024 is \$2 million to \$4 million lower per year, for a total impact of \$12 million lower than the estimates reported in the FY 2020 Budget.

TABLE 3—PATENT FINANCIAL OUTLOOK
 [FY 2020–FY 2024]

	Dollars in millions				
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Projected Fee Collections	3,095	3,358	3,687	3,690	3,836
Other Income	37	37	37	37	37
Total Projected Fee Collections and Other Income	3,132	3,395	3,724	3,727	3,873
Budgetary Requirements	3,172	3,326	3,434	3,524	3,626
Funding to (+) and from (–) Operating Reserve	(40)	69	290	203	247
EOY Operating Reserve Balance	203	272	562	765	1,012
Over/(Under) \$300M Minimum Level	(97)	(28)	262	465	712
Over/(Under) Optimal Level	(589)	(559)	(296)	(116)	105

Step 3: Set Specific Fee Amounts

Once the Office finalizes the annual requirements and aggregate prospective costs through the budget formulation process, the Office determines specific fee amounts that, together, will derive the aggregate revenue required to recover the estimated aggregate prospective costs during the five year budget horizon. Calculating individual fees is an iterative process that encompasses many variables and policy factors. These are discussed in greater detail in section V. Individual Fee Rationale.

One of the variables the USPTO considers to inform fee setting is the historical cost estimates associated with individual fees. The Office’s ABI provides historical cost for an organization’s activities and outputs by individual fee using the activity-based costing (ABC) methodology. ABC is commonly used for fee setting throughout the Federal Government. Additional information about the methodology, including the cost components related to respective fees, is available in the document entitled “USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—Activity-Based Information and Patent Fee Unit Expense Methodology” available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The USPTO provides data for FY 2016–FY 2018 because the

Office finds that reviewing the trend of ABI historical cost information is the most useful way to inform fee setting. The underlying ABI data are available for public inspection at the USPTO upon request.

When the Office implements a new process or service, historical ABI data is typically not available. However, the Office will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

V. Individual Fee Rationale

The Office projects that the aggregate revenue generated from the proposed patent fees will recover the prospective aggregate cost of its patent operations including contributions to the operating reserve per the strategic initiative to ensure financial sustainability to facilitate effective USPTO operations. As detailed previously, the PPAC supports this approach, stating that “The PPAC supports the USPTO in seeking the revenues it needs to increase the reliability and certainty of patent rights, provide timely examination, improve and secure its IT infrastructure and adequately fund its operating reserve” PPAC, at [2].

It is important to recognize that each individual proposed fee is not necessarily set equal to the estimated cost of performing the activities related to the fee. Instead, as described in Part III: Rulemaking Goals and Strategies,

some of the proposed fees are set at, above, or below their unit costs to balance several key fee setting policy factors: Promoting innovation strategies, aligning fees with the full cost of products and services, facilitating effective administration of the patent system, and offering patent processing options to applicants. For example, many of the initial filing fees are intentionally set below unit cost in order to promote innovation strategies by removing barriers to entry for innovators. To balance the aggregate revenue loss of fees set *below cost*, other fees must be set *above cost* in areas where it is less likely to reduce inventorship (e.g., maintenance).

For some fees proposed in this NPRM, such as excess claims fees, the USPTO does not typically maintain individual historical cost data for the service provided. Instead, the Office considers the policy factors described in Part III to inform fee setting. For example, by setting fees at particular levels using the facilitating effective administration of the patent system policy factor, the USPTO aims to: (1) Foster an environment where examiners can provide and applicants can receive prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and the faster dissemination of patented information; and (3) help

recover costs for activities that strain the patent system.

The rationale for the proposed changes are grouped into three major categories, discussed below: (A) Across the board adjustment to patent fees; (B) targeted fees; and (C) discontinued fees. The purpose of the categorization is to identify large fee changes for the reader and provide an individual fee rationale for such changes. The categorization is based on changes in large entity fee amounts because percentage changes for small and micro entity fees that are in place today would be the same as the percentage change for the large entity, and the dollar change would be half or one quarter of the large entity change.

The Table of Patent Fees includes the current and proposed fees for large, small, and micro entities as well as unit costs for the last three fiscal years. Part VI: Discussion of Specific Rules contains a complete listing of fees that are set or adjusted in the proposed patent fee schedule.

A. Across the Board Adjustment to Patent Fees

In order to both keep USPTO on a stable financial track and allow for the advancement of policies and practices that enhance the country's innovation ecosystem, the Office proposes to adjust all patent fees not covered by the targeted adjustments as discussed in section B, or proposed to be discontinued as discussed in section C, by approximately five percent. Given that nearly three years will have passed between the implementation date of the last fee adjustments and when the proposed fees are expected to take

effect, a five percent increase is similar to fees increasing by 1.6 percent annually to help USPTO keep up with inflationary cost increases. Proposed fees are rounded to the nearest five dollars by applying standard arithmetic rules. For fees that have small and micro entity fee reductions, the large entity fee is rounded up or down to the nearest 20 dollars by applying standard arithmetic rules. The resulting proposed fee amounts are more convenient to patent users and permit the Office to set small and micro entity fees at whole dollar amounts when applying the applicable fee reduction. Therefore, some smaller fees will not be changing, since a five percent increase would round down to the current fee, while other fees would change by slightly more or less than five percent, depending on rounding. The proposed fee adjustments in this category are listed in the Table of Patent Fees.

The five percent across the board adjustment strikes an appropriate balance between projected aggregate revenue and aggregate cost based on the assumptions used to develop the point-in-time estimates that support this NPRM. As was discussed in Part IV: Fee Setting Methodology, these assumptions are likely to change as new information becomes available. Refreshed estimates for the FY 2021 Budget will be available to the public before publication of the final rule. If changes to the assumptions underlying the USPTO's cost and revenue estimates result in significant changes in the FY 2021 Budget projections, the Office will refine the size of the across the board adjustment,

either upward or downward, such that fees are set a level that secures aggregate cost recovery while ensuring a reasonable pace for operating reserve growth.

B. Targeted Fees

For those fees targeted in this proposal, the individual fee rationale discussion is divided into two categories: (1) Adjustments to existing fees; and (2) new fees.

Adjustments to existing fees are further divided into subcategories according to the function of the fees, including: (a) Maintenance fee surcharge; (b) request for the expedited examination of a design application fee; (c) utility issue and maintenance fees; and (d) AIA trial fees. New fees are further divided into subcategories according to the function of the fees, including: (a) Non-DOCX filing surcharge fee; (b) Pro Hac Vice; and (c) Annual Active Patent Practitioner fees.

As discussed above, for purposes of comparing amounts in the individual fee rationale discussion, the Office has included the current fees as the baseline to calculate the dollar change and percent change for proposed fees.

(1) Adjustments to Existing Fees

The following fees are proposed to be increased by an amount other than the five percent across the board increase proposed for most patent-related fees. These targeted adjustments are made for a variety of strategic reasons. A discussion of the rationale for each fee follows.

(a) Maintenance Fee Surcharge

TABLE 4—MAINTENANCE FEE SURCHARGE FEES—FEE CHANGES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost
Surcharge—3.5 year—Late payment within 6 months	\$160 (\$80) [40]	\$500 (\$250) [125]	+\$340 (+\$170) [+\$85]	+213% (+213%) [+213%]	N/A
Surcharge—7.5 year—Late payment within 6 months	\$160 (\$80) [40]	\$500 (\$250) [125]	+\$340 (+\$170) [+\$85]	+213% (+213%) [+213%]	N/A
Surcharge—11.5 year—Late payment within 6 months	\$160 (\$80) [40]	\$500 (\$250) [125]	+\$340 (+\$170) [+\$85]	+213% (+213%) [+213%]	N/A

The Office proposes to increase the surcharge for a late maintenance fee payment within six months following the due date. The proposed fee of \$500 for large entities has been reduced from the \$1,000 presented in the September

2018 PPAC hearing. It is the responsibility of the patentee to ensure maintenance fees are paid timely to prevent expiration of a patent. If a maintenance fee is not paid within the first six months in the year in which it

can be paid, a Maintenance Fee Reminder notice is sent to the fee address or correspondence address on record. Failure to receive the notice does not shift the burden of monitoring the time for paying a maintenance fee

from the patentee to the USPTO. At this point, a surcharge is required in addition to the maintenance fee in order to maintain a patent. If the maintenance fee and any applicable surcharge are not paid by the end of the 4th, 8th, or 12th years after the date of issue, the patent rights lapse and a Notice of Patent Expiration is sent to the fee address or correspondence address on record. If a fee address has not been established, the notices are sent to the correspondence address. Over 95 percent of patent renewals are paid before the due date, but some patents are renewed during the six month period following the due date.

While still below what other IP offices charge, increasing this surcharge brings the USPTO more in line with its global counterparts. The goal of increasing this surcharge is to encourage patent holders to renew prior to the due date. Encouraging on-time renewals will benefit the public by increasing the understanding of which patents remain in force and which patent rights have been allowed to lapse.

The USPTO provides tools to help patent owners monitor due dates, such as the Patent Maintenance Fees Storefront, <https://fees.uspto.gov/MaintenanceFees>, where anyone can see the payment windows for all patents.

Additionally, customers with USPTO.gov accounts (*i.e.*, MyUSPTO) can create a “patent docket” and add patent or application numbers in order to keep track of due dates. Also, the weekly Official Gazette notices list the range of patents for which maintenance fees are now payable. In addition, as previously discussed in section III, with the availability of free calendar apps, individuals can easily set up their own reminders of when maintenance fee payments are eligible for renewal (3, 7, 11 years from issue) and when they are due (3.5, 7.5, 11.5 years from issue).

(b) Request for Expedited Examination of a Design Application Fee

TABLE 5—REQUEST FOR EXPEDITED EXAMINATION OF A DESIGN APPLICATION FEE

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost
Request for expedited examination of a design application	\$900 (\$450) [\$225]	\$2,000 (\$1,000) [\$500]	+\$1,100 (+\$550) [+\$225]	+122% (+122%) [+122%]	\$125

The Office proposes to increase the fee to request expedited examination of a design application. This fee was introduced at a fee rate of \$900 in November 2000. The Office is proposing to increase the fee for the first time since its inception, to a rate of \$2,000.

Expedited examination is available to all design applicants who first conduct a preliminary examination search and file a request for expedited treatment accompanied by a fee for the expedited treatment and handling (37 CFR 1.17(k)) in addition to the required filing, search, and examination fees. This cost-based expedited treatment fulfills a particular need by affording rapid design patent protection that may be especially important where marketplace conditions are such that new designs on articles are typically in vogue for limited periods of time. The applications are individually examined

with priority, and the clerical processing is conducted and/or monitored by specially designated personnel to achieve expeditious processing through initial application processing and the Design Examining Group. For a patentable design application, the expedited treatment is a streamlined filing-to-issuance procedure. This procedure further expedites design application processing by decreasing clerical processing time as well as the time spent routing the application between processing steps. Specially designated personnel are required to conduct and/or monitor the expedited clerical processing. Also, expedited design applications may be individually treated throughout the examination process where necessary for expedited treatment, whereas normally, the search phase of design

application examination is conducted in groups.

For the first few years following the introduction of this program, requests for expedited examination of a design application were less than one percent of total design filings. In recent years, requests have increased to over two percent of total filings. This increase in demand for this service has forced the Office to choose to cap the program (*i.e.*, impose limits on the number of expedited examinations it will undertake in a given fiscal year), end the program, or increase the fee. Increasing this optional fee will allow the USPTO to better manage staffing to match demand for this service, while still keeping the service available as an option for those who may benefit from this program.

(c) Utility Patent Issue and Maintenance Fees

TABLE 6—UTILITY PATENT ISSUE AND MAINTENANCE FEES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost
Utility Issue Fee	\$1,000 (\$500) [\$250]	\$1,200 (\$600) [\$300]	+\$200 (+\$100) [+\$50]	+20% (+20%) [+20%]	\$325
Reissue Issue Fee	\$1,000 (\$500) [\$250]	\$1,200 (\$600) [\$300]	+\$200 (+\$100) [+\$50]	+20% (+20%) [+20%]	\$325

TABLE 6—UTILITY PATENT ISSUE AND MAINTENANCE FEES—Continued

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost
For Maintaining an Original or Any Reissue Patent, Due at 3.5 years.	\$1,600 (\$800) [400]	\$2,000 (\$1,000) [500]	+\$400 (\$800) [400]	+25% (+25%) [+25%]	n/a
For Maintaining an Original or Any Reissue Patent, Due at 7.5 years.	\$3,600 (\$1,800) [900]	\$3,760 (\$1,880) [940]	+\$160 (\$80) [40]	+4% (+4%) [+4%]	n/a
For Maintaining an Original or Any Reissue Patent, Due at 11.5 years.	\$7,400 (\$3,700) [1,850]	\$7,700 (\$3,850) [1,925]	+\$300 (\$150) [75]	+4% (+4%) [+4%]	n/a

In the September 2018 PPAC public hearing, the Office proposed adjusting the issue fees by 20 percent and first stage maintenance fees by 25 percent. These adjustments will mark the first time maintenance fee rates have changed since 2013. Based on the support in the PPAC report, the Office determined to move forward with the proposal to increase the issue fee and maintenance fees as initially proposed.

The total package of fees proposed in this NPRM does not significantly impact the balance between front-end and back-end fees. The USPTO continues to set front-end fees below the cost to the Office to provide those services, in order to encourage innovation. Under this proposal, front-end fees for a utility patent with one RCE and lifetime maintenance will continue to be about 18 percent of the total fees paid over the

life of a patent (see Table 7). However, as certain technology lifecycles grow shorter, it is important that the USPTO not rely too heavily on fees paid late in the life of a patent. Therefore, the Office proposes to slightly rebalance the back-end fees to recover the initial search and examination costs earlier in the life of the patent.

TABLE 7—FRONT-END AND BACK-END FEE BALANCE

Fee group	Detailed fee title	Current			Proposed		
		Large entity fee	Percent of total (%)	Group's percent of total (%)	Large entity fee	Percent of total (%)	Group's percent of total (%)
Front End Fees ..	Filing	\$300	2	18	\$320	2	18
	Search	\$660	4		\$700	4	
	Examination \$760	5		\$800	4		
Back End Fees ...	1st RCE \$1,300	8		\$1,360	8		
	Issue	\$1,000	6	16	\$1,200	7	18
	1st Stage Maintenance	\$1,600	10		\$2,000	11	
	2nd Stage Maintenance	\$3,600	22	66	\$3,760	21	64
	3rd Stage Maintenance	\$7,400	45		\$7,700	43	
Total .....	.....	\$16,620	100	100	\$17,840	100	100

The issue fee for utility and reissue patents is proposed to be increased from \$1,000 to \$1,200, and the first stage maintenance fee is proposed to be increased from \$1,600 to \$2,000. As a result, the combined fees paid for issue and first stage maintenance would increase from 16 percent to 18 percent of the total fees paid for a utility patent with one RCE and lifetime maintenance. However, second and third stage

maintenance fees would only increase by 4 percent—less than the across the board adjustment—with second stage increasing from \$3,600 to \$3,760 and third stage increasing from \$7,400 to \$7,700.

The Office determined elasticity estimates for the three maintenance payments for both large and small entities. For all point estimates and confidence intervals, maintenance fees

were found to be inelastic, with the first stage being the least elastic of these fees. More detailed information on elasticity estimates can be found at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting> in the document entitled “USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates”.

(d) AIA Trial Fees

TABLE 8—AIA TRIAL FEES—FEE CHANGES AND UNIT COSTS

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost
Inter Partes Review Request Fee-Up to 20 Claims	\$15,500	\$19,500	+\$4,000	+26%	\$15,016

TABLE 8—AIA TRIAL FEES—FEE CHANGES AND UNIT COSTS—Continued

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost
<i>Inter Partes</i> Review Post-Institution Fee—Up to 15 Claims *	15,000	n/a	n/a	n/a	24,490
<i>Inter Partes</i> Review Post-Institution Fee—Up to 20 Claims *	n/a	18,750	n/a	n/a	n/a
<i>Inter Partes</i> Review Request of Each Claim in Excess of 20	300	375	+75	+25	n/a
<i>Inter Partes</i> Post-Institution Request of Each Claim in Excess of 15 *	600	n/a	n/a	n/a	n/a
<i>Inter Partes</i> Post-Institution Request of Each Claim in Excess of 20 *	n/a	750	n/a	n/a	n/a
Post-Grant or Covered Business Method Review Request Fee—Up to 20 Claims	16,000	20,000	+4,000	+25	21,465
Post-Grant or Covered Business Method Review Post-Institution Fee—Up to 15 Claims *	22,000	n/a	n/a	n/a	29,842
Post-Grant or Covered Business Method Review Post-Institution Fee—Up to 20 Claims *	n/a	27,500	n/a	n/a	n/a
Post-Grant or Covered Business Method Review Request of Each Claim in Excess of 20	375	475	+100	+27	n/a
Post-Grant or Covered Business Method Review Post-Institution Request of Each Claim in Excess of 15 *	825	n/a	n/a	n/a	n/a
Post-Grant or Covered Business Method Review Post-Institution Request of Each Claim in Excess of 20 *	n/a	1,050	n/a	n/a	n/a

* The post-institutional threshold for paying claims fees will increase from 15 to 20.

On April 24, 2018, the U.S. Supreme Court issued its decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018). As required by the decision, the PTAB will institute a trial as to all claims or none. Previously, the PTAB has instituted a trial on just some claims. This has increased the amount of time spent per case post-institution. The Office has also modified its pre-institution practice to take into account the impacts of the SAS decision. For example, prior to SAS, the PTAB did not generally address all arguments at institution. Post SAS, for purposes of deciding whether to institute trial on a petition, the Office's policy is to provide details to the parties to the extent practicable, including responding to arguments in a patent owner's preliminary response that were not the basis for the decision whether or not to institute. This has increased the amount of time spent per case pre-institution. These changes related to the SAS decision will increase the average cost to conduct each proceeding.

Other implementations, such as providing automatic sur-replies and pre-

hearing conferences, were made to help provide additional fairness and certainty to the parties and public while continuing the PTAB's practice of rendering high quality decisions within the statutory time limits applicable to AIA trial proceedings; however, these changes, too, have increased the average cost of conducting each proceeding.

The Office proposes that the post-institutional threshold for paying excess claim fees will increase from 15 to 20 so as to match the PTAB's request threshold, reflecting the fact that, following the Supreme Court decision in SAS, PTAB is required to institute all claims or none. The Office notes that the fee increases proposed in the NPRM are based on estimates. At this time, best estimates indicate that the average expense attributable to the institution stage of *inter partes* reviews has increased more than 20 percent between the second quarter of FY 2018 (before the SAS decision) and the fourth quarter of FY 2018 (following the SAS decision), and that the average expense attributable to the final decision stage of *inter partes* reviews has also increased

more than 20 percent during the same period. Also, note that the FY 2018 unit costs shown in Table 8 are annual costs, and the PTAB was only operating under the SAS decision for part of the year. When the final rule is prepared, USPTO will have more data on how the SAS decision has impacted the costs of AIA trials, and the fee rates in the final rule may differ from what is proposed here, in response to the updated information. Additionally, the fee increases the Office is considering are not expected to be implemented until 2021, and the new fees are expected to be in place for several years beyond that; as such, increases of greater than 20 percent are necessary to account for cost increases already experienced as well as future inflationary cost growth. This proposed rulemaking will help the PTAB continue to maintain the appropriate level of judicial and administrative resources to continue to provide high quality and timely decisions for AIA trials.

(2) New Fees

(a) Non-DOCX Filing Surcharge Fee

TABLE 9—NON-DOCX FILING SURCHARGE FEE—FEE CHANGES AND UNIT COST

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost Large (small) [micro] entity
Non-DOCX Filing Surcharge	New	\$400 (200) [100]	+\$400 (+200) [+100]	n/a (n/a) [n/a]	n/a

The Office proposes a new fee to be charged for utility non-provisional applications filed under 35 U.S.C. 111 submitted in a format other than DOCX (structured text). This surcharge will apply to filings that are submitted in an electronic document, such as a PDF, that is not saved in the DOCX format. It will also apply to filings that are submitted non-electronically, in addition to the existing paper filing surcharge. The surcharge is proposed to be introduced for specifications, claims, and abstracts. The submission in DOCX format will facilitate improvements in the efficiency of patent operations.

Using EFS-Web, anyone with a Web-enabled computer can file patent applications and documents without downloading special software or changing document preparation tools and processes. Registering as an EFS-Web eFiler allows enhanced filing, follow-on processing, saved submissions, and more. EFS-Web registered eFilers have been able to file specification, abstract, and claims in DOCX for utility non-provisional filings since August 2017.

Launched in 2015, the eCommerce Modernization (eMod) Project aims to improve the electronic application process for patent applicants by modernizing the USPTO's filing and viewing systems. Recent improvements include implementing structured text functionalities. Structured text allows applicants to more easily submit their documents in text-based documents, rather than having to create PDF documents. This streamlines the application and publication processes for both the applicants and examiners. The Office tested the capabilities of structured text within EFS-Web and PAIR with the eMod Text Pilot Program, which ran from August 2016 until September 2017. The pilot was successful and many improvements were made based on feedback from applicants, which included independent inventors, law firms, and corporations. Structured text features are now available to all EFS-Web registered and Private PAIR users, and include the ability for applicants to file

structured text via EFS-Web, and access structured text submissions, structured text office actions, and XML downloads via Private PAIR. Additional information can be found in the associated Submit DOCX and Retrieve DOCX guides. For more information on filing in DOCX, please visit <https://www.uspto.gov/patent/docx>.

To encourage the filing of more applications in structured text, a required fee surcharge is proposed for applications that do not include DOCX format. This will accelerate the adoption of DOCX to realize a variety of benefits. Both the USPTO and applicants will see increased efficiencies from encouraging DOCX filings. Based on a USPTO survey, over 80 percent of applicants author their patent applications in DOCX in the normal course of business. Filing in structured text allows applicants to submit their specifications, claims, and abstracts in text-based format, and eliminates the need to convert structured text into a PDF for filing. Applicants can access examiner Office actions in text-based format which makes it easy to copy and paste when drafting responses. The availability of structured text also improves accessibility for sight-impaired customers, who use screen reading technology.

DOCX filing provides opportunities to increase efficiency in the Office. It enables development of software to provide automated initial reviews of applicant submissions to help reduce effort required by the Office. The automated reviews can tell applicants up-front if potential problems exist and allow them to make changes prior to or at the time of submission. This also improves validation based on content, such as claims validation for missing claim numbering or abstract validation for word count and paragraph count.

Increased DOCX filing will also lead to higher data quality, by reducing system conversion errors. It provides a flexible format with no template constraints. This also improves data quality by supporting original formats for chemical formulas, mathematical equations, and tables. DOCX filing also

improves document identification by automatic detection, allows for greater reuse of content, and provides improved searching for patent applications and submissions. The originally submitted structured text document is available within Private PAIR, allowing easy retrieval of original DOCX files after transfer of cases between users.

Structured text usage also helps streamline the application process and provides benefits for the USPTO. The Office converts image-based filings (e.g., PDF documents) into text-based format for internal processing. Text-based filings will allow the Office to skip this time-consuming and costly step. Optical character recognition of image-based filings costs the Office approximately \$3.15 per new submission. Encouraging text-based filings has the potential to save the Office up to \$1.6 million annually. If, in the future, the program were extended to additional application documents besides specifications, claims, and abstracts, the potential savings could reach as much as \$9.0 million annually.

Extensible Markup Language (XML) generated from DOCX files complies with the international World Intellectual Property Office (WIPO) Standard ST.96 from intake through display and use in examination tools. Receiving filings through structured text makes documents automatically available to examiners in almost real-time. DOCX filing also improves examination consistency by using automated tools to analyze text, increases the accuracy of examiner formalities reviews and tools (i.e. claims tree generators, document comparison), and improves results in automated pre-search and future analytics (i.e., section 112(b) and (f) evaluations) by using text supplied by applicants. DOCX submission contributes to the USPTO's plan to begin the automation of publication processes, which will lead to large cost reductions in production of patent artifacts (grants and pre grant publications), and contributes to the USPTO's plan to begin the automation of processes to assist in formalities reviews, classification, and routing

which leads to improved patent quality, reduced pendency and greater consistency.

(b) Pro Hac Vice Fees

TABLE 10—PRO HAC VICE—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2018 unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Fee for non-registered practitioners to appear before the Patent Trial and Appeal Board.	New	\$250	+\$250	n/a	n/a

The Office proposes to charge a fee to appear pro hac vice in an AIA trial proceeding. The proposed non-registered practitioner fee is for each proceeding that a non-registered practitioner requests admission to practice. If a non-registered practitioner requests admission to multiple AIA trial proceedings, multiple requests and fees

would be required, one for each proceeding. Once a request is granted, the counsel is admitted for the entire duration of a proceeding, which may extend for several years, (e.g., when an *inter partes* review proceeds to final written decision, and, after appeal to the Federal Circuit, is remanded back to PTAB for further proceedings). By

instituting the pro hac vice fee, the Office will be able to shift the cost of this service of processing these requests from the overall AIA trial fees to the requesting, non-USPTO registered counsel.

(c) Annual Active Patent Practitioner Fee

TABLE 11—OED AND PATENT ENROLLMENT—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2018 unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Annual Active Patent Practitioner Fee <i>without</i> certifying continuing legal education (CLE) completion.	New	\$340	+\$340	n/a	n/a
Annual Active Patent Practitioner Fee <i>with</i> certifying continuing legal education (CLE) completion.	New	\$240	+\$240	n/a	n/a
Annual Voluntarily Inactive Fee	New	\$70	+\$70	n/a	n/a

The Office proposes to implement an annual active patent practitioner fee under 37 CFR 1.21 and 11.8.

Currently, the costs of OED's disciplinary and other functions are paid by patent applicants and owners. The Office proposes these fees so that practitioners, who directly benefit from registration, should bear the costs associated with maintaining the integrity of their profession, including the costs of OED's register maintenance and disciplinary functions. This parallels the way many state bars operate where the services of maintaining the bar are often paid by the attorneys who are members of that bar. Accordingly, these fee collections are proposed to shift the costs of the services OED provides practitioners in administering the disciplinary system and register maintenance from patent applicants and owners to the practitioners.

The intent of the proposed annual active patent practitioner fee is to offset the portion of costs of OED's disciplinary and register maintenance

operations currently paid by patent applicants and owners. The fees would also serve to fund the Patent Pro Bono Program and the Law School Clinic Certification Program, which increase public access to competent legal representation in IP matters, help enhance the IP legal profession for its members, and serve to make the patent examination process more efficient by decreasing the number of *pro se* applicants. In addition, the fee would help to cover the costs of increased outreach efforts, including speaking engagements and providing additional training opportunities to help patent practitioners receive the CLE discount, as discussed below.

The fee, as proposed, would not cover services provided to trademark practitioners and applicants, and therefore, the amount collected from patent practitioners would only be used to cover OED's patent-related functions. To determine the appropriate annual fee rates, the USPTO engaged in an analysis of OED's costs currently paid by patent applicants and owners, as well as the

expected costs of implementing the annual fee. The calculation of the annual fee rates was based upon the annual OED budget after subtracting contributions from trademark operations and contributions from enrollment fee collections, and adding in the costs of implementing the fee and the costs of outreach programs. The calculation was also based on amortizing the IT costs of the implementation of the annual fee over the first three years the fee is collected. In determining the proper fee amount to offset these costs, OED estimated its annual fee collections based on the projected number of registered practitioners who will pay each fee (or be removed from the register) during the year the annual fee is first collected. The estimated collections are based on the current number of registered practitioners and an estimation of how many practitioners are expected to be added to the register between now and when the fee is implemented.

Furthermore, increasing the predictability and reliability of patents

is critical to incentivizing innovation. CLE serves to enhance practitioners' legal skills. Ideally, when practitioners are well-trained and well-educated in patent law and practice, higher quality applications are filed, prosecution is more efficient, and patent grants become stronger, more reliable, and more predictable. It is also critical that patent examiners be able to maintain the pace of their examination process while ensuring that patent quality is preserved. Accordingly, through the encouragement of practitioner CLE by offering a \$100 annual fee discount as well as recognition on OED's public practitioner search page, the patent system should benefit greatly.

The USPTO intends to coordinate the delivery of CLE programs, assess whether third party CLE programs are adequate, and make the completion of CLE—whether offered by the USPTO or third parties—as convenient as possible for practitioners to complete, while ensuring that practitioners receive the training necessary to stay up to date with current ethics and patent law and practice.

Annual Active Patent Practitioner Fee

Each year, registered practitioners, as well as individuals granted limited recognition under 37 CFR 11.9(b), will be, on or before a date to be set by the OED Director, required to pay to the OED Director an annual active patent practitioner fee. Adequate notice will be published and sent to practitioners in advance of the due date for payment of the fee. Payment will be for the calendar year in which the annual active patent practitioner fee is assessed. Practitioners will be required to pay the fee electronically through the USPTO's online payment system.

Persons newly registered or granted limited recognition will not be liable for the annual active practitioner fee during the calendar year in which they are first registered or granted limited recognition. Practitioners who are endorsed on the register as administratively inactive or in emeritus status will not be liable for the annual active practitioner fee. Law school students participating in the USPTO Law School Clinic Certification Program who are granted limited recognition to practice before the Office in patent matters pursuant to 37 CFR 11.16(d) will not be liable for the annual active practitioner fee. Practitioners who are endorsed on the register as voluntarily inactive will be liable for a fee of \$70 per year to cover OED's administrative costs in maintaining the register and updating their information. Practitioners may apply to become active by paying

the reinstatement fee and making their request to the OED Director, as set forth below.

Emeritus Status

The USPTO proposes to create a new emeritus status for practitioners. The new emeritus status would allow active patent practitioners who have been registered for ten or more years to elect emeritus status, provided they are not under investigation at the time they elect such a status. Emeritus practitioners may not practice in patent matters, with the exception of *pro bono* matters through the USPTO Patent Pro Bono Program in which they do not receive compensation. A practitioner in emeritus status will not be required to pay the annual fee, but will remain under the disciplinary jurisdiction of the OED Director.

Continuing Legal Education (CLE)

The USPTO proposes to provide a \$100 discount for registered practitioners or persons granted limited recognition who certify completion of six hours of continuing legal education in the twenty four months preceding payment of the fee, including five hours of patent law and practice and one hour of ethics credit. Practitioners would be asked to certify whether or not they have completed the recommended number of CLE hours over the past twenty four months at the time they pay their annual active patent practitioner fee, as set forth below.

The USPTO proposes that a registered practitioner or person granted limited recognition may earn up to two of the five hours of CLE in patent law and practice toward the CLE discount by participating in the USPTO Patent Pro Bono Program. For every three hours of *pro bono* service, a patent practitioner may earn one hour of CLE credit toward the annual active patent practitioner fee discount.

Late Payment

Failure to pay the annual fee by the due date may result in the practitioner being charged a delinquency fee and being subject to administrative suspension. Specifically, if a registered practitioner, or person granted limited recognition pursuant to 37 CFR 11.9(b), fails to pay the annual fee by the due date, the OED Director will publish and send a notice to the practitioner advising him or her of the nonpayment, the consequence of being administratively suspended, and the requirements for reinstatement. The notice will request payment of the annual fee and a \$50 delinquency fee, as set forth in 37 CFR 1.21(a)(9)(i),

within 60 days after the date of such notice.

If a practitioner fails to comply with the notice within the time allowed, the OED Director will then publish and send to the practitioner a Rule to Show Cause why his or her registration should not be administratively suspended. The OED Director shall file a copy of the Rule to Show Cause with the USPTO Director. The practitioner will be given 30 days from the date of the Rule to Show Cause to file a response with the USPTO Director. The response should address any factual and legal bases why the practitioner should not be administratively suspended. Within ten days of receiving a copy of the response, the OED Director may file a reply with the USPTO Director. The USPTO Director will enter an order either dismissing the Rule to Show Cause or administratively suspending the registered practitioner. Administratively suspended practitioners will continue to be assessed the annual active patent practitioner fee during the period of their suspension.

Reinstatement

The sections referring to reinstatement from administratively inactive status remain unchanged. The reinstatement sections relating to other statuses are set forth below.

Administratively Suspended

Pursuant to 37 CFR 11.11(f)(1), any registered practitioner, or person granted limited recognition, who has been administratively suspended for less than five years may be reinstated on the register provided the practitioner is not a party to a disciplinary proceeding. To apply for reinstatement, the practitioner will need to submit an application form supplied by the OED, demonstrate compliance with the provisions of § 11.7(a)(2)(i) and submit a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office; and pay the fees set forth in § 1.21(a)(9)(ii), and all outstanding fees as set forth in § 1.21(a)(8), as well as any applicable delinquency fees as set forth in § 1.21(a)(9)(i), for each year the practitioner is administratively suspended.

Any administratively suspended registered practitioner or person granted limited recognition who fails to make these complete payments within five years of the effective date of the suspension for nonpayment shall be required to file a petition to the OED Director requesting reinstatement and providing objective evidence that they

continue to possess the necessary legal qualifications to render valuable service to patent applicants.

Voluntary Inactive

Any registered practitioner whose name has been endorsed as voluntarily inactive may be reinstated on the register provided the practitioner: (i) Is not a party to a disciplinary proceeding; (ii) has applied for reinstatement on an application form supplied by the OED Director; (iii) has demonstrated compliance with the provisions of § 11.7(a)(2)(i) and (iii); (iv) submits a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws

and the rules of practice before the Office; (v) has paid the fees set forth in § 1.21(a)(9)(ii); (vi) is not currently administratively suspended; and (vii) has paid all outstanding fees as set forth in § 1.21(a)(7), as well as any applicable delinquency fees as set forth in 37 CFR 1.21(a)(9)(i), for each year the practitioner is voluntarily inactive. A practitioner will be subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the period of his or her voluntary inactivation.

Emeritus

Practitioners who have elected emeritus status may be restored to active

status by filing a request for reinstatement with the OED Director and paying the \$210 reinstatement fee and the \$70 inactive fee for each year they were in emeritus status.

C. Discontinued Fees

This section describes fees that are proposed to be discontinued. The purpose of this proposed action is to help streamline the patent fee schedule, while also focusing USPTO workforce efforts on producing products that benefit the general public, rather than producing outputs for individual customers. The Office does not capture historical cost information for these proposed discontinued fees.

TABLE 12—DISCONTINUED FEES

Fee description	Current fees Large (small) [micro] entity	Proposed fees Large (small) [micro] entity	Dollar change Large (small) [micro] entity	Percent change Large (small) [micro] entity	FY 2018 unit cost
Copy of Patent Technology Monitoring Team (PTMT) patent bibliographic extract and other DVD (optical disc) (currently at § 1.19(j)).	\$50	Discontinue	– \$50	n/a	n/a
Copy of U.S. patent custom data extracts (currently at § 1.19(k)).	\$100	Discontinue	– \$100	n/a	n/a
Copy of selected technology reports, miscellaneous technology areas (currently at § 1.19(l)).	\$30	Discontinue	– \$30	n/a	n/a

In January 2018, to comply with Presidential Executive Order 13681, Improving the Security of Consumer Financial Transactions, select computer service fees were discontinued and the services made free. These proposed changes follow that trend. The above proposed service fees will be eliminated and the Office will instead provide these services, in a slightly modified form (*i.e.*, electronic), for free.

The first fee proposed for discontinuation is the current 37 CFR 1.19(j) fee for a copy of Patent Technology Monitoring Team, or PTMT, patent bibliographic extract and other DVDs. PTMT patent bibliographic data is currently available online for free, curtailing the need for USPTO to send out extracts on disc.

The second fee proposed for discontinuation is the current 37 CFR

1.19(k) fee for a copy of U.S. patent custom data extracts. With the elimination of this service fee, USPTO would create the common customizations and release them online, free to the public, at the same time the data is released. Further customizations would be discontinued. Additionally, PatentsView (<http://www.patentsview.org>), while not an official USPTO data source, meets many of the needs for those requesting custom data extracts, at no charge to the consumer.

The third fee proposed for discontinuation is the current 37 CFR 1.19(l) fee for a copy of selected technology reports in miscellaneous technology areas. Selected technology reports are currently available online for free, curtailing the need for USPTO to send out paper copies of the reports.

VI. Discussion of Specific Rules

The following section shows the Code of Federal Regulations (CFR) proposed fee amendments. The discussion below includes all proposed fee amendments, all proposed fee discontinuations, and all proposed changes to the CFR text.

Title 37 of the CFR, parts 1, 11, 41, and 42, are proposed to be amended as follows:

Section 1.16 is proposed to be amended by revising paragraphs (a) through (e), (h), (j), (k), and (m) through (s) and adding paragraph (u) to set forth the application filing, excess claims, search, and examination fees for patent applications filed as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.16 are shown in Table 13.

TABLE 13—CFR SECTION 1.16 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.16(a)	1011/2011/3011	Basic Filing Fee—Utility	300	150	75	320	160	80
1.16(a)	4011	Basic Filing Fee—Utility (electronic filing for small entities).	n/a	75	n/a	n/a	80	n/a
1.16(b)	1012/2012/3012	Basic Filing Fee—Design	200	100	50	220	110	55
1.16(b)	1017/2017/3017	Basic Filing Fee—Design (CPA)	200	100	50	220	110	55
1.16(c)	1013/2013/3013	Basic Filing Fee—Plant	200	100	50	220	110	55

TABLE 13—CFR SECTION 1.16 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.16(d)	1005/2005/3005	Provisional Application Filing Fee ...	280	140	70	300	150	75
1.16(e)	1014/2014/3014	Basic Filing Fee—Reissue	300	150	75	320	160	80
1.16(e)	1019/2019/3019	Basic Filing Fee—Reissue (Design CPA).	300	150	75	320	160	80
1.16(h)	1201/2201/3201	Independent Claims in Excess of Three.	460	230	115	480	240	120
1.16(h)	1204/2204/3204	Reissue Independent Claims in Excess of Three.	460	230	115	480	240	120
1.16(j)	1203/2203/3203	Multiple Dependent Claim	820	410	205	860	430	215
1.16(k)	1111/2111/3111	Utility Search Fee	660	330	165	700	350	175
1.16(m)	1113/2113/3113	Plant Search Fee	420	210	105	440	220	110
1.16(n)	1114/2114/3114	Reissue Search Fee	660	330	165	700	350	175
1.16(o)	1311/2311/3311	Utility Examination Fee	760	380	190	800	400	200
1.16(p)	1312/2312/3312	Design Examination Fee	600	300	150	640	320	160
1.16(q)	1313/2313/3313	Plant Examination Fee	620	310	155	660	330	165
1.16(r)	1314/2314/3314	Reissue Examination Fee	2,200	1,100	550	2,320	1,160	580
1.16(s)	1081/2081/3081	Utility Application Size Fee—for Each Additional 50 Sheets That Exceeds 100 Sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Design Application Size Fee—for Each Additional 50 Sheets That Exceeds 100 Sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Plant Application Size Fee—for Each Additional 50 Sheets That Exceeds 100 Sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Reissue Application Size Fee—for Each Additional 50 Sheets That Exceeds 100 Sheets.	400	200	100	420	210	105
1.16(s)	1081/2081/3081	Provisional Application Size Fee—for Each Additional 50 Sheets That Exceeds 100 Sheets.	400	200	100	420	210	105
1.16(u)	NEW	Non-DOCX Filing Surcharge Fee	n/a	n/a	n/a	400	200	100

Section 1.17: Section 1.17 is proposed to be amended by revising paragraphs (a), (c) through (g), (i)(2), (k), (m), (p), (r),

and (s) to set forth the application processing fees as authorized under Section 10 of the Act. The changes to

the fee amounts indicated in § 1.17 are shown in Table 14.

TABLE 14—CFR SECTION 1.17 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.17(a)(1)	1251/2251/3251	Extension for Response Within First Month.	200	100	50	220	110	55
1.17(a)(2)	1252/2252/3252	Extension for Response Within Second Month.	600	300	150	640	320	160
1.17(a)(3)	1253/2253/3253	Extension for Response Within Third Month.	1,400	700	350	1,480	740	370
1.17(a)(4)	1254/2254/3254	Extension for Response Within Fourth Month.	2,200	1,100	550	2,320	1,160	580
1.17(a)(5)	1255/2255/3255	Extension for Response Within Fifth Month.	3,000	1,500	750	3,160	1,580	790
1.17(c)	1817/2817/3817	Request for Prioritized Examination	4,000	2,000	1,000	4,200	2,100	1,050
1.17(d)	1819/2819/3819	Correction of Inventorship After First Action on Merits.	600	300	150	640	320	160
1.17(e)(1)	1801/2801/3801	Request for Continued Examination (RCE) (1st request) (see 37 CFR 1.114).	1,300	650	325	1,360	680	340
1.17(e)(2)	1820/2820/3820	Request for Continued Examination (RCE) (2nd and subsequent request).	1,900	950	475	2,000	1,000	500
1.17(f)	1462/2462/3462	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(f) (Group I).	400	200	100	420	210	105
1.17(g)	1463/2463/3463	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(g) (Group II).	200	100	50	220	110	55

TABLE 14—CFR SECTION 1.17 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.17(i)(2)	1803/2803/3803	Request for voluntary publication or republication.	130	130	130	140	140	140
1.17(i)(2)	1808/2808/3808	Other Publication Processing Fee ...	130	130	130	140	140	140
1.17(k)	1802/2802/3802	Request for Expedited Examination of a Design Application.	900	450	225	2,000	1,000	500
1.17(m)	1453/2453/3453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding.	2,000	1,000	500	2,100	1,050	525
1.17(m)	1454/2454/3454	Petition for the Delayed Submission of a Priority or Benefit Claim.	2,000	1,000	500	2,100	1,050	525
1.17(m)	1784/2784/3784	Petition to Excuse Applicant's Failure to Act Within Prescribed Time Limits in an International Design Application.	2,000	1,000	500	2,100	1,050	525
1.17(m)	1558/2558/3558	Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force.	2,000	1,000	500	2,100	1,050	525
1.17(p)	1806/2806/3806	Submission of an Information Disclosure Statement.	240	120	60	260	130	65
1.17(r)	1809/2809/3809	Filing a Submission After Final Rejection (see 37 CFR 1.129(a)).	840	420	210	880	440	220
1.17(s)	1810/2810/3810	For Each Additional Invention to be Examined (see 37 CFR 1.129(b)).	840	420	210	880	440	220

Section 1.18: Section 1.18 is proposed to be amended by revising paragraphs (a) through (f) to set forth the patent

issue fees as authorized under Section 10 of the Act. The changes to the fee

amounts indicated in § 1.18 are shown in Table 15.

TABLE 15—CFR SECTION 1.18 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.18(a)(1)	1501/2501/3501	Utility Issue Fee	1,000	500	250	1,200	600	300
1.18(a)(1)	1511/2511/3511	Reissue Issue Fee	1,000	500	250	1,200	600	300
1.18(b)(1)	1502/2502/3502	Design Issue Fee	700	350	175	740	370	185
1.18(c)(1)	1503/2503/3503	Plant Issue Fee	800	400	200	840	420	210
1.18(d)(3)	1505/2505/3505	Publication Fee for Republication ...	300	300	300	320	320	320
1.18(e)	1455/2455/3455	Filing an Application for Patent Term Adjustment.	200	200	200	210	210	210
1.18(f)	1456/2456/3456	Request for Reinstatement of Term Reduced.	400	400	400	420	420	420

Section 1.19: Section 1.19 is proposed to be amended by revising paragraphs (b)(1)(i)(B) and (b)(1)(ii)(B), and by

removing and reserving paragraphs (j) through (l) to set forth the patent document supply fees as authorized

under Section 10 of the Act. The changes to the fee amounts indicated in § 1.19 are shown in Table 16.

TABLE 16—CFR SECTION 1.19 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.19(b)(1)(i)(B)	8051	Copy Patent File Wrapper, Paper Medium, Any Number of Sheets.	280	280	280	290	290	290

TABLE 16—CFR SECTION 1.19 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.19(b)(1)(ii)(B)	8052	Copy Patent File Wrapper, Electronic Medium, Any Size or Provided Electronically.	55	55	55	60	60	60
1.19(j)	8057	Copy of Patent Technology Monitoring Team (PTMT) patent bibliographic extract and other DVD (optical disc).	50	50	50	(¹)	(¹)	(¹)
1.19(k)	8058	Copy of U.S. patent custom data extracts.	100	100	100	(¹)	(¹)	(¹)
1.19(l)	8059	Copy of selected technology reports, miscellaneous technology areas.	30	30	30	(¹)	(¹)	(¹)

¹ discontinue.

Section 1.20: Section 1.20 is proposed to be revised to set forth post issuance fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.20 are shown in Table 17.

TABLE 17—CFR SECTION 1.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.20(a)	1811/2811/3811	Certificate of Correction	150	150	150	160	160	160
1.20(b)	1816/2816/3816	Processing Fee for Correcting Inventorship in a Patent.	150	150	150	160	160	160
1.20(c)(1)	1831/2831/3831	<i>Ex Parte</i> Reexamination (§ 1.510(a)) in forty (40) or fewer pages.	6,000	3,000	1,500	6,300	3,150	1,575
1.20(c)(2)	1812/2812/3812	<i>Ex Parte</i> Reexamination (§ 1.510(a)) in forty-one (41) or more pages.	12,000	6,000	3,000	12,600	6,300	3,150
1.20(c)(7)	1812/2812/3812	Refused request for <i>ex parte</i> Reexamination.	3,600	1,800	900	3,780	1,890	945
1.20(c)(3)	1821/2821/3821	Reexamination Independent Claims in Excess of Three and also in Excess of the Number of Such Claims in the Patent Under Reexamination.	460	230	115	480	240	120
1.20(c)(5)	1824/2824/3824	Petitions in a Reexamination Proceeding, Except for those Specifically Enumerated in 37 CFR 1.550(i) and 1.937(d).	1,940	970	485	2,040	1,020	510
1.20(d)	1814/2814/3814	Statutory Disclaimer, Including Terminal Disclaimer.	160	160	160	170	170	170
1.20(e)	1551/2551/3551	For Maintaining an Original or Any Reissue Patent, Due at 3.5 years.	1,600	800	400	2,000	1,000	500
1.20(f)	1552/2552/3552	For Maintaining an Original or Any Reissue Patent, Due at 7.5 years.	3,600	1,800	900	3,760	1,880	940
1.20(g)	1553/2553/3553	For Maintaining an Original or Any Reissue Patent, Due at 11.5 years.	7,400	3,700	1,850	7,700	3,850	1,925
1.20(h)	1554/2554/3554	Surcharge—3.5 year—Late Payment Within 6 Months.	160	80	40	500	250	125
1.20(h)	1555/2555/3555	Surcharge—7.5 year—Late Payment Within 6 Months.	160	80	40	500	250	125
1.20(h)	1556/2556/3556	Surcharge—11.5 year—Late Payment Within 6 Months.	160	80	40	500	250	125
1.20(j)(1)	1457/2457/3457	Extension of Term of Patent	1,120	1,120	1,120	1,180	1,180	1,180
1.20(j)(2)	1458/2458/3458	Initial Application for Interim Extension (see 37 CFR 1.790).	420	420	420	440	440	440

TABLE 17—CFR SECTION 1.20 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.20(j)(3)	1459/2459/3459	Subsequent Application for Interim Extension (<i>see</i> 37 CFR 1.790).	220	220	220	230	230	230
1.20(k)(1)	1826/2826/3826	Request for Supplemental Examination.	4,400	2,200	1,100	4,620	2,310	1,155
1.20(k)(2)	1827/2827/3827	Reexamination Ordered as a Result of Supplemental Examination.	12,100	6,050	3,025	12,700	6,350	3,175
1.20(k)(3)(ii)	1829/2829/3829	Supplemental Examination Document Size Fee—for Each Additional 50 Sheets or a Fraction Thereof in a Nonpatent Document.	280	140	70	300	150	75

Section 1.21: Section 1.21 is proposed to be amended by adding paragraphs (a)(7) and (8) and revising paragraphs (a)(1), (2), and (5), (a)(9)(ii), (a)(10), (k), (n), (o), and (q) to set forth miscellaneous fees and charges as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.21 are shown in Table 18.

The USPTO proposes to add paragraph (a)(7) to § 1.21 to create a voluntary inactive fee of \$70, to be paid by registered practitioners and persons granted limited recognition who are endorsed on the register as voluntarily inactive.

The USPTO proposes to add paragraph (a)(8) to § 1.21 to create an annual active patent practitioner fee. Paragraph (a)(8)(i) of § 1.21 is proposed to set a discounted fee of \$240 for registered practitioners and persons granted limited recognition under 37 CFR 11.9(b) who certify to the OED Director that they have completed six hours of continuing legal education

within the past 24 months. Paragraph (a)(8)(ii) of § 1.21 is proposed to set a fee of \$340 for registered practitioners and persons granted limited recognition under 37 CFR 11.9(b) who do not certify to the OED Director that they have completed six hours of continuing legal education within the past 24 months.

The USPTO proposes to amend paragraph (o) of § 1.21 to clarify the applicability of its provisions. The USPTO proposes to specify that the mega-sequence listing fee applies to applications filed under 35 U.S.C. 111 and 371 to clarify that the fee applies to provisional applications, nonprovisional applications, and national stage applications; the fee does not apply to international applications filed with the U.S. Receiving Office (RO/US). Furthermore, because a sequence listing in a national stage application may be received by the USPTO from the International Bureau in accordance with PCT Article 20, rather than directly submitted to the USPTO by the applicant, the USPTO proposes

to specifically provide that the mega-sequence listing fee applies to such receipt. The USPTO further proposes to clarify that the fee applies to only the first submission or receipt of a sequence listing in electronic form having a size ranging from 300 MB to 800 MB and to the first submission or receipt of a sequence listing in electronic form having a size over 800 MB. Thus, an applicant will not be charged the mega-sequence listing fee for the submission of a substitute or replacement electronic form of the sequence listing (*see* 37 CFR 1.825) unless the size of the substitute or replacement electronic form sequence listing is subject to the provisions of a different paragraph of § 1.21(o) (*e.g.*, the first sequence listing in an application is between 300 MB and 800 MB, and a replacement sequence listing is greater than 800 MB). Finally, the USPTO proposes to specify that for purposes of determining the fee required under § 1.21(o), the size of the electronic form of the sequence listing is measured without file compression.

TABLE 18—CFR SECTION 1.21 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.21(a)(1)(i)	9001	Application Fee (non-refundable)	100	100	100	110	110	110
1.21(a)(1)(ii)(A)	9010	For Test Administration by Commercial Entity.	200	200	200	210	210	210
1.21(a)(1)(ii)(B)	9011	For Test Administration by the USPTO.	450	450	450	470	470	470
1.21(a)(1)(iii)	9029	For USPTO-Administered Review of Registration Examination.	450	450	450	470	470	470
1.21(a)(2)(i)	9003	On Registration to Practice Under § 11.6.	200	200	200	210	210	210
1.21(a)(2)(ii)	9026	On Grant of Limited Recognition under § 11.9(b).	200	200	200	210	210	210
1.21(a)(2)(iii)	9025	On change of registration from agent to attorney.	100	100	100	110	110	110
1.21(a)(5)(i)	9012	Review of Decision by the Director of Enrollment and Discipline under § 11.2(c).	400	400	400	420	420	420
1.21(a)(5)(ii)	9013	Review of Decision of the Director of Enrollment and Discipline under § 11.2(d).	400	400	400	420	420	420
1.21(a)(7)	NEW	Inactive Patent Practitioner Fee	n/a	n/a	n/a	70	70	70

TABLE 18—CFR SECTION 1.21 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.21(a)(8)(i)	NEW	Annual Active Practitioner Fee with certifying continuing legal education completion.	n/a	n/a	n/a	240	240	240
1.21(a)(8)(ii)	NEW	Annual Active Practitioner Fee without certifying continuing legal education completion.	n/a	n/a	n/a	340	340	340
1.21(a)(9)(ii)	9004	Administrative Reinstatement Fee ...	200	200	200	210	210	210
1.21(a)(10)	9014	On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office.	1,600	1,600	1,600	1,680	1,680	1,680
1.21(k)	9024	Unspecified other services, excluding labor.	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
1.21(n)	8026	Handling Fee for Incomplete or Improper Application.	130	130	130	140	140	140
1.21(o)(1)	1091/2091/3091	Submission of sequence listings ranging in size of 300 MB to 800 MB.	1,000	500	250	1,060	530	265
1.21(o)(2)	1092/2092/3092	Submission of sequence listings exceeding 800 MB.	10,000	5,000	2,500	10,500	5,250	2,625
1.21(q)	8054	Additional Fee for Expedited Service.	160	160	160	170	170	170

¹ No Cost.

Section 1.27: Section 1.27 is proposed to be amended by revising the introductory text of paragraph (a)(3) to provide that the payment, by any party, of the exact amount of the small entity transmittal fee set forth in § 1.1031(a) will be treated as a written assertion of entitlement to small entity status. The proposed change to § 1.27(a)(3) will make it easier for applicants filing an international design application through

the USPTO as an office of indirect filing to establish small entity status.

Section 1.431: Section 1.431 is proposed to be amended by revising paragraph (c) to remove reference to the late payment fee calculation under PCT Rule 16*bis*.2. The late payment fee pursuant to PCT Rule 16*bis*.2 is proposed to be added to § 1.445, as that provision concerns international application filing, processing and search fees.

Section 1.445: Section 1.445 is proposed to be amended by revising paragraphs (a) to set forth international filing, processing, and search fees and charges as authorized under Section 10 of the Act. The changes to the fee amounts indicated in 37 CFR 1.445 are shown in Table 19. Section 1.445(a) is also proposed to be amended to include the late payment fee pursuant to PCT Rule 16*bis*.2. See discussion of § 1.431, *supra*.

TABLE 19—CFR SECTION 1.445 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.445(a)(1)(i)(A)	1601/2601/3601	Transmittal Fee	240	120	60	260	130	65
1.445(a)(2)(i)	1602/2602/3602	Search Fee—Regardless of Whether There is a Corresponding Application (see 35 U.S.C. 361(d) and PCT Rule 16).	2,080	1,040	520	2,180	1,090	545
1.445(a)(3)(i)	1604/2604/3604	Supplemental Search Fee When Required, per Additional Invention.	2,080	1,040	520	2,180	1,090	545
1.445(a)(4)(i)	1621/2621/3621	Transmitting Application to Intl. Bureau to Act as Receiving Office.	240	120	60	260	130	65
1.445(a)(5)	1627/2627/3627	Late Furnishing Fee for Providing a Sequence Listing in Response to an Invitation Under PCT Rule 13ter.	300	150	75	320	160	80

Section 1.482: Section 1.482 is proposed to be amended by revising paragraphs (a) and (c) to read as set out

in the regulatory text at the end of this document. The changes to the fee

amounts indicated in § 1.482 are shown in Table 20.

TABLE 20—CFR SECTION 1.482 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.482(a)(1)(i)	1605/2605/3605	Preliminary Examination Fee—U.S. Was the ISA.	600	300	150	640	320	160
1.482(a)(1)(ii)	1606/2606/3606	Preliminary Examination Fee—U.S. Was Not the ISA.	760	380	190	800	400	200
1.482(a)(2)(i)	1607/2607/3607	Supplemental Examination Fee per Additional Invention.	600	300	150	640	320	160
1.482(c)	1627/2627/3627	Late Furnishing Fee for Providing a Sequence Listing in Response to an Invitation Under PCT Rule 13ter.	300	150	75	320	160	80

Section 1.492: Section 1.492 is proposed to be amended by revising paragraphs (a), (b)(3) and (4), (c)(2), (d), (f), (h), and (j) to set forth the

application filing, excess claims, search, and examination fees for international patent applications entering the national stage as authorized under Section 10 of

the Act. The changes to the fee amounts indicated in § 1.492 are shown in Table 21.

TABLE 21—CFR SECTION 1.492 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.492(a)	1631/2631/3631	Basic PCT National Stage Fee	300	150	75	320	160	80
1.492(b)(3)	1642/2642/3642	PCT National Stage Search Fee—Search Report Prepared and Provided to USPTO.	520	260	130	540	270	135
1.492(b)(4)	1632/2632/3632	PCT National Stage Search Fee—All Other Situations.	660	330	165	700	350	175
1.492(c)(2)	1633/2633/3633	National Stage Examination Fee—All Other Situations.	760	380	190	800	400	200
1.492(d)	1614/2614/3614	PCT National Stage Claims—Extra Independent (over three).	460	230	115	480	240	120
1.492(f)	1616/2616/3616	PCT National Stage Claims—Multiple Dependent.	820	410	205	860	430	215
1.492(h)	1617/2617/3617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage.	140	70	35	160	80	40
1.492(j)	1681/2681/3681	National Stage Application Size Fee—for Each Additional 50 Sheets That Exceeds 100 Sheets.	400	200	100	420	210	105

Section 11.8: The USPTO proposes to add paragraph (d) to § 11.8 to establish a new fee to be paid annually by practitioners. Paragraph (d)(1) of § 11.8 is proposed to require registered practitioners and persons granted limited recognition under § 11.9(b) to pay the fee to the OED Director each year, beginning the year after they are registered or granted limited recognition. Paragraph (d)(2) of § 11.8 is proposed to explain that failure to comply with paragraph (d)(1) may result in being charged a delinquency fee, administrative suspension as set forth in § 11.11(b), or both.

The USPTO proposes to add paragraph (d)(3)(i) to § 11.8 to provide for a discount for registered practitioners or persons granted limited recognition who certify completion of six hours of continuing legal education

credit in the preceding twenty-four months, including five hours of patent law and practice and one hour of ethics. To receive the discount, practitioners would be asked to certify that they completed the recommended number of CLE hours at the time they pay their annual active patent practitioner fee. Generally, the same types of courses and activities that qualify for CLE credit in another state will qualify for credit for purposes of the CLE certification discount, so long as it covers the appropriate topics. For patent law and practice, any course that covers any of the topics included in 37 CFR 11.5(b)(1) would be accepted. For ethics credit, any ethics course hosted by the USPTO, or any course accepted for ethics CLE credit in any U.S. state or territory would be accepted. The USPTO considered that CLE may not be equally

available to practitioners in all geographic areas, and therefore, has proposed that live or pre-recorded material would be accepted for purposes of obtaining the CLE discount. The USPTO is also seeking comments on whether the public would like the option to request that OED “pre-certify” courses for a fee if they comply with OED’s guidelines for accepted CLE courses. The USPTO considered requiring patent examiners to complete similar training, but is not proposing to do so at this time. Patent examiners are already required to complete rigorous training as part of their job duties. Further, patent practitioners are not, at this time, required to complete CLE, but the USPTO is proposing to merely offer a discount on the annual fee for doing so. Patent examiners would not be required to pay the annual active patent

practitioner fee under this proposal, and therefore would not receive a discount to the fee.

The USPTO also considered that patent agents and some patent attorneys are not currently subject to any CLE requirements, so requiring CLE to receive a discount may be viewed as more burdensome for these groups. However, all patent agents and attorneys are provided the same services in maintaining the integrity of their profession, and granted the same rights to practice before the USPTO, and therefore, the USPTO proposes charging the same fee for all patent practitioners. Again, the USPTO is not requiring any practitioner to complete CLE, but merely offering a discount for doing so.

The USPTO proposes to add paragraph (d)(3)(ii) of § 11.8 to provide that a registered practitioner or person granted limited recognition may earn up to two of the five hours of CLE in patent law and practice by participating in the USPTO Patent Pro Bono Program. For every three hours of *pro bono* service, a patent practitioner may earn one hour of CLE credit toward the annual active patent practitioner fee discount.

Section 11.11: The USPTO proposes to redesignate paragraph (a)(1) as paragraph (a), and to amend the paragraph to provide that the OED Director may publish a practitioner's CLE certification status.

The USPTO proposes to remove paragraph (a)(2) of § 11.11, as its provisions relate to the mandatory survey, which would no longer be conducted by the OED Director if the annual fee is implemented.

The USPTO proposes to amend paragraph (b)(1) of § 11.11 to apply to those failing to comply with § 11.8(d)(1), which refers to the annual active patent practitioner fee, rather than

§ 11.11(a)(2), which refers to the mandatory survey.

The USPTO proposes to add paragraph (b)(4) of § 11.11 to provide that the annual active patent practitioner fee will continue to be assessed for those practitioners who are administratively suspended during the period of administrative suspension.

The USPTO proposes to amend paragraph (d)(1) of § 11.11 to remove the exception set forth in paragraph (d)(4), as there is currently no paragraph (d)(4). The addition of paragraph (d)(4) is being proposed in these Rules, but does not refer to an exception to (d)(1).

The USPTO proposes to add paragraph (d)(4) of § 11.11 to require registered practitioners and persons granted limited recognition under § 11.9(b), who are endorsed on the register as voluntarily inactive to pay an annual voluntary inactive fee of \$70 to the OED Director each year.

The USPTO proposes to amend paragraph (d)(6) of § 11.11 to remove the current process for a practitioner in voluntary inactive status to request reinstatement, and instead, refer the practitioner to paragraph (f)(3), which contains a new proposed process for reinstatement of practitioners in voluntary inactive status.

The USPTO proposes to redesignate paragraph (e) of § 11.11 as paragraph (e)(1) and add paragraph (e)(2) to create a new emeritus status for practitioners. The new emeritus status would allow active practitioners who have been registered for ten or more years to elect emeritus status, provided they are not under investigation at the time they elect such a status. Emeritus practitioners may not practice in patent matters, with the exception of *pro bono* matters through the USPTO Patent Pro Bono Program in which they do not receive compensation. A practitioner in

emeritus status will not be required to pay the annual fee, but will remain under the disciplinary jurisdiction of the OED Director.

The USPTO proposes to amend paragraph (f)(1) of § 11.11 to remove any references to resigned practitioners, remove the requirement that a practitioner who was administratively suspended for two or more years before the date the Office receives a completed application from the person must also pass the registration examination under § 11.7(b)(1)(ii), and add the requirement that any practitioner who remains administratively suspended for more than five years shall be required to file a petition to the OED Director requesting reinstatement and providing objective evidence that the practitioner continues to possess the necessary legal qualifications to render applicants valuable service to patent applicants.

The USPTO proposes to add paragraph (f)(3) which would set forth the process by which voluntarily inactive practitioners may be reinstated on the register in active status.

The USPTO proposes to add paragraph (f)(4) of § 11.11, which sets forth the process by which a practitioner who has resigned may apply to be reinstated to the register in active status.

The USPTO proposes to add paragraph (f)(5) of § 11.11 which sets forth the process by which a practitioner who has elected emeritus status may apply to be reinstated to the register in active status.

Section 41.20: Section 41.20 is proposed to be amended by revising paragraph (a), (b)(1), (b)(2)(ii), and (b)(3) and (4) to set forth the appeal fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 41.20 are shown in Table 22.

TABLE 22—CFR SECTION 41.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
41.20(a)	1405/2405/3405	Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3.	400	400	400	420	420	420
41.20(b)(1)	1401/2401/3401	Notice of Appeal	800	400	200	840	420	210
41.20(b)(2)(ii)	1404/2404/3404	Filing a Brief in Support of an Appeal in an <i>Inter Partes</i> Reexamination Proceeding.	2,000	1,000	500	2,100	1,050	525
41.20(b)(3)	1403/2403/3403	Request for Oral Hearing	1,300	650	325	1,360	680	340
41.20(b)(4)	1413/2413/3413	Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board.	2,240	1,120	560	2,360	1,180	590

Section 42.15: Section 42.15 is proposed to be amended by revising paragraphs (a) through (e) to set forth

the *inter partes* review and post-grant review or covered business method patent review of patent fees as

authorized under Section 10 of the Act. The changes to the fee amounts

indicated in § 42.15 are shown in Table 23.

TABLE 23—CFR SECTION 42.15 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
42.15(a)(1)	1406	<i>Inter Partes</i> Review Request Fee—Up to 20 Claims.	15,500	15,500	15,500	19,500	19,500	19,500
42.15(a)(2)	1414	<i>Inter Partes</i> Review Post-Institution Fee—Up to 15 Claims.	15,000	15,000	15,000	n/a	n/a	n/a
42.15(a)(2)	1414	<i>Inter Partes</i> Review Post-Institution Fee—Up to 20 Claims.	n/a	n/a	n/a	18,750	18,750	18,750
42.15(a)(3)	1407	In Addition to the <i>Inter Partes</i> Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	300	300	300	375	375	375
42.15(a)(4)	1415	In addition to the <i>Inter Partes</i> Post-Institution Fee, for Requesting Review of Each Claim in Excess of 20.	600	600	600	750	750	750
42.15(b)(1)	1408	Post-Grant or Covered Business Method Patent Review Request Fee—Up to 20 Claims.	16,000	16,000	16,000	20,000	20,000	20,000
42.15(b)(2)	1416	Post-Grant or Covered Business Method Patent Review Post-Institution Fee—Up to 15 Claims.	22,000	22,000	22,000	n/a	n/a	n/a
42.15(b)(2)	1416	Post-Grant or Covered Business Method Patent Review Post-Institution Fee—Up to 20 Claims.	n/a	n/a	n/a	27,500	27,500	27,500
42.15(b)(3)	1409	In Addition to the Post-Grant or Covered Business Method Patent Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	375	375	375	475	475	475
42.15(b)(4)	1417	In Addition to the Post-Grant or Covered Business Method Patent Review Post-Institution Fee, for Requesting Review of Each Claim in Excess of 20.	825	825	825	1,050	1,050	1,050
42.15(c)(1)	1412	Petition for a Derivation Proceeding	400	400	400	420	420	420
42.15(d)	1411	Request to Make a Settlement Agreement Available and Other Requests Filed in a Patent Trial Proceeding.	400	400	400	420	420	420
42.15(e)	NEW	Pro Hac Vice Admission Fee	n/a	n/a	n/a	250	250	250

VII. Rulemaking Considerations

A. AIA: America Invents Act

This proposed rule seeks to set and adjust fees under Section 10(a) of the AIA as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158. Section 10(a) of the AIA authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the U.S.C. for any services performed, or materials furnished, by the Office. The SUCCESS Act extends the USPTO fee setting authority until September 2026. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set

individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, Section 10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under Section 10, and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the Office provide a public comment period of not less than 45 days.

The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of

patent operations. When proposing fees under Section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office considers and analyzes any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on August 8, 2018, the Director notified the PPAC of the Office's intent to set or

adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The PPAC held a public hearing in Alexandria, Virginia, on September 6, 2018. Transcripts of the hearing are available for review at https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20180906.pdf. Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from this hearing and made all comments available to the public via the Fee Setting website, <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on October 29, 2018, and can be found online at https://www.uspto.gov/sites/default/files/documents/PPAC_Fee_Setting_Report_Oct2018.pdf. The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing this NPRM. Further discussion of the PPAC report can be found in the section titled “Fee Setting Considerations.” Before the final rule is issued, this proposed rule provides the public with a 60-day period during which comments may be submitted for consideration by the USPTO.

B. Regulatory Flexibility Act

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to examine the impact on small entities of the Office’s proposed rule implementing changes to patent fees. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the Office must prepare and make available for public comment an IRFA, unless the Office certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Given that the proposed fee schedule is projected to result in \$1,061.3 million in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2021 to FY 2024, the Office acknowledges that the fee

adjustments proposed will impact all entities seeking patent protection and could have a significant impact on small and micro entities. The \$1,061.3 million in additional aggregate revenue results from an additional \$167.0 million in FY 2021, \$294.9 million in FY 2022, \$294.6 million in FY 2023, and \$304.9 million in FY 2024.

While the Office welcomes all comments on this IRFA, it particularly seeks comments describing the type and extent of the impact of the proposed patent fees on commenters’ specific businesses. In describing the impact, the Office requests biographic detail about the impacted businesses or concerns, including the size, average annual revenue, past patent activity (*e.g.*, applications submitted, contested cases pursued, maintenance fees paid, patents abandoned, etc.), and planned patent activity of the impacted business or concern, where feasible. The Office will use this information to further assess the impact of the proposed rule on small entities. Where possible, comments should also describe any recommended alternative methods of setting and adjusting patent fees that would further reduce the impact on small entities.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. A Description of the Reasons Why the Action by the Office Is Being Considered

Section 10 of the AIA, as amended by the SUCCESS Act, authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed, or materials furnished, by the Office. Section 10 prescribes that patent fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs to the Office with respect to such patent fees. The proposed fee schedule will recover the aggregate cost of patent operations while facilitating the effective administration of the U.S. patent system. The reasons why the rulemaking is being considered are further discussed in section 6.i below and elsewhere in this IRFA and the NPRM.

2. The Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to implement the fee setting provisions of Section 10 of the Act by setting or adjusting patent fees to recover the

aggregate cost of patent operations, including administrative costs, while facilitating the effective administration of the U.S. patent system. Since its inception, the Act strengthened the patent system by affording the USPTO the “resources it requires to clear the still sizeable backlog of patent applications and move forward to deliver to all American inventors the first rate service they deserve.” H.R. Rep. No. 112–98(I), at 163 (2011). In setting and adjusting fees under the Act, the Office seeks to secure a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including revenue needed to achieve strategic and operational goals. Additional information on the Office’s strategic goals may be found in the Strategic Plan available at https://www.uspto.gov/sites/default/files/documents/USPTO_2018-2022_Strategic_Plan.pdf. Additional information on the Office’s goals and operating requirements may be found in the “USPTO FY 2020 President’s Budget Request,” available at <https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information>. The legal basis for the proposed rule is Section 10 of the Act.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

SBA Size Standard

The Small Business Act (SBA) size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity’s industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the Small Business Administration, the Office formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006). The Office’s alternate small business size standard consists of SBA’s previously established size standard for entities entitled to pay reduced patent fees. *See* 13 CFR 121.802.

Unlike SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The Office's definition of a small business concern for RFA purposes is a business or other concern that: (1) Meets the SBA's definition of a "business concern or concern" set forth in 13 CFR 121.105 and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006).

If a patent applicant self-identifies on a patent application as qualifying as a small entity, or provides certification of micro entity status for reduced patent fees under the Office's alternative size standard, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Small Entity Defined

The Act provides that fees set or adjusted under Section 10(a) "for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent" with respect to

the application of such fees to any "small entity" (as defined in 37 CFR 1.27) that qualifies for reduced fees under 35 U.S.C. 41(h)(1). In turn, 125 Stat. at 316–17. 35 U.S.C. 41(h)(1) provides that certain patent fees "shall be reduced by 50 percent" for a small business concern as defined by section 3 of the SBA, and to any independent inventor or nonprofit organization as defined in regulations described by the Director.

Micro Entity Defined

Section 10(g) of the Act created a new category of entity called a "micro entity." 35 U.S.C. 123; *see also* 125 Stat. at 318–19. Section 10(b) of the Act provides that the fees set or adjusted under Section 10(a) "for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 75 percent with respect to the application of such fees to any micro entity as defined by 35 U.S.C. 123." 125 Stat. at 315–17. 35 U.S.C. 123(a) defines a "micro entity" as an applicant who makes a certification that the applicant: (1) Qualifies as a small entity as defined in 37 CFR 1.27; (2) has not been named as an inventor on more than 4 previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or Patent Cooperation Treaty (PCT) applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding

calendar year, as most recently reported by the Bureau of the Census;¹ and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity exceeding the income limit set forth in (3) above. *See* 125 Stat. at 318. 35 U.S.C. 123(d) also defines a "micro entity" as an applicant who certifies that: (1) The applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

Estimate of Number of Small Entities Affected

The changes in the proposed rule will apply to any entity, including small and micro entities, which pays any patent fee set forth in the NPRM. The reduced fee rates (50 percent for small entities and 75 percent for micro entities) will continue to apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The Office reviews historical data to estimate the percentages of application filings asserting small entity status. Table 24 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

TABLE 24—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS *

	** FY 2018	FY 2017	FY 2016	FY 2015	FY 2014	Average
Utility:						
All	596,484	604,292	608,778	579,174	580,596	593,865
Small	136,246	136,350	133,304	127,819	128,377	132,419
% Small	22.8	22.6	21.9	22.1	22.1	22.3
Micro	20,140	20,417	20,695	19,119	18,142	19,703
% Micro	3.4	3.4	3.4	3.3	3.1	3.3
Reissue:						
All	985	1,049	1,088	1,090	1,215	1,085
Small	208	246	230	211	228	225
% Small	21.1	23.5	21.1	19.4	18.8	20.8
Micro	18	19	21	12	22	18
% Micro	1.8	1.8	1.9	1.1	1.8	1.7
Plant:						
All	1,047	1,071	1,187	1,105	1,110	1,104
Small	467	534	567	514	527	522

¹ For more information, see <https://www.uspto.gov/patent/laws-and-regulations/micro-entity-status-gross-income-limit>.

TABLE 24—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS*—Continued

	** FY 2018	FY 2017	FY 2016	FY 2015	FY 2014	Average
% Small	44.6	49.9	47.8	46.5	47.5	47.3
Micro	9	17	11	8	17	12
% Micro	0.9	1.6	0.9	0.7	1.5	1.1
Design:						
All	46,010	44,072	42,324	38,225	36,220	41,370
Small	18,945	18,126	16,791	14,783	14,354	16,600
% Small	41.2	41.1	39.7	38.7	39.6	40.1
Micro	5,448	5,006	4,289	24	n/a	3,692
% Micro	11.8	11.4	10.1	0.1	n/a	8.4

* The patent application filing data in this table includes RCEs.

** FY 2018 application filing data are preliminary and will be finalized in the FY 2019 Performance and Accountability Report (PAR).

Because the percentage of small entity filings varies widely between application types, the Office has averaged the small entity filing rates over the past five years for those application types in order to estimate future filing rates by small and micro entities. Those average rates appear in the last column of Table 24. The Office estimates that small entity filing rates will continue for the next five years at these average historic rates.

The Office forecasts the number of projected patent applications (*i.e.*, workload) for the next five years using a combination of historical data, economic analysis, and subject matter expertise. The Office estimates that serialized UPR patent application filings will grow by 1.5 percent in FY 2019 and 1.0 percent in FYs 2020–2024. The

Office forecasts design patent applications independently of UPR applications because they exhibit different behavior.

Using the estimated filings for the next five years, and the average historic rates of small entity filings, Table 25 presents the Office's estimates of the number of patent application filings by all applicants, including small and micro entities, over the next five fiscal years by application type.

The Office has undertaken an elasticity analysis to examine if fee adjustments may impact small entities and, in particular, whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive demand for services by patent applicants and patentees is to fee changes. If elasticity

is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The Office analyzed elasticity at the overall filing level across all patent applicants with regard to entity size and estimated the potential impact to patent application filings across entities. Additional information about elasticity estimates is available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting> in the document entitled “USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates.”

TABLE 25—ESTIMATED NUMBERS OF PATENT APPLICATIONS IN FY 2019–FY 2024

		FY 2019 (current)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Utility	All	609,639	611,158	612,614	621,450	629,204	636,625
Reissue	All	750	750	750	750	750	750
Plant	All	1,050	1,050	1,050	1,050	1,050	1,050
Design	All	49,118	52,283	55,649	59,262	63,156	67,255
Total	All	660,557	665,241	670,063	682,512	694,160	705,680

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and Type of Professional Skills Necessary for Preparation of the Report or Record

If implemented, the proposed rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small and micro entities will continue to apply. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under

this proposal. This action proposes only to adjust patent fees and not to set procedures for asserting small entity status or certifying micro entity status, as previously discussed.

The full proposed fee schedule (*see* Part VI: Discussion of Specific Rules) is set forth in the NPRM. The proposed fee schedule sets or adjusts 295 patent fees in total. This includes three fees that will be discontinued and 11 new fees.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules

The USPTO is the sole agency of the U.S. Government responsible for administering the provisions of title 35,

U.S.C., pertaining to examining and granting patents. It is solely responsible for issuing rules to comply with Section 10 of the AIA. No other Federal, state, or local entity has jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the PCT). Nevertheless, the USPTO believes

that there are no other duplicative or overlapping rules.

6. Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rules on Small Entities

The USPTO considered several alternative approaches to this proposed rule, discussed below, including full cost recovery for individual services, an across the board adjustment to fees, and a baseline (current fee rates). The discussion here begins with a description of the fee schedule adopted for this proposed rule.

i. Alternative 1: Proposed Alternative—Set and Adjust Patent Fees

The alternative proposed herein secures the Office's required revenue to recover its aggregate costs, while progressing towards high quality and timely patent examination and review proceedings in order to produce reliable and predictable IP rights. This will benefit all applicants, including small and micro entities, without undue burden to patent applicants and holders, barriers to entry, or reduced incentives to innovate. This alternative maintains small and micro entity discounts. Compared to the current fee schedule, there are no new small or micro entity fee codes being extended to existing large entity fee rates and none are being eliminated. All entities will benefit from the Office's proposal to discontinue three fees related to goods and services found to be of limited value based on the ability to obtain these services at zero cost or more efficiently from non-Office sources. The Office will instead provide these services, in a slightly modified form (*i.e.* electronic), for free.

As discussed throughout this document, the fee changes proposed in this alternative are moderate compared to other alternatives. Given that the proposed fee schedule will result in increased aggregate revenue under this alternative, small and micro entities would pay some higher fees when compared to the current fee schedule (Alternative 4).

In summary, the fees to obtain a patent will increase. All fees are subject to the 5.0 percent across the board increase. In addition to the across the board increase, some fees will be subject to a larger increase. For example, the issue fee and first stage maintenance fee rate will increase by 20.0 and 25.0 percent respectively. However, second and third stage maintenance fees will only increase by 4.0 percent, less than

the across the board increase. This alternative includes a new surcharge fee for applications not filed in DOCX format, which aims to improve the electronic application process for patent applicants by modernizing the USPTO's filing and viewing systems. This streamlines application and publication processes, which benefits both the applicants and examiners. In an effort to enable PTAB to continue high quality, timely, and efficient proceedings with the expected increase in work following the Supreme Court decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018), AIA trial fees will increase 25.0 percent. Finally, in response to feedback from the PPAC and members of the public, the proposed fee increase for Maintenance Fee Surcharge—Late Payment within Six Months, has been changed to \$500. Under the original proposal to the PPAC, the fee would have increased by \$840 to \$1,000.

Adjusting the patent fee schedule as proposed in this NPRM allows the Office to implement the patent-related strategic goals and objectives documented in the Strategic Plan and to carry out requirements as described in the FY 2020 Budget. Specifically, this proposed fee setting rule is estimated to generate sufficient revenue to support increases in core examination costs that are necessary to implement strategic initiatives to issue highly reliable patents, such as increasing the time examiners are provided to work on each application. This proposed rule also supports the Strategic Plan's mission support goal to deliver organizational excellence (which includes optimizing speed, quality, and cost-effectiveness of IT delivery to achieve business value and ensuring financial sustainability to facilitate effective USPTO operations) by allowing the Office to continue to make necessary business improvements. While all of the other alternatives discussed facilitate progress toward some of the Office's goals, the proposed alternative is the only one that does so in a way that does not impose undue costs on patent applicants and holders.

A comparison between the proposed fee schedule for this proposed rule, and existing fees (labeled Alternative 1—Proposed Fee Schedule—Setting and Adjusting Patent Fees during Fiscal Year 2020) is available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>, in the document entitled "USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—IRFA Tables." Fee changes for small and micro entities are included in the tables. For the comparison between proposed fees and current fees, as noted above, the

"current fees" column displays the fees that were in effect as of January 2018.

ii. Other Alternatives Considered

In addition to the proposed fee schedule set forth in Alternative 1, above, the Office considered several other alternative approaches. For each alternative considered, the Office calculated proposed fees and the resulting revenue derived by each alternative scenario. The proposed fees and their corresponding revenue tables are available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. Please note, only the fees outlined in Alternative 1 are proposed in this NPRM; other scenarios are shown only to demonstrate the Office's analysis of other options.

a. Alternative 2: Unit Cost Recovery

It is common practice in the Federal Government to set individual fees at a level sufficient to recover the cost of that single service. In fact, official guidance on user fees, as cited in OMB Circular A–25: *User Charges*, states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the government is acting in its capacity as sovereign.

As such, the USPTO considered setting most individual large entity fees at the historical cost of performing the activities related to the particular service in FY 2018. There are several complexities in achieving individual fee unit cost recovery for the patent fee schedule. The most significant is the AIA requirement to provide a 50 percent discount on fees to small entities and a 75 percent discount on fees to micro entities. To account for this requirement, this alternative continues existing small and micro entity discounts where eligible under AIA authority. Thus, in order to continue the small and micro entity discounts and generate sufficient revenue to recover the Office's anticipated budgetary requirements over the five-year period, for this alternative, maintenance fees must be set significantly above unit cost.

With the exception of maintenance fees, fees for which there is no FY 2018 cost data would be set at current rates under this alternative. The Office no longer collects activity-based information for maintenance fees, and previous year unit costs were negligible. For the small number of services that have a variable fee, the aggregate revenue table does not list a fee. Instead, for those services with an estimated workload, the workload is listed in

dollars rather than units to develop revenue estimates. Fees without either a fixed fee rate or a workload estimate are assumed to provide zero revenue to the Office. Note, this alternative bases fee rates for FY 2020 through FY 2024 on FY 2018 historical costs. The Office recognizes that this approach does not account for inflationary factors that would likely increase costs and necessitate higher fees in the out-years.

Alternative 2 does not align well with the strategic and policy goals of this proposed rule. Both the current and proposed fee schedules are structured to collect more fees further along in the process (*i.e.* issue fees and maintenance fees), where the patent owner has better information about a patent's value, rather than up front (*i.e.*, filing fees, search fees, and examination fees), when applicants are less certain about the value of their art, even though the front-end services are costlier to the Office. This alternative presents significant barriers to those seeking patent protection, because if the Office were to immediately shift from the current front-end/back-end balance to a unit cost recovery structure, front-end fees would increase significantly, nearly tripling in some cases (*e.g.*, search fees).

The Office has estimated the potential quantitative elasticity impacts for application filings (*e.g.*, filing, search, and examination fees), maintenance renewals (all stages), and other major fee categories. Results of this analysis indicate that a high cost of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative activities among all entities, especially for small and micro entities. Under the current fee schedule, maintenance fees subsidize all applications, including those applications for which no claims are allowed. By insisting on unit cost payment at each point in the application process, the Office is effectively charging high fees for every attempted patent, meaning those applicants who have less information about the patentability of their claims or the market value of their invention may be less likely to pursue initial prosecution (*e.g.*, filing, search, and examination) or subsequent actions to continue prosecution (*e.g.*, RCE). The ultimate effect of these changes in behavior is likely to stifle innovation.

Similarly, the Office suspects that renewal rates could change as well, given fee reductions for maintenance fees at each of the three stages. While some innovators and firms may choose to file fewer applications given the higher front-end costs, others, whose claims are allowed or upheld, may seek

to fully maximize the benefits of obtaining a patent by keeping those patents in force for longer than they would have previously (*i.e.*, under the baseline). In the aggregate, patents that are maintained beyond their useful life weaken the IP system by slowing the rate of public accessibility and follow-on inventions, which is contrary to the Office's policy factor of promoting innovation strategies. In sum, this alternative is inadequate to accomplish the goals and strategies as stated in Part III of this proposed rule.

The fee schedule for Alternative 2: Unit Cost Recovery is available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>, in the document entitled "USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—IRFA Tables." For the comparison between proposed (unit cost recovery) fees and current fees, the "current fees" column displays the fees that are in effect as of January 2018. This column is used to calculate dollar and percent fee change compared to proposed fees.

b. Alternative 3: Across the Board Adjustment

In years past, the USPTO used its authority to adjust statutory fees annually according to increases in the consumer price index (CPI), which is a commonly used measure of inflation. Building on this prior approach and incorporating the additional authority under the AIA to set small and micro entity fees, Alternative 3 would set fees by applying a one-time 10.0 percent, across the board inflationary increase to the baseline (current fees) beginning in FY 2021. Ten percent represents the change in revenue needed to achieve the aggregate revenue needed to cover future budgetary requirements.

As estimated by the CBO, projected CPI rates by fiscal year are: 2.4 percent in FY 2020, 2.5 percent in FY 2021, 2.5 percent in FY 2022, and 2.4 percent in both FY 2023 and FY 2024. The Office elected not to apply the estimated cumulative inflationary adjustment (12.2 percent), from FY 2020 through FY 2024, because doing so would result in significantly more fee revenue than needed to meet the Office's core mission and strategic priorities. Under this alternative, nearly every existing fee would be increased and no fees would be discontinued or reduced. Given that all entities (large, small, and micro) would pay 10 percent higher fees for every product and service, especially the fees due at the time of filing, this alternative does not adequately support the Office's policy factor to promote innovation strategies.

The fee schedule for Alternative 3: Across the Board Adjustment is available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>, in the document entitled "USPTO Setting and Adjusting Patent Fees during Fiscal Year 2020—IRFA Tables." For the comparison between proposed (across the board adjustment) fees and current fees, the "current fees" column displays the fees that are in effect as of July 2018.

c. Alternative 4: Baseline (Current Fee Schedule)

The Office considered a no-action alternative. This alternative would retain the status quo, meaning that the Office would continue the small and micro entity discounts that the Congress provided in Section 10 of the Act and maintain fees as of January 2018.

This approach would not provide sufficient aggregate revenue to accomplish the Office's rulemaking goals, as set forth in Part III of this NPRM or the Strategic Plan. IT improvement, progress on backlog and pendency, and other improvement activities would continue, but at a significantly slower rate as increases in core patent examination costs that are necessary to implement strategic initiative to issue highly reliable patents—such as increasing the time examiners are provided to work on each application—crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its operating reserves, leaving the Office vulnerable to fiscal and economic events. This would expose core operations to unacceptable levels of financial risk and would position the Office to have to return to making inefficient, short-term funding decisions.

iii. Alternatives Specified by the RFA

The RFA provides that an agency also consider four specified "alternatives" or approaches, namely: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of the rule, or any part thereof. 5 U.S.C. 604(c). The USPTO discusses each of these specified alternatives or approaches below and describes how this NPRM is adopting these approaches.

Differing Requirements

As discussed above, the changes proposed in this proposed rule would continue existing fee discounts for small and micro entities that take into account the reduced resources available to them as well as offer new discounts when applicable under AIA authority. Specifically, micro entities would continue to receive a 75 percent reduction in patent fees under this proposal and non-micro, small entities would continue to pay 50 percent of the fee.

This proposed rule sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. To pay reduced patent fees, small entities must merely assert small entity status to pay reduced patent fees. The small entity may make this assertion by either checking a box on the transmittal form, "Applicant claims small entity status," or by paying the basic filing or basic national small entity fee exactly. The process to claim micro entity status is similar in that eligible entities need only submit a written certification of their status prior to or at the time a reduced fee is paid. This proposed rule does not change any reporting requirements for any small or micro entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification) and the benefit of the fee reductions (50 percent for small entities and 75 percent for micro entities) is significant.

This proposed rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

Clarification, Consolidation, or Simplification of Requirements

This proposed rule pertains to setting or adjusting patent fees. Any compliance or reporting requirements proposed in this rule are de minimis and necessary to implement lower proposed fees. Therefore, any clarifications, consolidations, or simplifications to compliance and reporting requirements for small entities are not applicable or would not achieve the objectives of this rulemaking.

Performance Standards

Performance standards do not apply to the current proposed rule.

Exemption for Small and Micro Entities

The proposed changes here maintain a 50 percent reduction in fees for small entities and a 75 percent reduction in fees for micro entities. The Office considered exempting small and micro

entities from paying increased patent fees, but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the Act provides that "fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents *shall* be reduced by 50 percent [for small entities] and *shall* be reduced by 75 percent [for micro entities]" (emphasis added). Neither the AIA nor any other statute authorizes the USPTO simply to exempt small or micro entities, as a class of applicants, from paying increased patent fees.

C. Executive Order 12866 (Regulatory Planning and Review): This proposed rule has been determined to be economically significant for purposes of Executive Order 12866 (Sept. 30, 1993). The Office has developed a RIA as required for rulemakings deemed to be economically significant. The complete RIA is available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the proposed rule; (2) tailored the proposed rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This proposed rule is not expected to be subject to the requirements of Executive Order 13771 (Jan. 30, 2017) because this proposed rule is expected to involve a transfer payment.

F. Executive Order 13132 (Federalism): This rulemaking does not

contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this proposed rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this proposed rule are expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this proposed rule is a "major rule" as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The proposed changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

N. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

O. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

P. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule involves information collection requirements which are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this proposed rule has been reviewed and previously approved by OMB under control numbers 0651–0012, 0651–0016, 0651–0020, 0651–0021, 0651–0031, 0651–0032, 0651–0033, 0651–0059, 0651–0063, 0651–0064, 0651–0069, and 0651–0075.

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

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1, 11, 41, and 42 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

- 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

- 2. Section 1.16 is amended by:
- a. Revising paragraphs (a) through (e);
 - b. Adding table headings in paragraphs (f) and (g);
 - c. Revising paragraph (h);
 - d. Adding a table heading in paragraph (i);
 - e. Revising paragraphs (j) and (k);
 - f. Adding a table heading in paragraph (l);
 - g. Revising paragraphs (m) through (s);
 - h. Adding a table heading in paragraph (t); and
 - i. Adding paragraph (u).

The revisions and additions read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	\$80.00
By a small entity (§ 1.27(a))	\$160.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))	\$80.00
By other than a small or micro entity	\$320.00

(b) Basic fee for filing each application under 35 U.S.C. 111 for an original design patent:

TABLE 2 TO PARAGRAPH (b)

By a micro entity (§ 1.29)	\$55.00
By a small entity (§ 1.27(a))	\$110.00
By other than a small or micro entity	\$220.00

(c) Basic fee for filing each application for an original plant patent:

TABLE 3 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	\$55.00
By a small entity (§ 1.27(a))	\$110.00
By other than a small or micro entity	\$220.00

(d) Basic fee for filing each provisional application:

TABLE 4 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	\$75.00
By a small entity (§ 1.27(a))	\$150.00
By other than a small or micro entity	\$300.00

(e) Basic fee for filing each application for the reissue of a patent:

TABLE 5 TO PARAGRAPH (e)

By a micro entity (§ 1.29)	\$80.00
By a small entity (§ 1.27(a))	\$160.00
By other than a small or micro entity	\$320.00

(f) * * *

TABLE 6 TO PARAGRAPH (f)

*	*
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(g) * * *

TABLE 7 TO PARAGRAPH (g)

*	*
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(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

TABLE 8 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	\$120.00
By a small entity (§ 1.27(a))	\$240.00
By other than a small or micro entity ..	\$480.00

(i) * * *

TABLE 9 TO PARAGRAPH (i)

*	*
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(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

TABLE 10 TO PARAGRAPH (j)

By a micro entity (§ 1.29)	\$215.00
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TABLE 10 TO PARAGRAPH (j)—
Continued

By a small entity (§ 1.27(a))	\$430.00
By other than a small or micro entity ..	\$860.00

(k) Search fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

TABLE 11 TO PARAGRAPH (k)

By a micro entity (§ 1.29)	\$175.00
By a small entity (§ 1.27(a))	\$350.00
By other than a small or micro entity ..	\$700.00

(l) * * *

TABLE 12 TO PARAGRAPH (l)

* * *

(m) Search fee for each application for an original plant patent:

TABLE 13 TO PARAGRAPH (m)

By a micro entity (§ 1.29)	\$110.00
By a small entity (§ 1.27(a))	\$220.00
By other than a small or micro entity ..	\$440.00

(n) Search fee for each application for the reissue of a patent:

TABLE 14 TO PARAGRAPH (n)

By a micro entity (§ 1.29)	\$175.00
By a small entity (§ 1.27(a))	\$350.00
By other than a small or micro entity ..	\$700.00

(o) Examination fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

TABLE 15 TO PARAGRAPH (o)

By a micro entity (§ 1.29)	\$200.00
By a small entity (§ 1.27(a))	\$400.00
By other than a small or micro entity ..	\$800.00

(p) Examination fee for each application filed under 35 U.S.C. 111 for an original design patent:

TABLE 16 TO PARAGRAPH (p)

By a micro entity (§ 1.29)	\$160.00
By a small entity (§ 1.27(a))	\$320.00
By other than a small or micro entity ..	\$640.00

(q) Examination fee for each application for an original plant patent:

TABLE 17 TO PARAGRAPH (q)

By a micro entity (§ 1.29)	\$165.00
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TABLE 17 TO PARAGRAPH (q)—
Continued

By a small entity (§ 1.27(a))	\$330.00
By other than a small or micro entity ..	\$660.00

(r) Examination fee for each application for the reissue of a patent:

TABLE 18 TO PARAGRAPH (r)

By a micro entity (§ 1.29)	\$580.00
By a small entity (§ 1.27(a))	\$1,160.00
By other than a small or micro entity ..	\$2,320.00

(s) Application size fee for any application filed under 35 U.S.C. 111 for the specification and drawings which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

TABLE 19 TO PARAGRAPH (s)

By a micro entity (§ 1.29)	\$105.00
By a small entity (§ 1.27(a))	\$210.00
By other than a small or micro entity ..	\$420.00

(t) * * *

TABLE 20 TO PARAGRAPH (t)

* * *

(u) Additional fee for any application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications where the application is not submitted in DOCX format:

TABLE 21 TO PARAGRAPH (u)

By a micro entity (§ 1.29)	\$100.00
By a small entity (§ 1.27(a))	200.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))	200.00
By other than a small or micro entity ..	400.00

* * *

■ 3. Section 1.17 is amended by:

- a. Revising paragraph (a);
- b. Revising paragraphs (c) through (g);
- c. Adding a table heading in paragraph (h);
- d. Adding a table heading in paragraph (i)(1);
- e. Revising paragraphs (i)(2) and (k);
- f. Revising paragraph (m);
- g. Adding a table heading in paragraph (o);
- h. Revising paragraphs (p) through (s); and
- i. Adding a table heading in paragraph (t).

The revisions and additions read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

TABLE 1 TO PARAGRAPH (a)(1)

By a micro entity (§ 1.29)	\$55.00
By a small entity (§ 1.27(a))	110.00
By other than a small or micro entity ..	220.00

(2) For reply within second month:

TABLE 2 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29)	\$160.00
By a small entity (§ 1.27(a))	\$320.00
By other than a small or micro entity ..	\$640.00

(3) For reply within third month:

TABLE 3 TO PARAGRAPH (a)(3)

By a micro entity (§ 1.29)	\$370.00
By a small entity (§ 1.27(a))	740.00
By other than a small or micro entity ..	1,480.00

(4) For reply within fourth month:

TABLE 4 TO PARAGRAPH (a)(4)

By a micro entity (§ 1.29)	\$580.00
By a small entity (§ 1.27(a))	1,160.00
By other than a small or micro entity ..	2,320.00

(5) For reply within fifth month:

TABLE 5 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29)	\$790.00
By a small entity (§ 1.27(a))	1,580.00
By other than a small or micro entity ..	3,160.00

* * *

(c) For filing a request for prioritized examination under § 1.102(e):

TABLE 6 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	\$1,050.00
By a small entity (§ 1.27(a))	2,100.00
By other than a small or micro entity ..	4,200.00

(d) For correction of inventorship in an application after the first action on the merits:

TABLE 7 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	\$160.00
By a small entity (§ 1.27(a))	\$320.00
By other than a small or micro entity ..	640.00

(e) To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

TABLE 8 TO PARAGRAPH (e)(1)

By a micro entity (§ 1.29)	\$340.00
By a small entity (§ 1.27(a))	680.00

TABLE 8 TO PARAGRAPH (e)(1)—
Continued

By other than a small or micro entity ..	1,360.00
--	----------

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

TABLE 9 TO PARAGRAPH (e)(2)

By a micro entity (§ 1.29)	\$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity ..	2,000.00

(f) For filing a petition under one of the sections in paragraphs (f)(1) through (6) of this section which refers to this paragraph (f):

TABLE 10 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	\$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity ..	420.00

(1) Section 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

(2) Section 1.53(e)—to accord a filing date.

(3) Section 1.182—for decision on a question not specifically provided for in an application for patent.

(4) Section 1.183—to suspend the rules in an application for patent.

(5) Section 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

(6) Section 1.1023—to review the filing date of an international design application.

(g) For filing a petition under one of the sections in paragraphs (g)(1) through (15) of this section which refers to this paragraph (g):

TABLE 11 TO PARAGRAPH (g)

By a micro entity (§ 1.29)	\$55.00
By a small entity (§ 1.27(a))	110.00
By other than a small or micro entity ..	220.00

(1) Section 1.12—for access to an assignment record.

(2) Section 1.14—for access to an application.

(3) Section 1.46—for filing an application on behalf of an inventor by a person who otherwise shows sufficient proprietary interest in the matter.

(4) Section 1.55(f)—for filing a belated certified copy of a foreign application.

(5) Section 1.55(g)—for filing a belated certified copy of a foreign application.

(6) Section 1.57(a)—for filing a belated certified copy of a foreign application.

(7) Section 1.59—for expungement of information.

(8) Section 1.103(a)—to suspend action in an application.

(9) Section 1.136(b)—for review of a request for extension of time when the provisions of § 1.136(a) are not available.

(10) Section 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

(11) Section 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

(12) Section 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

(13) Section 5.12 of this chapter—for expedited handling of a foreign filing license.

(14) Section 5.15 of this chapter—for changing the scope of a license.

(15) Section 5.25 of this chapter—for retroactive license.

(h) * * *

TABLE 12 TO PARAGRAPH (h)

* * * * *

(i) * * *

(1) * * *

TABLE 13 TO PARAGRAPH (i)(1)

* * * * *

(2) For taking action under one of the sections in paragraphs (i)(2)(i) and (ii) of this section which refers to this paragraph (i)(2):

TABLE 14 TO PARAGRAPH (i)(2)

By a micro entity (§ 1.29)	\$140.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity ..	140.00

(i) Section 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

(ii) Section 1.221—for requesting voluntary publication or republication of an application.

* * * * *

(k) For filing a request for expedited examination under § 1.155(a):

TABLE 15 TO PARAGRAPH (k)

By a micro entity (§ 1.29)	\$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity ..	2,000.00

* * * * *

(m) For filing a petition for the revival of an abandoned application for a patent, for the delayed payment of the

fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, for the extension of the twelve-month (six-month for designs) period for filing a subsequent application (§§ 1.55(c) and (e), 1.78(b), (c), and (e), 1.137, 1.378, and 1.452)), or for filing a petition to excuse applicant's failure to act within prescribed time limits in an international design application (§ 1.1051):

TABLE 16 TO PARAGRAPH (m)

By a micro entity (§ 1.29)	\$525.00
By a small entity (§ 1.27(a))	1,050.00
By other than a small or micro entity ..	2,100.00

* * * * *

(o) * * *

TABLE 17 TO PARAGRAPH (o)

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d):

TABLE 18 TO PARAGRAPH (p)

By a micro entity (§ 1.29)	\$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity ..	260.00

(q) Processing fee for taking action under one of the sections in paragraphs (q)(1) through (3) of this section which refers to this paragraph (q): \$50.00.

(1) Section 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.

(2) Section 1.48—for correction of inventorship in a provisional application.

(3) Section 1.53(c)(2)—to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).

(r) For entry of a submission after final rejection under § 1.129(a):

TABLE 19 TO PARAGRAPH (r)

By a micro entity (§ 1.29)	\$220.00
By a small entity (§ 1.27(a))	440.00
By other than a small or micro entity ..	880.00

(s) For each additional invention requested to be examined under § 1.129(b):

TABLE 20 TO PARAGRAPH (s)

By a micro entity (§ 1.29)	\$220.00
By a small entity (§ 1.27(a))	440.00
By other than a small or micro entity ..	880.00

(t) * * *

TABLE 21 TO PARAGRAPH (t)

* * * * *

■ 4. Section 1.18 is amended by revising paragraphs (a), (b)(1), (c), (d)(3), (e) and (f) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	\$300.00
By a small entity (§ 1.27(a))	600.00
By other than a small or micro entity ..	1,200.00

(b)(1) Issue fee for issuing an original design patent:

TABLE 2 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29)	\$185.00
By a small entity (§ 1.27(a))	370.00
By other than a small or micro entity ..	740.00

* * * * *

(c) Issue fee for issuing an original plant patent:

TABLE 3 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	\$210.00
By a small entity (§ 1.27(a))	420.00
By other than a small or micro entity ..	840.00
(d) * * *	
(3) Republication fee (§ 1.221(a))	320.00
(e) For filing an application for patent term adjustment under § 1.705:	210.00
(f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for patent term adjustment under § 1.705:	420.00

■ 5. Section 1.19 is amended by revising paragraphs (b)(1)(i)(B) and (b)(1)(ii)(B) and removing and reserving paragraphs (j) through (l) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Copy Patent File Wrapper, Paper Medium, Any Number of Sheets: \$290.00.

* * * * *

(ii) * * *

(B) Copy Patent File Wrapper, Electronic, Any Medium, Any Size: \$60.00.

* * * * *

■ 6. Section 1.20 is revised to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake (§ 1.323): \$160.00.

(b) Processing fee for correcting inventorship in a patent (§ 1.324): \$160.00.

(c) In reexamination proceedings: (1)(i) For filing a request for *ex parte* reexamination (§ 1.510(a)) having:

(A) Forty (40) or fewer pages; (B) Lines that are double-spaced or one-and-a-half spaced;

(C) Text written in a non-script type font such as Arial, Times New Roman, or Courier;

(D) A font size no smaller than 12 point;

(E) Margins which conform to the requirements of § 1.52(a)(1)(ii); and

(F) Sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition.

TABLE 1 TO PARAGRAPH (c)(1)(i)

By a micro entity (§ 1.29)	\$1,575.00
By a small entity (§ 1.27(a))	3,150.00
By other than a small or micro entity ..	6,300.00

(ii) The following parts of an *ex parte* reexamination request are excluded from paragraphs (c)(1)(i)(A) through (F) of this section:

(A) The copies of every patent or printed publication relied upon in the request pursuant to § 1.510(b)(3);

(B) The copy of the entire patent for which reexamination is requested pursuant to § 1.510(b)(4); and

(C) The certifications required pursuant to § 1.510(b)(5) and (6).

(2) For filing a request for *ex parte* reexamination (§ 1.510(b)) which has sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition, and which otherwise does not comply with the provisions of paragraph (c)(1) of this section:

TABLE 2 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29)	\$3,150.00
By a small entity (§ 1.27(a))	6,300.00
By other than a small or micro entity ..	12,600.00

(3) For filing with a request for reexamination or later presentation at any other time of each claim in

independent form in excess of three and also in excess of the number of claims in independent form in the patent under reexamination:

TABLE 3 TO PARAGRAPH (c)(3)

By a micro entity (§ 1.29)	\$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity ..	480.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

TABLE 4 TO PARAGRAPH (c)(4)

By a micro entity (§ 1.29)	\$25.00
By a small entity (§ 1.27(a))	50.00
By other than a small or micro entity ..	100.00

(5) If the excess claims fees required by paragraphs (c)(3) and (4) of this section are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by paragraphs (c)(3) and (4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(6) For filing a petition in a reexamination proceeding, except for those specifically enumerated in §§ 1.550(i) and 1.937(d):

TABLE 5 TO PARAGRAPH (c)(6)

By a micro entity (§ 1.29)	\$510.00
By a small entity (§ 1.27(a))	1,020.00
By other than a small or micro entity ..	2,040.00

(7) For a refused request for *ex parte* reexamination under § 1.510 (included in the request for *ex parte* reexamination fee at § 1.20(c)(1) or (2)):

TABLE 6 TO PARAGRAPH (c)(7)

By a micro entity (§ 1.29)	\$945.00
By a small entity (§ 1.27(a))	1,890.00
By other than a small or micro entity ..	3,780.00

(d) For filing each statutory disclaimer (§ 1.321): \$170.00.

(e) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

TABLE 7 TO PARAGRAPH (e)

By a micro entity (§ 1.29)	\$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity ..	2,000.00

(f) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

TABLE 8 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	\$940.00
By a small entity (§ 1.27(a))	1,880.00
By other than a small or micro entity ..	3,760.00

(g) For maintaining an original or any reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

TABLE 9 TO PARAGRAPH (g)

By a micro entity (§ 1.29)	\$1,925.00
By a small entity (§ 1.27(a))	3,850.00
By other than a small or micro entity ..	7,700.00

(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980:

TABLE 10 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	\$125.00
By a small entity (§ 1.27(a))	250.00
By other than a small or micro entity ..	500.00

(i) [Reserved]

(j) For filing an application for extension of the term of a patent.

TABLE 11 TO PARAGRAPH (j)

(1) Application for extension under § 1.740	\$1,180.00
(2) Initial application for interim extension under § 1.790	440.00
(3) Subsequent application for interim extension under § 1.790	230.00

(k) In supplemental examination proceedings:

(1) For processing and treating a request for supplemental examination:

TABLE 12 TO PARAGRAPH (k)(1)

By a micro entity (§ 1.29)	\$1,155.00
By a small entity (§ 1.27(a))	2,310.00
By other than a small or micro entity ..	4,620.00

(2) For *ex parte* reexamination ordered as a result of a supplemental examination proceeding:

TABLE 13 TO PARAGRAPH (k)(2)

By a micro entity (§ 1.29)	\$3,175.00
By a small entity (§ 1.27(a))	6,350.00
By other than a small or micro entity ..	12,700.00

(3) For processing and treating, in a supplemental examination proceeding, a non-patent document over 20 sheets in length, per document:

(i) Between 21 and 50 sheets:

TABLE 14 TO PARAGRAPH (k)(3)(i)

By a micro entity (§ 1.29)	\$45.00
By a small entity (§ 1.27(a))	90.00
By other than a small or micro entity ..	180.00

(ii) For each additional 50 sheets or a fraction thereof:

TABLE 15 TO PARAGRAPH (k)(3)(ii)

By a micro entity (§ 1.29)	\$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity ..	300.00

■ 7. Section 1.21 is amended by revising paragraphs (a)(1), (2), and (5), adding paragraphs (a)(7) and (8), revising paragraphs (a)(9)(ii) and (a)(10), adding paragraph (k), and revising paragraphs (n), (o), and (q) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(l) For admission to examination for registration to practice:

(i) Application Fee (non-refundable): \$110.00.

(ii) Registration examination fee.

(A) For test administration by commercial entity: \$210.00.

(B) For test administration by the USPTO: \$470.00.

(iii) For USPTO-administered review of registration examination: \$470.00.

(2) On registration to practice or grant of limited recognition:

(i) On registration to practice under § 11.6 of this chapter: \$210.00.

(ii) On grant of limited recognition under § 11.9(b) of this chapter: \$210.00.

(iii) On change of registration from agent to attorney: \$110.00.

* * * * *

(5) For review of decision:

(i) By the Director of Enrollment and Discipline under § 11.2(c) of this chapter: \$420.00.

(ii) Of the Director of Enrollment and Discipline under § 11.2(d) of this chapter: \$420.00.

* * * * *

(7) Annual Voluntary Inactive Fee: \$70.00.

(8) For the Annual Active Practitioner Fee:

(i) With certification of continuing legal education completion pursuant to § 11.8(d)(3) of this chapter: \$240.00.

(ii) Without certification of continuing legal education completion pursuant to § 11.8(d)(3) of this chapter: \$340.00.

(9) * * *

(ii) Administrative reinstatement fee: \$210.00.

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office: \$1,680.00.

* * * * *

(k) For items and services that the Director finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Director with respect to each such item or service: Actual cost.

* * * * *

(n) For handling an application in which proceedings are terminated pursuant to § 1.53(e): \$140.00.

(o) The receipt of a very lengthy sequence listing (mega-sequence listing) in an application under 35 U.S.C. 111 or 371 is subject to the following fee:

(1) First receipt by the Office of a sequence listing in electronic form ranging in size from 300MB to 800MB (without file compression):

TABLE 1 TO PARAGRAPH (o)(1)

By a micro entity (§ 1.29)	\$265.00
By a small entity (§ 1.27(a))	530.00
By other than a small or micro entity ..	1,060.00

(2) First receipt by the Office of a sequence listing in electronic form exceeding 800MB in size (without file compression):

TABLE 2 TO PARAGRAPH (o)(2)

By a micro entity (§ 1.29)	\$2,625.00
By a small entity (§ 1.27(a))	5,250.00
By other than a small or micro entity ..	10,500.00

* * * * *

(q) Additional Fee for Expedited Service: \$170.00.

■ 8. Section 1.27 is amended by revising paragraph (c)(3) introductory text as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

(c) * * *

(3) *Assertion by payment of the small entity basic filing, basic transmittal, basic national fee, international search fee, or individual designation fee in an international design application.* The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in § 1.16(a), (b), (c), (d), or (e), the small entity transmittal fee set forth in § 1.445(a)(1) or § 1.1031(a), the small entity international search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office pursuant to PCT Rule 16, or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing, basic transmittal, or basic national fee is inadvertently selected in error. The payment, by any party, of the small entity first part of the individual designation fee for the United States to the International Bureau (§ 1.1031) will be treated as a written assertion of entitlement to small entity status.

* * *

■ 9. Section 1.431 is amended by revising paragraph (c) to read as follows:

§ 1.431 International application requirements.

* * *

(c) Payment of the international filing fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. The international filing, transmittal, and search fee payable is the international filing, transmittal, and search fee in effect on the receipt date of the international application. If the international filing, transmittal and search fees are not paid within one month from the date of receipt of the international application and prior to the sending of a notice of deficiency which imposes a late payment fee (§ 1.445(a)(6)), applicant will be notified and given a one month non-extendable

time limit within which to pay the deficient fees plus the late payment fee.

* * *

■ 10. Section 1.445 is amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by law or by the Director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (*see* 35 U.S.C. 361(d) and PCT Rule 14) consisting of:

(i) A basic portion:
(A) For an international application having a receipt date that is on or after [EFFECTIVE DATE OF FINAL RULE]:

TABLE 1 TO PARAGRAPH (a)(1)(i)(A)

By a micro entity (§ 1.29)	\$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity ..	260.00

(B) For an international application having a receipt date that is on or after January 1, 2014 and before [EFFECTIVE DATE OF FINAL RULE]:

TABLE 2 TO PARAGRAPH (a)(1)(i)(B)

By a micro entity (§ 1.29)	\$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity ..	240.00

(C) For an international application having a receipt date that is before January 1, 2014: \$240.00.

(ii) A non-electronic filing fee portion for any international application designating the United States of America that is filed on or after November 15, 2011, other than by the Office electronic filing system, except for a plant application:

TABLE 3 TO PARAGRAPH (a)(1)(ii)

By a small entity (§ 1.27(a))	\$200.00
By other than a small entity	400.00

(2) A search fee (*see* 35 U.S.C. 361(d) and PCT Rule 16):

(i) For an international application having a receipt date that is on or after [EFFECTIVE DATE OF FINAL RULE]:

TABLE 4 TO PARAGRAPH (a)(2)(i)

By a micro entity (§ 1.29)	\$545.00
By a small entity (§ 1.27(a))	1,090.00
By other than a small or micro entity ..	2,180.00

(ii) For an international application having a receipt date that is on or after January 1, 2014 and before [EFFECTIVE DATE OF FINAL RULE]:

TABLE 5 TO PARAGRAPH (a)(2)(ii)

By a micro entity (§ 1.29)	\$520.00
----------------------------------	----------

TABLE 5 TO PARAGRAPH (a)(2)(ii)—Continued

By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity ..	\$2,080.00

(iii) For an international application having a receipt date that is before January 1, 2014: \$2,080.00.

(3) A supplemental search fee when required, per additional invention:

(i) For an international application having a receipt date that is on or after [EFFECTIVE DATE OF FINAL RULE]:

TABLE 6 TO PARAGRAPH (a)(3)(i)

By a micro entity (§ 1.29)	\$545.00
By a small entity (§ 1.27(a))	1,090.00
By other than a small or micro entity ..	2,180.00

(ii) For an international application having a receipt date that is on or after January 1, 2014 and before [EFFECTIVE DATE OF FINAL RULE]:

TABLE 7 TO PARAGRAPH (a)(3)(ii)

By a micro entity (§ 1.29)	\$520.00
By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity ..	2,080.00

(iii) For an international application having a receipt date that is before January 1, 2014: \$2,080.00.

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section that would apply if the USPTO was the Receiving Office for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

(5) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13ter:

TABLE 8 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29)	\$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity ..	300.00

(6) Late payment fee pursuant to PCT Rule 16bis.2

* * *

■ 11. Section 1.482 is revised to read as follows:

§ 1.482 International preliminary examination and processing fees.

(a) The following fees and charges for international preliminary examination are established by the Director under the authority of 35 U.S.C. 376:

(1) The following preliminary examination fee is due on filing the Demand:

(i) If an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark

Office as an International Searching Authority:

TABLE 1 TO PARAGRAPH (a)(1)(i)

By a micro entity (§ 1.29)	\$160.00
By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity ..	640.00

(ii) If the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office:

TABLE 2 TO PARAGRAPH (a)(1)(ii)

By a micro entity (§ 1.29)	\$200.00
By a small entity (§ 1.27(a))	400.00
By other than a small or micro entity ..	800.00

(2) An additional preliminary examination fee when required, per additional invention:

TABLE 3 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29)	\$160.00
By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity ..	640.00

(b) The handling fee is due on filing the Demand and shall be as prescribed in PCT Rule 57.

(c) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13ter:

TABLE 4 TO PARAGRAPH (c)

By a micro entity (§ 1.29)	\$80.00
By a small entity (§ 1.27(a))	160.00
By other than a small or micro entity ..	320.00

■ 12. Section 1.492 is amended by:

- a. Revising paragraph (a);
- b. Adding table headings in paragraphs (b)(1) and (2);
- c. Revising paragraphs (b)(3) and (4);
- d. Adding a table heading in paragraph (c)(1);
- e. Revising paragraphs (c)(2) and (d);
- f. Adding a table heading in paragraph (e);
- g. Revising paragraphs (f) and (h);
- h. Adding a table heading in paragraph (i); and
- i. Revising paragraph (j).

The revisions and additions read as follows:

§ 1.49 2 National stage fees.

* * * * *

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371:

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29)	\$80.00
By a small entity (§ 1.27(a))	160.00
By other than a small or micro entity ..	320.00

(b) * * *
(1) * * *

TABLE 2 TO PARAGRAPH (b)(1)

* * * * *

(2) * * *

TABLE 3 TO PARAGRAPH (b)(2)

* * * * *

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

TABLE 4 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29)	\$135.00
By a small entity (§ 1.27(a))	270.00
By other than a small or micro entity ..	540.00

(4) In all situations not provided for in paragraph (b)(1), (2), or (3) of this section:

TABLE 5 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29)	\$175.00
By a small entity (§ 1.27(a))	350.00
By other than a small or micro entity ..	700.00

(c) * * *
(1) * * *

TABLE 6 TO PARAGRAPH (c)(1)

* * * * *

(2) In all situations not provided for in paragraph (c)(1) of this section:

TABLE 7 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29)	\$200.00
By a small entity (§ 1.27(a))	400.00
By other than a small or micro entity ..	800.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

TABLE 8 TO PARAGRAPH (d)

By a micro entity (§ 1.29)	\$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity ..	480.00

(e) * * *

TABLE 9 TO PARAGRAPH (e)

* * * * *

TABLE 9 TO PARAGRAPH (e)—Continued

* * * * *

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

TABLE 10 TO PARAGRAPH (f)

By a micro entity (§ 1.29)	\$215.00
By a small entity (§ 1.27(a))	430.00
By other than a small or micro entity ..	860.00

* * * * *

(h) Surcharge for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (§ 1.491(a)) pursuant to § 1.495(c):

TABLE 11 TO PARAGRAPH (h)

By a micro entity (§ 1.29)	\$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity ..	160.00

(i) * * *

TABLE 12 TO PARAGRAPH (i)

* * * * *

(j) Application size fee for any international application, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

TABLE 13 TO PARAGRAPH (j)

By a micro entity (§ 1.29)	\$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity ..	420.00

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 13. The authority citation for 37 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 32, 41; sec. 1, Pub. L. 113–227, 128 Stat. 2114.

■ 14. Section 11.8 is amended by adding paragraph (d) to read as follows:

§ 11.8 Oath and registration fee.

* * * * *

(d)(1) Each registered practitioner, as well as individuals granted limited recognition under § 11.9(b), shall each year, on or before a date to be set by the OED Director, pay to the OED Director an annual active patent practitioner fee as set forth in § 1.21(a)(8) of this chapter. Adequate notice shall be published and sent to practitioners in

advance of the due date for payment of the annual active patent practitioner fee. Payment shall be for the calendar year in which the annual active patent practitioner fee is assessed. Practitioners shall not be liable for the annual active patent practitioner fee during the calendar year in which they are first registered or granted limited recognition.

Practitioners who are endorsed on the register as administratively inactive pursuant to § 11.11(c) or in emeritus status pursuant to § 11.11(e)(2) shall not be liable for the annual active patent practitioner fee. Practitioners who have been disciplinarily suspended, excluded, or who have resigned shall not be liable for the annual active patent practitioner fee during the time period in which they are suspended, excluded, or have resigned.

(2) Failure to comply with the provisions of paragraph (d)(1) of this section may result in the registered practitioner, or individual granted limited recognition under § 11.9(b), being charged a delinquency fee as set forth in § 1.21(a)(9)(i) of this chapter and may subject a practitioner to administrative suspension as set forth in § 11.11(b). An administratively suspended registered practitioner, or person granted limited recognition, may be reinstated or reactivated on the register pursuant to § 11.11(f)(1).

(3)(i) A registered practitioner, or person granted limited recognition under § 11.9(b), who certifies to the OED Director that the practitioner has completed, in the past 24 months, five hours of continuing legal education credits in patent law and practice and one hour of continuing legal education credit in ethics, shall pay an annual active patent practitioner fee in the amount set forth in § 1.21(a)(8)(i) of this chapter. All other registered practitioners, or persons granted limited recognition under § 11.9(b), shall pay an annual active patent practitioner fee in the amount set forth in § 1.21(a)(8)(ii) of this chapter.

(ii) A registered practitioner, or person granted limited recognition under § 11.9(b), may earn up to two of the five hours of continuing legal education credit in patent law and practice as set forth in paragraph (a) of this section by providing patent *pro bono* legal services through the USPTO Patent Pro Bono Program. One hour of continuing legal education credit in patent law and practice may be earned for every three hours of patent *pro bono* legal service.

■ 15. Section 11.11 is amended by revising the section heading and paragraphs (a) and (b)(1), adding paragraph (b)(4), revising paragraph

(d)(1), adding paragraph (d)(4), revising paragraphs (d)(6), (e), and (f)(1), and adding paragraphs (f)(3) through (5) to read as follows:

§ 11.11 Administrative suspension, inactivation, resignation, reinstatement, and revocation.

(a) *Contact information.* A registered practitioner must notify the OED Director of his or her postal address for his or her office, at least one and up to three email addresses where he or she receives email, and a business telephone number, as well as every change to any of said addresses or telephone number within thirty days of the date of the change. A registered practitioner shall, in addition to any notice of change of address and telephone number filed in individual patent applications, separately file written notice of the change of address or telephone number to the OED Director. A registered practitioner who is an attorney in good standing with the bar of the highest court of one or more States shall provide the OED Director with the State bar identification number associated with each membership. The OED Director shall publish from the register a list containing the name, postal business addresses, business telephone number, registration number, and registration status as an attorney or agent of each registered practitioner recognized to practice before the Office in patent matters. The OED Director may also publish from the register the continuing legal education certification status of each registered practitioner.

(b) * * *

(1) Whenever it appears that a registered practitioner, or person granted limited recognition under § 11.9(b) has failed to comply with § 11.8(d)(1), the OED Director shall publish and send a notice to the registered practitioner or person granted limited recognition advising of the noncompliance, the consequence of being administratively suspended set forth in paragraph (b)(6) of this section if noncompliance is not timely remedied, and the requirements for reinstatement under paragraph (f) of this section. The notice shall be published and sent to the registered practitioner or person granted limited recognition by mail to the last postal address furnished under paragraph (a) of this section or by email addressed to the last email addresses furnished under paragraph (a) of this section. The notice shall demand compliance and payment of a delinquency fee set forth in § 1.21(a)(9)(i) of this chapter within sixty days after the date of such notice.

* * * * *

(4) An administratively suspended registered practitioner or person granted limited recognition will continue to be assessed the annual active patent practitioner fee as set forth in § 11.8(d) during the period of administrative suspension.

* * * * *

(d) * * *

(1) Any active registered practitioner may voluntarily enter inactive status by filing a request, in writing, that his or her name be endorsed on the register as voluntarily inactive. Upon acceptance of the request, the OED Director shall endorse the name as voluntarily inactive.

* * * * *

(4) Each registered practitioner, as well as individuals granted limited recognition under § 11.9(b), endorsed on the register as voluntarily inactive, shall each year, on or before a date to be set by the OED Director, pay to the OED Director an annual voluntary inactive fee as set forth in § 1.21(a)(7) of this chapter. Adequate notice shall be published and sent to practitioners in advance of the due date for payment of the annual voluntary inactive fee. Payment shall be for the calendar year in which the annual voluntary inactive fee is assessed.

* * * * *

(6) A voluntarily inactive practitioner may request reinstatement by complying with paragraph (f)(3) of this section.

(e) *Resignation and emeritus status.*

(1) A registered practitioner or a practitioner recognized under § 11.14(c), who is not under investigation under § 11.22 for a possible violation of the USPTO Rules of Professional Conduct, subject to discipline under § 11.24 or § 11.25, or a practitioner against whom probable cause has been found by a panel of the Committee on Discipline under § 11.23(b), may resign by notifying the OED Director in writing that he or she desires to resign. Upon acceptance in writing by the OED Director of such notice, that registered practitioner or practitioner under § 11.14 shall no longer be eligible to practice before the Office in patent matters but shall continue to file a change of address for five years thereafter in order that he or she may be located in the event information regarding the practitioner's conduct comes to the attention of the OED Director or any grievance is made about his or her conduct while he or she engaged in practice before the Office. The name of any registered practitioner whose resignation is accepted shall be removed from the active register, endorsed as resigned, and notice thereof

published in the Official Gazette. Upon acceptance of the resignation by the OED Director, the registered practitioner must comply with the provisions of § 11.116.

(2) A registered practitioner who has been registered for 10 or more years and who is currently in active status may request emeritus status in writing from the OED Director, unless such practitioner is under investigation under § 11.22 for a possible violation of the USPTO Rules of Professional Conduct, is a practitioner against whom probable cause has been found by a panel of the Committee on Discipline under § 11.23(b), or is a respondent in a pending proceeding instituted under § 11.24, § 11.25, or § 11.29. Upon acceptance in writing by the OED Director of such request, the practitioner shall no longer be eligible to practice before the Office in patent matters, except to provide patent *pro bono* legal services through the USPTO Patent Pro Bono Program. An emeritus practitioner performing *pro bono* legal services may neither ask for nor receive any compensation of any kind from the client, except for out-of-pocket expenses, for the patent legal services rendered by the emeritus practitioner. The name of any individual whose emeritus status is accepted shall be endorsed as emeritus. Upon acceptance of the emeritus status by the OED Director, the emeritus practitioner shall comply with the provisions of § 11.116 and shall continue to file a change of address for the period of their emeritus status.

(f) * * *

(1)(i) Any administratively suspended registered practitioner, or person granted limited recognition under § 11.9(b) may be reinstated on the register provided the practitioner:

(A) Is not a party to a disciplinary proceeding;

(B) Has applied for reinstatement on an application form supplied by the OED Director;

(C) Has demonstrated compliance with the provisions of § 11.7(a)(2)(i) and (iii);

(D) Has submitted a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office;

(E) Has paid the fees set forth in § 1.21(a)(9)(ii) of this chapter; and

(F) Has paid all outstanding fees as set forth in § 1.21(a)(8) of this chapter, as well as any applicable delinquency fees as set forth in § 1.21(a)(9)(i) of this chapter, for each year the practitioner is administratively suspended.

(ii) Practitioners who certify to the OED Director that they have completed six hours of continuing legal education over the past twenty four months, comprising five hours in the area of patent law and one hour in ethics, may receive a \$100 discount on the annual fee for each year in which they are administratively suspended. A practitioner will be subject to investigation and discipline for his or her conduct that occurs prior to, during, or after the period of his or her administrative suspension. Any administratively suspended registered practitioner or person granted limited recognition who fails to make these complete payments within five years of the effective date of the suspension for nonpayment shall be required to file a petition to the OED Director requesting reinstatement and providing objective evidence that they continue to possess the necessary legal qualifications to render applicants valuable service to patent applicants.

* * * * *

(3)(i) Any registered practitioner whose name has been endorsed as voluntarily inactive pursuant to paragraph (d)(1) of this section may be reinstated on the register provided the practitioner:

(A) Is not a party to a disciplinary proceeding;

(B) Has applied for reinstatement on an application form supplied by the OED Director;

(C) Has demonstrated compliance with the provisions of § 11.7(a)(2)(i) and (iii);

(D) Submits a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office;

(E) Paid the reinstatement fee set forth in § 1.21(a)(9)(ii) of this chapter; and

(F) Paid the fee set forth in § 1.21(a)(7) of this chapter for each year the practitioner was voluntarily inactive.

(ii) A practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the period of his or her voluntary inactivation.

(4) Any registered practitioner who has been endorsed as resigned pursuant to paragraph (e) of this section may be reinstated on the register provided the practitioner has applied for reinstatement on an application form supplied by the OED Director, demonstrated compliance with the provisions of § 11.7(a)(2)(i) and (iii), paid the reinstatement fee set forth in § 1.21(a)(9)(ii) of this chapter, and paid the fees set forth in § 1.21(a)(7) of this

chapter for each year the practitioner was resigned. A practitioner who has resigned for two or more years before the date the Office receives a completed application from the person who resigned must also pass the registration examination under § 11.7(b)(1)(ii). Any reinstated practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the period of his or her resignation.

(5) Any registered practitioner in emeritus status may be reinstated on the register provided the practitioner has applied for reinstatement on an application form supplied by the OED Director, paid the reinstatement fee set forth in § 1.21(a)(9)(ii) of this chapter, and paid the fee set forth in § 1.21(a)(7) of this chapter for each year the practitioner was in emeritus status. Any reinstated practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after emeritus status being conferred.

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 16. The authority citation for 37 CFR part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Pub. L. 112–29.

■ 17. Section 41.20 is amended by revising paragraphs (a), (b)(1), (b)(2)(ii), and (b)(3) and (4) to read as follows:

§ 41.20 Fees.

(a) *Petition fee.* The fee for filing a petition under this part is: \$420.00.

(b) * * *

(1) For filing a notice of appeal from the examiner to the Patent Trial and Appeal Board:

TABLE 1 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29)	\$210.00
By a small entity (§ 1.27(a))	420.00
By other than a small or micro entity ..	840.00

(2) * * *

(ii) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal in an *inter partes* reexamination proceeding:

TABLE 2 TO PARAGRAPH (b)(2)(ii)

By a micro entity (§ 1.29)	\$525.00
By a small entity (§ 1.27(a))	1,050.00
By other than a small or micro entity ..	2,100.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

TABLE 3 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29)	\$340.00
By a small entity (§ 1.27(a))	680.00
By other than a small or micro entity ..	1,360.00

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

TABLE 4 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29)	\$590.00
By a small entity (§ 1.27(a))	1,180.00
By other than a small or micro entity ..	2,360.00

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 18. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 19. Section 42.15 is revised to read as follows:

§ 42.15 Fees.

(a) On filing a petition for *inter partes* review of a patent, payment of the following fees are due:

(1) *Inter Partes* Review request fee: \$19,500.00.

(2) *Inter Partes* Review Post-Institution fee: \$18,750.00.

(3) In addition to the *Inter Partes* Review request fee, for requesting review of each claim in excess of 20: \$375.00.

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting review of each claim in excess of 20: \$750.00.

(b) On filing a petition for post-grant review or covered business method patent review of a patent, payment of the following fees are due:

(1) Post-Grant or Covered Business Method Patent Review request fee: \$20,000.00.

(2) Post-Grant or Covered Business Method Patent Review Post-Institution fee: \$27,500.00.

(3) In addition to the Post-Grant or Covered Business Method Patent

Review request fee, for requesting review of each claim in excess of 20: \$475.00.

(4) In addition to the Post-Grant or Covered Business Method Patent Review Post-Institution fee, for requesting review of each claim in excess of 20: \$1,050.00.

(c) On the filing of a petition for a derivation proceeding, payment of the following fees is due:

(1) Derivation petition fee: \$420.00.

(2) [Reserved]

(d) Any request requiring payment of a fee under this part, including a written request to make a settlement agreement available: \$420.00.

(e) Fee for non-registered practitioners to appear before the Patent Trial and Appeal Board: \$250.00.

Dated: July 18, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–15727 Filed 7–30–19; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 190214112-9535-02]

RIN 0648-BI62

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska

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

ACTION: Final rule; issuance of Letters of Authorization (LOA).

SUMMARY: NMFS, upon request from Hilcorp Alaska LLC (Hilcorp), hereby issues regulations to govern the unintentional taking of marine mammals incidental to oil and gas activities in Cook Inlet, Alaska, over the course of five years (2019–2024). These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking. In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby additionally given that a LOA has been issued to Hilcorp to take marine mammals incidental to oil and gas activities.

DATES: Effective from July 30, 2019, to July 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of Hilcorp's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

These regulations establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to Hilcorp's oil and gas activities in Cook Inlet, Alaska.

We received an application from Hilcorp requesting five-year regulations and authorization to take multiple species of marine mammals. Take will occur by Level A and Level B harassment incidental to a variety of sources including: Two-dimensional (2D) and three-dimensional (3D) seismic surveys, geohazard surveys, vibratory sheet pile driving, and drilling of exploratory wells. Please see "Background" below for definitions of harassment.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat (see the discussion below in the "Mitigation" section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, this rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Rule

Following is a summary of the major provisions of this rule regarding Hilcorp's activities. These measures include:

- Required monitoring of the ensonified areas to detect the presence of marine mammals before beginning activities;
- Required aerial surveys to search for Cook Inlet beluga whales before beginning seismic surveys;
- Shutdown of activities under certain circumstances to minimize injury of marine mammals;

- Ramp up at the beginning of seismic surveying to allow marine mammals the opportunity to leave the area prior to beginning the survey at full power, and vessel strike avoidance;

- Ramp up of impact hammering of the drive pipe for the conductor pipe driven from the drill rig; and

- Ceasing noise producing activities within 10 miles (16 km) of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15, as well as ceasing seismic activity within the Level B harassment isopleth distance of the mouth of the Kasilof River between January 1 and May 31.

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of such takings must be set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill

any marine mammal. Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS reviewed our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

NMFS prepared an Environmental Assessment (EA) and analyzed the

potential impacts to marine mammals that will result from Hilcorp’s activities. A Finding of No Significant Impact (FONSI) was signed on July 17, 2019. A copy of the EA and FONSI is available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas>.

Summary of Request

On April 17, 2018, NMFS received an application from Hilcorp (or “the applicant”) requesting authorization to incidentally take marine mammals, by Level A and Level B harassment, incidental to noise exposure resulting from oil and gas activities in Cook Inlet, Alaska, from May 2019 to April 2024. These regulations will be valid for a period of five years. On October 8, 2018, NMFS deemed the application adequate and complete.

The use of sound sources such as those described in the application (*e.g.*, seismic airguns) may result in the take of marine mammals through disruption

of behavioral patterns or may cause auditory injury of marine mammals. Therefore, incidental take authorization under the MMPA is warranted.

Description of Activity

Overview

The scope of Hilcorp’s Incidental Take Regulations (ITR) Petition includes four stages of activity, including exploration, development, production, and decommissioning activities within the applicant’s area of operations in and adjacent to Cook Inlet within the Petition’s geographic area (Figures 3 and 8 in the application). Table 1 summarizes the planned activities within the geographic scope of this Petition, and the following text describes these activities in more detail. This section is organized into two primary areas within Cook Inlet: Lower Cook Inlet (south of the Forelands to Homer) and middle Cook Inlet (north of the Forelands to Susitna/Point Possession).

TABLE 1—SUMMARY OF PLANNED ACTIVITIES INCLUDED IN INCIDENTAL TAKE REGULATIONS (ITR) PETITION

[Updates from Table 1 in the proposed rule are reflected in bold]

Project name	Cook Inlet region	Year(s) planned	Seasonal timing	Anticipated duration	Anticipated noise sources
Anchor Point 2D seismic survey.	Lower Cook Inlet, Anchor Point to Kasilof.	2021 or 2022	April–October	30 days (10 days seismic).	Marine: 1 source vessel with airgun array , 1 node vessel. Onshore/Intertidal: Shot holes, tracked vehicles, helicopters.
OCS 3D seismic survey	Lower Cook Inlet OCS	2019 or 2020	April–October	45–60 days	1 source vessel with airgun array , 2 support vessels, 1 mitigation vessel.
OCS geohazard survey	Lower Cook Inlet OCS	2020–2021 ..	April–October	30 days	1 vessel with echosounders and/or sub-bottom profilers.
OCS exploratory wells ..	Lower Cook Inlet OCS	2020–2022 ..	February–November	40–60 days per well, 2–4 wells per year.	1 jack-up rig, drive pipe installation, vertical seismic profiling, 2–3 tugs for towing rig, support vessels, helicopters.
Iniskin Peninsula exploration and development (causeway construction).	Lower Cook Inlet, west side.	2020–2022 ..	April–October	180 days each year	Construction of causeway, vibratory sheet pile driving, dredging, vessels.
Platform & pipeline maintenance.	Middle Cook Inlet	2019–2024 ..	April–October	180 days (each year) ..	Vessels, water jets, hydraulic grinders, pingers, helicopters, and/or sub-bottom profilers No change.
North Cook Inlet Unit subsea well geohazard survey.	Middle Cook Inlet	2020	April–October	14 days	1 vessel with echosounders and/or sub-bottom profilers No change.
North Cook Inlet Unit well abandonment activity.	Middle Cook Inlet	2020	April–October	90 days	1 jack-up rig, tugs towing rig, support vessel, helicopters.
Trading Bay area geohazard survey.	Middle Cook Inlet	2020	April–October	30 days	1 vessel with echosounders and/or sub-bottom profilers.

TABLE 1—SUMMARY OF PLANNED ACTIVITIES INCLUDED IN INCIDENTAL TAKE REGULATIONS (ITR) PETITION—Continued
[Updates from Table 1 in the proposed rule are reflected in bold]

Project name	Cook Inlet region	Year(s) planned	Seasonal timing	Anticipated duration	Anticipated noise sources
Trading Bay area exploratory wells.	Middle Cook Inlet	2020	April–October	120–150 days	1 jack-up rig, drive pipe installation, vertical seismic profiling, tugs towing rig, support vessel, helicopters.
Granite Point production drilling and geohazard survey*.	Middle Cook Inlet	2019	June–October	120–150 days	1 jack-up rig, tugs towing rig, support vessel, helicopters, 1 vessel with echosounders.
Drift River terminal de-commissioning.	Lower Cook Inlet, west side.	2020–2023 ..	April–October	120 days	Vessels.

* While these activities were added after the proposed rule, they do not involve technologies that NMFS believes are likely to result in take and therefore do not change the number of takes authorized.

Bold text indicates changes from Table 1 in the Proposed Rule.

Dates and Duration

The scope of the Petition includes exploration, development, production, and decommissioning activities within the applicant's area of operations in and adjacent to Cook Inlet within the Petition's geographic area (Figures 3 and 8 in the application) for the period of five years beginning May 1, 2019, extending through April 30, 2024.

Specific Geographic Region

The geographic area of activity covers a total of approximately 2.7 million acres (10,926 km²) in Cook Inlet. It includes land and adjacent waters in Cook Inlet including both State of Alaska and Federal OCS waters (Figure 3 and 8 in the application). The area extends from the north at the Susitna Delta on the west side (61°10'48 N, 151°0'55 W) and Point Possession on the east side (61°2'11 N, 150°23'30 W) to the south at Ursus Cove on the west side (59°26'20 N, 153°45'5 W) and Nanwalek on the east side (59°24'5 N, 151°56'30 W). The area is depicted in Figures 3 and 8 of the application.

Detailed Description of Specific Activity

It is difficult to characterize each year accurately because many of the activities are progressive (*i.e.*, they depend on results and/or completion of the previous activity). This results in some uncertainty in the timing, duration, and complete scope of work for each year. The applicant will submit an application for a LOA with the specific details of the planned work for that year and with estimated take numbers using the same assumptions as in the ITR Petition.

Activities in Lower Cook Inlet

Based on potential future lease sales in both State and Federal waters,

operators collect two-dimensional (2D) seismic data to determine the location of possible oil and gas prospects. Generally, 2D survey lines are spaced farther apart than three-dimensional (3D) survey lines, and 2D surveys are conducted in a regional pattern that provides less detailed geological information. 2D surveys are used to cover wider areas to map geologic structures on a regional scale. Airgun array sizes used during 2D surveys are similar to those used during 3D surveys.

Activities in Middle Cook Inlet 2D Seismic Survey

During the timeframe of this Petition, the region of interest for the 2D survey is the marine, intertidal, and onshore area on the eastern side of Cook Inlet from Anchor Point to the mouth of the Kasilof River. The area of interest is approximately 8 km (5 miles) offshore of the coastline. The anticipated timing of the planned 2D survey is in the open water season (April through October) in either 2020 or 2021. The actual survey duration is approximately 30 days in either year, but only 10 of the 30 days would be in-water seismic work.

The 2D seismic data are acquired using airguns in the marine zone, airguns in the intertidal zone when the tide is high, drilled shot holes in the intertidal zone when the tide is low, and drilled shot holes in the land zone. The data are recorded using an autonomous nodal system (*i.e.*, no cables) that are deployed in the marine, intertidal, and land zones. The planned source lines (airgun and shot holes) are approximately 16 km (10 mi) in length running perpendicular to the coastline (see Figure 1 in the application). The source lines are spaced every 8 km (5 mi) in between Anchor Point and

Kasilof, with approximately 9–10 lines over the area of interest.

In the marine and high tide intertidal zones, data will be acquired using a shallow water airgun towed behind one source vessel. Although the precise volume of the airgun array is unknown at this time, Hilcorp will use an airgun array similar to what has been used for surveys in Cook Inlet by Apache (2011–2013) and SAExploration (2015): Either a 2,400 cubic inch (in³) or 1,760 in³ array. A 2,400 in³ airgun was assumed for analysis in this rule to be conservative in take estimation. In addition, the source vessel will be equipped with a 440 in³ shallow water source which it can deploy at high tide in the intertidal area in less than 1.8 meters (m) (6 feet (ft)) of water. Source lines are oriented along the node line. A single vessel is capable of acquiring a source line in approximately 1–2 hours (hrs). In general, only one source line will be collected in one day to allow for all the node deployments and retrievals, and intertidal and land zone shot holes drilling. There are up to 10 source lines, so if all operations run smoothly, there will only be 2 hrs per day over 10 days of airgun activity. Hilcorp anticipates the entire operation to take approximately 30 days to complete to account for weather and equipment contingencies.

The recording system that will be employed is an autonomous system “nodal” (*i.e.*, no cables), which is expected to be made up of at least two types of nodes; one for the land and one for the intertidal and marine environment. For the intertidal and marine zone, this will be a submersible multi-component system made up of three velocity sensors and a hydrophone. These systems have the ability to record continuous data. Inline

receiver intervals for the node systems are approximately 50 m (165 ft). For 2D seismic surveys, the nodes are deployed along the same line as the seismic source. The deployment length is restricted by battery duration and data storage capacity. The marine nodes will be placed using one node vessel. The vessels required for the 2D seismic survey include just a source vessel and a node vessel that is conducting only passive recording.

In the marine environment, once the nodes are placed on the seafloor, the exact position of each node is required. In very shallow water, the node positions are either surveyed by a land surveyor when the tide is low, or the position is accepted based on the position at which the navigator has laid the unit. In deeper water, a hull or pole mounted pinger to send a signal to the transponder attached to each node will be used. The transponders are coded and the crew knows which transponder goes with which node prior to the layout. The transponders response (once pinged) is added together with several other responses to create a suite of range and bearing between the pinger boat and the node. Those data are then calculated to precisely position the node. In good conditions, the nodes can be interrogated as they are laid out. It is also common for the nodes to be pinged after they have been laid out. Onshore and intertidal locating of source and receivers will be accomplished with Differential Global Positioning System/roving units (DGPS/RTK) equipped with telemetry radios which will be linked to a base station established on the source vessel. Survey crews will have both helicopter and light tracked vehicle support. Offshore source and receivers will be positioned with an integrated navigation system (INS) utilizing DGPS/RTK links to the land base stations. The integrated navigation system will be capable of many features that are critical to efficient safe operations. The system will include a hazard display system that can be loaded with known obstructions, or exclusion zones.

Apache conducted a sound source verification (SSV) for the 440 in³ and 2,400 in³ arrays in 2012 (Austin and Warner 2012; 81 FR 47239). The location of the SSV was in Beshta Bay on the western side of Cook Inlet (between Granite Point and North Forelands). Water depths ranged from 30–70 m (98–229 ft).

For the 440 in³ array, the measured levels for the broadside direction were 217 decibel (dB) re: 1 microPa (μPa) peak, 190 dB sound exposure level (SEL), and 201 dB root mean square (rms) at a distance of 50 m. The

estimated distance to the 160 dB rms (90th percentile) threshold, assuming the empirically measured transmission loss of 20.4 log R (Austin and Warner, 2012), was 2,500 m. Sound levels near the source were highest between 30 and 300 hertz (Hz) in the endfire direction and between 20 Hz and 300 Hz in the broadside direction.

For the 2,400 in³ array, the measured levels for the endfire direction were 217 dB peak, 185 dB SEL, and 197 dB rms at a distance of 100 m. The estimated distance to the 160 dB rms (90th percentile) thresholds, assuming the empirically measured transmission loss of 16.9 log R, was 7,770 m. Sound levels near the source were highest between 30 and 150 Hz in the endfire direction and between 50 and 200 Hz in the broadside direction. During the process of issuing regulations for Apache Alaska, JASCO provided an updated distance of 7,330 m for a 24-hour survey (81 FR 47239). This updated estimate is considered the best available science for seismic activity of similar array size in Cook Inlet and was used to estimate take in this rulemaking. It is important to note that neither survey by Hilcorp is expected to use an airgun array of 2,400 in³; both surveys will use an airgun array with a lower in³ than this. However, 7,330 m is used in calculations as it is the closest known and measured value for seismic airgun isopleths for arrays of a similar size in middle and lower Cook Inlet. Further, a sound source verification (SSV) will be performed to characterize the actual array and environmental parameters for the area to be surveyed. These measured levels were used to evaluate potential Level A harassment (217 dB peak and 185 dB SEL at 100 m assuming 15 log transmission loss) and Level B harassment (7,330 m distance to 160 dB threshold) isopleths from these sound sources (see Estimated Take section).

3D Seismic Survey

During the timeframe of this Petition, Hilcorp plans to collect 3D seismic data for approximately 45–60 days starting May 1, 2019 over 8 of the 14 OCS lease blocks in lower Cook Inlet. The 3D seismic survey is comprised of an area of approximately 790 km² (305 mi²) through 8 lease blocks (6357, 6405, 6406, 6407, 6455, 6456, 6457, 6458). Hilcorp submitted an application for an Incidental Harassment Authorization (IHA) in late 2017 for a planned survey in 2018 but withdrew the application, and now plans for the survey to take place in 2019 and cover several years of surveying and development. Hilcorp plans to collect 3D seismic data for approximately 45–60 days in either the

fall of 2019 (September–October) or spring of 2020 (April–May). Hilcorp plans to collect the seismic survey data in one season (either fall 2019 or spring 2020). If the seismic vessel is not able to start in September and end by October 31 to comply with BOEM lease stipulations, the survey will be postponed until spring 2020. The length of the survey will depend on weather, equipment, and marine mammal delays (contingencies of 20 percent weather, 10 percent equipment, 10 percent marine mammal were assumed in this analysis, or a 40 percent increase in expected duration to account for the aforementioned delays).

Polarcus is the intended seismic contractor, and the general seismic survey design is provided below. The 3D seismic data will be acquired using a specially designed marine seismic vessel towing between 8 and 12 ~2,400-m (1.5 mi) recording cables with a dual air gun array. The survey will involve one source vessel, one support vessel, one chase vessel, and one mitigation vessel. The anticipated seismic source to be deployed from the source vessel is a 14-airgun array with a total volume of 1,945 in³. Crew changes are expected to occur every four to six weeks using a helicopter or support vessel from shore bases in lower Cook Inlet. The seismic survey will be active 24 hrs per day. The array will be towed at a speed of approximately 7.41 km/hr (4 knots), with seismic data collected continuously. Data acquisition will occur for approximately 5 hrs, followed by a 1.5-hr period to turn and reposition the vessel for another pass. The turn radius on the seismic vessel is approximately 3,200 m (2 mi).

The data acquisition will be shot parallel to the Cook Inlet shorelines in a north/south direction. This operational direction will keep recording equipment/streamers in line with Cook Inlet currents and tides and keep the equipment away from shallow waters on the east and west sides. The program may be modified if the survey cannot be conducted as a result of noise conditions onsite (*i.e.*, ambient noise). The airguns will typically be turned off during the turns. The vessel will turn into the tides to ensure the recording cables/streamers remain in line behind the vessel.

Hilcorp plans to use an array that provides for the lowest possible sound source to collect the target data. The array is a Bolt 1900 LLXT dual gun array. The airguns will be configured as two linear arrays or “strings;” each string will have 7 airguns shooting in a “flip-flop” configuration for a total of 14 airguns. The airguns will range in

volume from 45 to 290 in³ for a total of 1,945 in³. The first and last are spaced approximately 14 m (45.9 ft) apart and the strings are separated by approximately 10 m (32.8 ft). The two airgun strings will be distributed across an approximate area of 30 x 14 m (98.4 x 45.9 ft) behind the source vessel and will be towed 300–400 m (984–1,312 ft) behind the vessel at a depth of 5 m (16.4 ft). The firing pressure of the array is 2,000 pounds per square inch (psi). The airgun will fire every 4.5 to 6 seconds, depending on the exact speed of the vessel. When fired, a brief (25 milliseconds [ms]) to 140 ms) pulse of sound is emitted by all airguns nearly simultaneously.

Hilcorp intends to use 8 Sercel-type solid streamers or functionally similar for recording the seismic data (Figure 5 in the application). Each streamer will be approximately 2,400 m (150 mi) in length and will be towed approximately 8–15 m (26.2–49.2 ft) or deeper below the surface of the water. The streamers will be placed approximately 50 m (165 ft) apart to provide a total streamer spread of 400 m (1,148 ft). Hilcorp recognizes solid streamers as best in class for marine data acquisition because of unmatched reliability, signal to noise ratio, low frequency content, and noise immunity.

The survey will involve one source vessel, one support vessel, one or two chase vessels, and one mitigation vessel. The source vessel tows the airgun array and the streamers. The support vessel provides general support for the source vessel, including supplies, crew changes, etc. The chase vessel monitors the in-water equipment and maintains a security perimeter around the streamers. The mitigation vessel provides a viewing platform to augment the marine mammal monitoring program.

The planned volume of the airgun array is 1,945 in³. Hilcorp and their partners will be conducting detailed modeling of the array output, but a detailed SSV has not been conducted for this array in Cook Inlet. Therefore, for the purposes of estimating acoustic harassment, results from previous seismic surveys in Cook Inlet by Apache and SAExploration, particularly the 2,400 in³ array, were used. Apache conducted an SSV for the 440 in³ and 2,400 in³ arrays in 2012 (Austin and Warner 2012; 81 FR 47239). The location of the SSV was in Beshta Bay on the western side of Cook Inlet (between Granite Point and North Forelands). Water depths ranged from 30–70 m (98–229 ft). For the 2,400 in³ array, the measured levels for the endfire direction were 217 dB peak, 185 dB SEL, and 197 dB rms at a distance

of 100 m. The estimated distance to the 160 dB rms (90th percentile) thresholds, assuming the empirically measured transmission loss of 16.9 log R, was 7,770 m. Sound levels near the source were highest between 30 and 150 Hz in the endfire direction and between 50 and 200 Hz in the broadside direction.

These measured levels were used to evaluate potential Level A (217 dB peak and 185 dB SEL at 100 m assuming 15 log transmission loss) and Level B (7,330 m distance to 160 dB threshold) acoustic harassment of marine mammals in this Petition.

Geohazard and Geotechnical Surveys

Upon completion of the 3D seismic survey over the lower Cook Inlet OCS leases, Hilcorp plans to conduct a geohazard survey on site-specific regions within the area of interest prior to conducting exploratory drilling. The precise location is not known, as it depends on the results of the 3D seismic survey, but the location will be within the lease blocks. The anticipated timing of the activity is in either the fall of 2019 or the spring of 2020. The actual survey duration will take approximately 30 days.

The suite of equipment used during a typical geohazards survey consists of single beam and multi-beam echosounders, which provide water depths and seafloor morphology; a side scan sonar that provides acoustic images of the seafloor; a sub-bottom profiler which provides 20 to 200 m (66 to 656 ft) sub-seafloor penetration with a 6- to 20-centimeter (cm, 2.4–7.9-inch (in)) resolution. Magnetometers, to detect ferrous items, may also be used. Geotechnical surveys are conducted to collect bottom samples to obtain physical and chemical data on surface and near sub-surface sediments. Sediment samples typically are collected using a gravity/piston corer or grab sampler. The surveys are conducted from a single support vessel.

The echosounders and sub-bottom profilers are generally hull-mounted or towed behind a single vessel. The ship travels at 3–4.5 knots (5.6–8.3 km/hr). Surveys are site specific and can cover less than one lease block in a day, but the survey extent is determined by the number of potential drill sites in an area. BOEM guidelines at NTL-A01 require data to be gathered on a 150 by 300 m (492 by 984 ft) grid within 600 m (1,969 ft) of the surface location of the drill site, a 300 by 600 m (984 by 1,969 ft) grid along the wellbore path out to 1,200 m (3,937 ft) beyond the surface projection of the conductor casing, and extending an additional 1,200 m beyond that limit with a 1,200 by 1,200 m grid

out to 2,400 m (7,874 ft) from the well site.

The multibeam echosounder, single beam echosounder, and side scan sonar operate at frequencies of greater than 200 kHz. Based on the frequency ranges of these pieces of equipment and the hearing ranges of the marine mammals that have the potential to occur in the action area, the noise produced by the echosounders and side scan sonar are not likely to result in take of marine mammals and are not considered further in this document.

The geophysical surveys include use of a low resolution and high resolution sub-bottom profiler. The high-resolution sub-bottom profiler operates at source level of 210 dB re 1 µPa RMS at 1 m. The system emits energy in the frequency bands of 2 to 24 kHz. The beam width is 15 to 24 degrees. Typical pulse rate is between 3 and 10 Hz. The secondary low-resolution sub-bottom profiler will be utilized as necessary to increase sub-bottom profile penetration. The system emits energy in the frequency bands of 1 to 4 kHz.

Exploratory Drilling

Operators will drill exploratory wells based on mapping of subsurface structures using 2D and 3D seismic data and historical well information. Hilcorp plans to conduct the exploratory drilling program April to October between 2020 and 2022. The exact start date is currently unknown and is dependent on the results of the seismic survey, geohazard survey, and scheduling availability of the drill rig. It is expected that each well will take approximately 40–60 days to drill and test. Beginning in spring 2020, Hilcorp Alaska plans to possibly drill two and as many as four exploratory wells, pending results of the 3D seismic survey in the lower Cook Inlet OCS leases. After testing, the wells may be plugged and abandoned.

Hilcorp Alaska plans to conduct its exploratory drilling using a rig similar to the Spartan 151 drill rig. The Spartan 151 is a 150 H class independent leg, cantilevered jack-up drill rig with a drilling depth capability of 7,620 m (25,000 ft) that can operate in maximum water depths up to 46 m (150 ft). Depending on the rig selection and location, the drilling rig will be towed on site using up to three ocean-going tugs licensed to operate in Cook Inlet. Rig moves will be conducted in a manner to minimize any potential risk regarding safety as well as cultural or environmental impact. While under tow to the well sites, rig operations will be monitored by Hilcorp and the drilling contractor management. Very High Frequency (VHF) radio, satellite, and

cellular phone communication systems will be used while the rig is under tow. Helicopter transport will also be available.

Similarly to transiting vessels, although some marine mammals could receive sound levels in exceedance of the general acoustic threshold of 120 dB from the tugs towing the drill rig during this project, take is unlikely to occur, primarily because of the predictable movement of vessels and tugs. Additionally, marine mammal population density in the project area is low (see Estimated Take section below), and those that are present are likely habituated to the existing baseline of commercial ship traffic. Further, there are no activity-, location-, or species-specific circumstances or other contextual factors that increase concern and the likelihood of take from towing of the drill rig.

The drilling program for the well will be described in detail in an Exploration Plan to BOEM. The Exploration Plan will present information on the drilling mud program; casing design, formation evaluation program; cementing programs; and other engineering information. After rig up/rig acceptance by Hilcorp Alaska, the wells will be spudded and drilled to bottom-hole depths of approximately 2,100 to 4,900 m (7,000 to 16,000 ft) depending on the well. It is expected that each well will take about 40–60 days to drill and up to 10–21 days of well testing. If two wells are drilled, it will take approximately 80–120 days to complete the full program; if four wells are drilled, it will take approximately 160–240 days to complete the full program.

Primary sources of rig-based acoustic energy were identified as coming from the D399/D398 diesel engines, the PZ–10 mud pump, ventilation fans (and associated exhaust), and electrical generators. The source level of one of the strongest acoustic sources, the diesel engines, was estimated to be 137 dB re 1 μ Pa rms at 1 m in the 141–178 Hz bandwidth. Based on this measured level, the 120 dB rms acoustic received level isopleth is 50 m (154 ft) away from where the energy enters the water (jack-up leg or drill riser). Drilling and well construction sounds are similar to vessel sounds in that they are relatively low-level and low-frequency. Since the rig is stationary in a location with low marine mammal density, the impact of drilling and well construction sounds produced from the jack up rig is expected to be lower than a typical large vessel. There is open water in all directions from the drilling location. Any marine mammal approaching the rig would be fully aware of its presence

long before approaching or entering the zone of influence for behavioral harassment, and we are unaware of any specifically important habitat features (e.g., concentrations of prey or refuge from predators) within the rig's zone of influence that encourages marine mammal use and exposure to higher levels of noise closer to the source. Given the absence of any activity-, location-, or species-specific circumstances or other contextual factors that increase concern, we do not expect routine drilling noise to result in the take of marine mammals.

When planned and permitted operations are completed, the well will be suspended according to Bureau of Safety and Environmental Enforcement (BSEE) regulations. The well casings will be landed in a mudline hanger after each hole section is drilled. When the well is abandoned, the production casing is sealed with mechanical plugging devices and cement to prevent the movement of any reservoir fluids between various strata. Each casing string will be cutoff below the surface and sealed with a cement plug. A final shallow cement plug will be set to approximately 3.05 m (10 ft) below the mudline. At this point, the surface casing, conductor, and drive pipe will be cutoff and the three cutoff casings and the mudline hanger are pulled to the deck of the jack-up rig for final disposal. The plugging and abandonment procedures are part of the Well Plan which is reviewed by BSEE prior to being issued an approved Permit to Drill.

A drive pipe is a relatively short, large-diameter pipe driven into the sediment prior to the drilling of oil wells. The drive pipe serves to support the initial sedimentary part of the well, preventing the looser surface layer from collapsing and obstructing the wellbore. Drive pipes are installed using pile driving techniques. Hilcorp plans to drive approximately 60 m of 76.2-cm pipe at each well site prior to drilling using a Delmar D62–22 impact hammer (or similar). This hammer has an impact weight of 6,200 kg (13,640 lbs). The drive pipe driving event is expected to last one to three days at each well site, although actual pounding of the pipe will only occur intermittently during this period.

Illingworth & Rodkin (2014) measured the hammer noise for hammering the drive pipe operating from the rig *Endeavour* for *Buccaneer* in 2013 and reported the source level at 190 dB at 55 m, with underwater levels exceeding 160 dB rms threshold at 1.63 km (1 mi). The measured sound levels for the pipe driving were used to evaluate potential

Level A (source level of 221dB @ 1m and assuming 15 logR transmission loss) and Level B (1,630 m distance to the 160 dB threshold) acoustic harassment of marine mammals. Conductors are slightly smaller diameter pipes than the drive pipes used to transport or “conduct” drill cuttings to the surface. For these wells, a 50.8-cm (20-in) conductor pipe may be drilled, not hammered, inside the drive pipe, dependent on the integrity of surface formations. There are no noise concerns associated with the conductor pipe drilling.

Once the well is drilled, accurate follow-up seismic data may be collected by placing a receiver at known depths in the borehole and shooting a seismic airgun at the surface near the borehole, called vertical seismic profiling (VSP). These data provide high-resolution images of the geological layers penetrated by the borehole and can be used to accurately correlate original surface seismic data. The actual size of the airgun array is not determined until the final well depth is known, but typical airgun array volumes are between 600 and 880 in³. VSP typically takes less than two full days at each well site. Illingworth & Rodkin (2014) measured a 720 in³ array for *Buccaneer* in 2013 and report the source level at 227 dB at 1 m, with underwater levels exceeding 160 dB rms threshold at 2.47 km (1.54 mi). The measured sound levels for the VSP were used to evaluate potential Level A harassment (227 dB rms at 1 m assuming 15 logR transmission loss) and Level B harassment (2,470 m distance to the 160 dB threshold) isopleths.

Iniskin Peninsula Exploration

Hilcorp Alaska initiated baseline exploratory data collection in 2013 for a proposed land-based oil and gas exploration and development project on the Iniskin Peninsula of Alaska, near Chinitna Bay. The project is approximately 97 km (60 mi) west of Homer on the west side of Cook Inlet in the Fitz Creek drainage. New project infrastructure includes material sites, a 6.9 km (4.3 mi) long access road, prefabricated bridges to cross four streams, an air strip, barge landing/staging areas, fuel storage facilities, water wells and extraction sites, an intertidal causeway, a camp/staging area, and a drill pad. Construction is anticipated to start in 2020.

An intertidal rock causeway will be constructed adjacent to the Fitz Creek staging area to improve the accessibility of the barge landing during construction and drilling operations. The causeway will extend seaward from the high tide

line approximately 366 m (1,200 ft) to a landing area 46 m (150 ft) wide. A dock face will be constructed around the rock causeway so that barges will be able to dock along the causeway. Rock placement for the causeway is not known to generate sound at levels expected to disturb marine mammals. The causeway is also not planned at a known pinniped haulout or other biologically significant location for local marine mammals. Therefore, rock laying for the causeway is not considered further in this document.

The causeway will need to be 75 percent built before the construction of the dock face will start. The dock face will be constructed with 18-m (60-ft) tall Z-sheet piles, all installed using a vibratory hammer. It will take approximately 14–25 days, depending on the length of the work shift, assuming approximately 25 percent of the day actual pile driving. The timing of pile driving will be in late summer or early winter, after the causeway has been partially constructed. Illingworth & Rodkin (2007) compiled measured near-source (10 m [32.8 ft]) SPL data from vibratory pile driving for different pile sizes ranging in diameter from 30.5 to 243.8 cm (12 to 96 in). For this Petition, the source level of the 61.0-cm (24-in) AZ steel sheet pile from Illingworth & Rodkin (2007) was used for the sheet pile. The measured sound levels of 160 dB rms at 10 m, assuming 15 logR transmission loss for the vibratory sheet pile driving, was used to evaluate potential Level A and B harassment isopleths. Airborne sound from this construction is only expected to impact pinnipeds that are hauled out in the area where sound levels exceed in-air harassment thresholds. While harbor seals are known to use nearby bays, no major land haulouts exist in the project area and no harassment from airborne sound is expected to result from project activities. Therefore, above-water construction will not be discussed further in this document.

Activities in Middle Cook Inlet

Offshore Production Platforms

Of the 17 production platforms in central Cook Inlet, 15 are owned by Hilcorp.

Hilcorp performs routine construction on their platforms, depending on needs of the operations. Construction activities may take place up to 24 hrs a day. In-water activities include support vessels bringing supplies five days a week up to two trips per day between offshore systems at Kenai (OSK) and the platform. Depending on the needs, there may also be barges towed by tugs with

equipment and helicopters for crew and supply changes. Routine supply-related transits from vessels and helicopters are not substantially different from routine vessel and air traffic already occurring in Cook Inlet, and take is not expected to occur from these activities.

Offshore Production Drilling

Hilcorp routinely conducts development drilling activities at offshore platforms on a regular basis to meet the asset's production needs. Development drilling activities occur from existing platforms within the Cook Inlet through either open well slots or existing wellbores in existing platform legs. Drilling activities from platforms within Cook Inlet are accomplished by using conventional drilling equipment from a variety of rig configurations.

Some other platforms in Cook Inlet have permanent drilling rigs installed that operate under power provided by the platform power generation systems, while others do not have drill rigs, and the use of a mobile drill rig is required. Mobile offshore drill rigs may be powered by the platform power generation (if compatible with the platform power system) or self-generate power with the use of diesel fired generators. For the reasons outlined above for the Lower Inlet, noise from routine drilling is not considered further in this document.

Helicopter logistics for development drilling programs operations will include transportation for personnel and supplies. The helicopter support will be managed through existing offshore services based at the OSK Heliport to support rig crew changes and cargo handling. Helicopter flights to and from the platform while drilling is occurring is anticipated to increase (on average) by two flights per day from normal platform operations.

Major supplies will be staged on-shore at the OSK Dock in Nikiski. Required supplies and equipment will be moved from the staging area to the platform in which drilling occurring by existing supply vessels that are currently in use supporting offshore operations within Cook Inlet. Vessel trips to and from the platform while drilling is occurring is anticipated to increase (on average) by two trips per day from normal platform operations. During mobile drill rig mobilization and demobilization, one support vessel is used continuously for approximately 30 days to facilitate moving rig equipment and materials.

Oil and Gas Pipeline Maintenance

Each year, Hilcorp Alaska must verify the structural integrity of their platforms

and pipelines located within Cook Inlet. Routine maintenance activities include: Subsea pipeline inspections, stabilizations, and repairs; platform leg inspections and repairs; and anode sled installations and/or replacement. In general, pipeline stabilization and pipeline repair are anticipated to occur in succession for a total of 6–10 weeks. However, if a pipeline stabilization location also requires repair, the divers will repair the pipeline at the same time they are stabilizing it. Pipeline repair activities are only to be conducted on an as-needed basis whereas pipeline stabilization activities will occur annually. During underwater inspections, if the divers identify an area of the pipeline that requires stabilization, they will place Sea-Crete bags at that time rather than waiting until the major pipeline stabilization effort that occurs later in the season.

Natural gas and oil pipelines located on the seafloor of the Cook Inlet are inspected on an annual basis using ultrasonic testing (UT), cathodic protection surveys, multi-beam sonar surveys, and sub-bottom profilers. Deficiencies identified are corrected using pipeline stabilization methods or USDOT-approved pipeline repair techniques. The applicant employs dive teams to conduct physical inspections and evaluate cathodic protection status and thickness of subsea pipelines on an annual basis. If required for accurate measurements, divers may use a water jet to provide visual access to the pipeline. For stabilization, inspection dive teams may place Sea-Crete bags beneath the pipeline to replace any materials removed by the water jet. Results of the inspections are recorded and significant deficiencies are noted for repair.

Multi-beam sonar and sub-bottom profilers may also be used to obtain images of the seabed along and immediately adjacent to all subsea pipelines. Elements of pipeline inspections that could produce underwater noise include: The dive support vessel, water jet, multi-beam sonar/sub-bottom profiler and accompanying vessel.

A water jet is a zero-thrust water compressor that is used for underwater removal of marine growth or rock debris underneath the pipeline. The system operates through a mobile pump which draws water from the location of the work. Water jets likely to be used in Cook Inlet include, but are not limited to, the CaviDyne CaviBlaster® and the Gardner Denver Liqua-Blaster. Noise generated during the use of the water jets is very short in duration (30 minutes

or less at any given time) and intermittent.

Hilcorp Alaska conducted underwater measurements during 13 minutes of CaviBlaster® use in Cook Inlet in April 2017 (Austin 2017). Received sound levels were measured up to 143 dB re 1 μ Pa rms at 170 m and up to 127 dB re 1 μ Pa rms at 1,100 m. Sounds from the CaviBlaster® were clearly detectable out to the maximum measurement range of 1.1 km. Using the measured transmission loss of 19.5 log R (Austin 2017), the source level for the CaviBlaster® was estimated as 176 dB re 1 μ Pa at 1 m. The sounds were broadband in nature, concentrated above 500 Hz with a dominant tone near 2 kHz.

Specifications for the GR 29 Underwater Hydraulic Grinder state that the SPL at the operator's position is 97 dB in air (Stanley 2014). There are no underwater measurements available for the grinder, so using a rough estimate of converting sound level in dB in air to water by adding 61.5 dB results in an underwater level of approximately 159 dB at 1 meter. The measured sound levels for the water jet were used to evaluate potential Level A and B acoustic harassment isopleths, but the grinder was not included.

If necessary, Hilcorp may use an underwater pipe cutter to replace existing pipeline segments in Cook Inlet. The following tools are likely to be used for pipeline cutting activities:

- A diamond wire saw used for remote cutting underwater structures such as pipes and I-Beams. These saws use hydraulic power delivered by a dedicated power source. The saw usually uses a method that pushes the spinning wire through the pipe.
- A hydraulically-powered Guillotine saw which uses an orbital cutting movement similar to traditional power saws.

Generally, sound radiated from the diamond wire cutter is not easily discernible from the background noise during the cutting operation. The Navy measured underwater sound levels when the diamond saw was cutting caissons for replacing piles at an old fuel pier at Naval Base Point Loma (Naval Base Point Loma Naval Facilities Engineering Command Southwest 2017). They reported an average SPL for a single cutter at 136.1–141.4 dB rms at 10 m.

Specifications for the Guillotine saw state that the SPL at the operator's position is 86 dB in air (Wachs 2014). There are no underwater measurements available for the grinder, so using a rough estimate of converting sound level in dB in air to water by adding

61.5 dB results in an underwater level of approximately 148 dB at 1 meter. Because the measured levels for use of underwater saws do not exceed the NMFS criteria, the noise from underwater saws was not considered further in this document.

Scour spans beneath pipelines greater than 23 m (75 ft) have the potential to cause pipeline failures. To be conservative, scour spans of 15 m (50 ft) or greater identified using multi-beam sonar surveys are investigated using dive teams. Divers perform tactile inspections to confirm spans greater than 15 m (50 ft). The pipeline is stabilized along these spans with Sea-Crete concrete bags. While in the area, the divers will also inspect the external coating of the pipeline and take cathodic protection readings if corrosion wrap is found to be absent.

Significant pipeline deficiencies identified during pipeline inspections are repaired as soon as practicable using methods including, but not limited to, USDOT-approved clamps and/or fiber glass wraps, bolt/flange replacements, and manifold replacements. In some cases, a water jet may be required to remove sand and gravel from under or around the pipeline to allow access for assessment and repair. The pipeline surface may also require cleaning using a hydraulic grinder to ensure adequate repair. If pipeline replacement is required, an underwater pipe cutter such as a diamond wire saw or hydraulically-powered Guillotine saw may be used. Water jets are the only equipment in pipeline stabilization activities that could produce underwater noise that have the potential to result in take of marine mammals.

Platform Leg Inspection and Repair

Hilcorp's platforms in Cook Inlet are inspected on a routine basis. Divers and certified rope access technicians visually inspect subsea platform legs. These teams also identify and correct significant structural deficiencies. Platform leg integrity and pipeline-to-platform connections beneath the water surface are evaluated by divers on a routine basis. Platform legs, braces, and pipeline-to-platform connections are evaluated for cathodic protection status, structure thickness, excessive marine growth, damage, and scour. If required, divers may use a water jet to clean or provide access to the structure. If necessary, remedial grinding using a hydraulic underwater grinder may be required to determine the extent of damage and/or to prevent further crack propagation. All inspection results are recorded and significant deficiencies are noted for repair. Elements of subsea

platform leg inspection and repair that could produce underwater noise include: Dive support vessel, hydraulic grinder, water jet.

Platform leg integrity along the tidal zone is inspected on a routine basis. Difficult-to-reach areas may be accessed using either commercially-piloted unmanned aerial systems (UAS). Commercially-piloted UASs may be deployed from the top-side of the platform to obtain images of the legs. Generally, the UAS is in the air for 15–20 minutes at a time due to battery capacity, which allows for two legs and part of the underside of the platform to be inspected. The total time to inspect a platform is approximately 1.5 hrs of flight time. The UAS is operated at a distance of up to 30.5 m (100 ft) from the platform at an altitude of 9–15 m (30–50 ft) above sea level. To reduce potential harassment of marine mammals, the area around the platform will be inspected prior to launch of the UAS to ensure there are no flights directly above marine mammals. As no flights will be conducted directly over marine mammals, the effects of drone use for routine maintenance are not considered further in this application.

Anode Sled Installation and Replacement

Galvanic and impressed current anode sleds are used to provide cathodic protection for the pipelines and platforms in Cook Inlet. Galvanic anode sleds do not require a power source and may be installed along the length of the pipelines on the seafloor. Impressed current anode sleds are located on the seafloor at each of the corners of each platform and are powered by rectifiers located on the platform. Anodes are placed at the seafloor using dive vessels and hand tools. If necessary, a water jet may be used to provide access for proper installation. Anodes and/or cables may be stabilized using Sea-Crete bags.

Pingers

Several types of moorings are deployed in support of Hilcorp operations; all require an acoustic pinger for location or release. The pinger is deployed over the side of a vessel, and a short signal is emitted to the mooring device. The mooring device responds with a short signal to indicate that the device is working, to indicate range and bearing data, or to illicit a release of the unit from the anchor. These are used for very short periods of time when needed.

The types of moorings requiring the use of pingers anticipated to be used in the Petition period include acoustic

moorings during the 3D seismic survey (assumed 2–4 moorings), node placement for the 2D survey (used with each node deployment), and potential current profilers deployed each season (assumed 2–4 moorings). The total amount of time per mooring device is less than 10 minutes during deployment and retrieval. To avoid disturbance, the pinger will not be deployed if marine mammals have been observed within 135 m (443 ft) of the vessel. The short duration of the pinger deployment as well as Hilcorp's mitigation suggests take of marine mammals from pinger use is unlikely to occur, and pingers are not considered further in this analysis.

North Cook Inlet Unit Subsea Well Plugging and Abandonment

The discovery well in the North Cook Inlet Unit was drilled over 50 years ago and is planned to be abandoned, so in 2020 Hilcorp Alaska plans to conduct a geohazard survey to locate the well and conduct plugging and abandonment (P&A) activities for a previously drilled subsea exploration well. The geohazard survey location is approximately 402–804 m ($\frac{1}{4}$ – $\frac{1}{2}$ mi) south of the Tyonek platform and will take place over approximately seven days with a grid spacing of approximately 250 m (820 ft). The suite of equipment used during a typical geohazards survey consists of single beam and multi-beam echosounders, which provide water depths and seafloor morphology; a side scan sonar that provides acoustic images of the seafloor; a sub-bottom profiler which provides 20 to 200 m (66 to 656 ft) sub-seafloor penetration with a 6- to 20-cm (2.4–7.9-in) resolution. The echosounders and sub-bottom profilers are generally hull-mounted or towed behind a single vessel. The vessel travels at 3–4.5 knots (5.6–8.3 km/hr).

After the well has been located, Hilcorp plans to conduct plugging and abandonment activities over a 60–90 day time period from May through July in 2020. The jack-up rig will be similar to what is described above (the Spartan 151 drill rig, or similar). The rig will be towed onsite using up to three ocean-going tugs. Once the jack-up rig is on location, divers working off a boat will assist in preparing the subsea wellhead and mudline hanger for the riser to tie the well to the jack-up. At this point, the well will be entered and well casings will be plugged with mechanical devices and cement and then cutoff and pulled. A shallow cement plug will be set in the surface casing to 3.05 m (10 ft) below the mudline hanger. The remaining well casings will be cutoff and the mudline hanger will be recovered to the deck of the jack-up rig

for disposal. The well abandonment will be performed in accordance to Alaska Oil and Gas Conservation Commission (AOGCC) regulations.

Trading Bay Exploratory Drilling

Hilcorp plans to conduct exploratory drilling activities in the Trading Bay area. The specific sites of interest have not yet been identified, but the general area is shown in Figure 3 in the application. Hilcorp will conduct geohazard surveys over the areas of interest to locate potential hazards prior to drilling with the same suite of equipment as described above for exploratory drilling in the lower Inlet. The survey is expected to take place over 30–60 days in 2019 from a single vessel.

The exploratory drilling and well completion activities will take place in site-specific areas based on the geohazard survey. Hilcorp plans to drill 1–2 exploratory wells in this area in the open water season of 2020 with the same equipment and methods as described above for lower Inlet exploratory drilling. The noise of routine drilling is not considered further as explained in the description of activities in the Lower Inlet. However, drive pipe installation and vertical seismic profiling will be considered further in the Estimated Take section.

Required mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Mitigation and Monitoring and Reporting*).

Public Comments and Responses

A notice of NMFS's proposal to issue regulations to Hilcorp was published in the **Federal Register** on April 1, 2019 (84 FR 12330). That notice described, in detail, Hilcorp's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (the Commission), several NGOs, the Cook Inlet Regional Citizens Advisory Council, and private citizens. These comments and our responses are described below.

Comment 1: The Commission recommended that NMFS ensure all applicants include a site-specific stakeholder engagement plan or plan of cooperation that includes the required information on the species or stocks potentially affected by the proposed activities, a list of communities contacted, a summary of input received, a schedule for ongoing community engagement, and measures that would be implemented to mitigate any

potential conflicts with subsistence hunting, as part of their LOA requests.

Response: Hilcorp has shared the stakeholder meeting tracking tool with NMFS listing dates, attendees, and discussions specifically on marine mammal subsistence hunting. Hilcorp will continue to update NMFS and USFWS with this tracking tool. Each annual LOA will include a detailed Marine Mammal Mitigation and Monitoring Plan (4MP) for the activities to be conducted in that year. The list of communities and individuals contacted, date and form of contact, and any issues raised, will be posted on the NMFS Incidental Take Program website.

Comment 2: Several commenters recommended that NMFS defer issuance of a final rule to Hilcorp or any other applicant proposing to conduct sound-producing activities in Cook Inlet until NMFS has a reasonable basis for determining that authorizing any incidental harassment takes would not contribute to or exacerbate the decline of Cook Inlet beluga whales.

Response: In accordance with our implementing regulations at 50 CFR 216.104(c), we use the best available scientific evidence to determine whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. Based on the scientific evidence available, NMFS determined that the impacts of the oil and gas program, which are primarily acoustic in nature, would meet the standard of no more than a negligible impact and no unmitigable adverse impact on availability of marine mammals for subsistence uses. Moreover, Hilcorp proposed and NMFS has required in the rule a rigorous mitigation plan to reduce impacts to Cook Inlet beluga whales and other marine mammals to the lowest level practicable. Hilcorp is required to shutdown airguns if any beluga whale is observed within the Level B isopleth (described further in our Ensonified Area section), and activities are further restricted by imposing a shutdown of activities within a 10 mi (16 km) radius of the Susitna Delta from April 15 through October 15, which is an important area for beluga feeding and calving in the spring and summer months. These shutdown measures are more restrictive than the standard shutdown measures typically applied and combined with the Susitna Delta exclusion (minimizing adverse effects to foraging), they are expected to reduce both the scope and severity of potential harassment takes, ensuring that there

are no energetic impacts from the harassment that would adversely affect reproductive rates or survivorship. Additionally, since the proposed rule was published, another mitigation area has been added in an area and time where belugas have been observed congregating, to further minimize impacts. Specifically, no 2D seismic airgun activity will be allowed between January 1 and May 31 within the level B harassment radius (which may be updated based on the SSV results) of the Kasilof River. We are assuming that timing of belugas in the Kasilof is likely similar to the timing of belugas in the nearby Kenai River (sightings peak in spring and fall, with little to no presence in the summer). Belugas may also be present in the Kenai River throughout the year; however, there are peaks of beluga presence in spring (Castellote et al. 2016; NMFS unpublished data) and sightings also in the fall (August through October; NMFS unpublished data). There appears to be a steep decline in beluga presence in the Kenai River area during the summer (June through August); however, historically belugas were seen throughout the summer in the area. Cook Inlet belugas were also historically observed in the nearby Kasilof River during aerial surveys conducted by ADFG in the late 1970s and early 1980s and NMFS starting in 1993 (Shelden et al. 2015b). NMFS' records of opportunistic sightings contain thirteen records of beluga sightings in the Kasilof River between 1978 and 2015, with half of those sightings occurring since 2008 (Shelden et al. 2015b; NMFS unpublished data). In 2018, surveys of local residents in the Kenai/Kasilof area were conducted by NMFS. There were two reports of sightings of belugas in the Kasilof River in April; one of these reports was of a group of around 30 belugas (NMFS unpublished data).

Our analysis indicates that issuance of these regulations will not contribute to or worsen the observed decline of the Cook Inlet beluga whale population. Additionally, the ESA Biological Opinion determined that the issuance of this rule is not likely to jeopardize the continued existence of the Cook Inlet beluga whales or the western distinct population segment of Steller sea lions or to destroy or adversely modify Cook Inlet beluga whale critical habitat. The Biological Opinion also outlined Terms and Conditions and Reasonable and Prudent Measures to reduce impacts, which have been incorporated into the rule, including an additional area closure of the Kasilof River mouth discussed in the Mitigation section

below. Therefore, based on the analysis of potential effects, the parameters of the activity, and the rigorous mitigation and monitoring program, NMFS determined that the activity would have a negligible impact on the Cook Inlet beluga whale stock.

Moreover, the oil and gas activity would take only small numbers of marine mammals relative to their population sizes. Further, either these takes represent one annual disturbance event for each of these individuals, or perhaps a few individuals could be disturbed a few times, in which case the number of impacted individual whales is even lower. As described in the proposed rule **Federal Register** notice, NMFS used a method that incorporates density of marine mammals overlaid with the anticipated ensounded area to calculate an estimated number of takes for belugas, which was estimated to be less than 10% of the stock abundance, which NMFS considers small.

Comment 3: Several commenters recommended that NMFS defer issuance of Hilcorp's final rule until all activities for which incidental take authorizations or regulations have been or are expected to be issued are considered with respect to their anticipated, cumulative take of Cook Inlet beluga whales, as part of a Programmatic Environmental Impact Statement under NEPA.

Response: NMFS originally declared its intent to prepare an Environmental Impact Statement (EIS) for oil and gas activities in Cook Inlet, Alaska (79 FR 61616; October 14, 2014). However, in a 2017 **Federal Register** notice (82 FR 41939; September 5, 2017), NMFS indicated that due to a reduced number of Incidental Take Authorization (ITA) requests in the region, combined with funding constraints at that time, we were postponing any potential preparation of an EIS for oil and gas activities in Cook Inlet. As stated in the 2017 **Federal Register** notice, should the number of ITA requests, or anticipated requests, noticeably increase, NMFS will re-evaluate whether preparation of an EIS is necessary. Currently, the number of ITA requests for activities that may affect marine mammals in Cook Inlet is at such a level that preparation of an EIS is not yet necessary. Nonetheless, under NEPA, NMFS is required to consider cumulative effects of other potential activities in the same geographic area, and these are discussed in greater detail in the Final Environmental Assessment (EA).

Comment 4: The Commission also recommended that NMFS establish annual limits on the total number and type of takes that are authorized for all

sound-producing activities in Cook Inlet before issuing the final rule.

Response: As mentioned above, NMFS is required to make its required determinations at the specified activities level (*i.e.*, the entire project described in the application) under the MMPA. Setting limits on the number and types of takes across individual activity pieces is not necessary, as there are no takes associated with any specific portion of the project that have differential or more severe impacts such that they require individual management or limits. Further, there are few incidental takes of Cook Inlet beluga whales currently authorized in Cook Inlet, and the projects for which takes are authorized are separated spatially and temporally. NMFS explores the effects of potential overlap in projects and the effects of sound sources other than sound sources resulting in incidental take on Cook Inlet beluga whales in the Cumulative Effects section of the Final EA.

Comment 5: The Commission recommended that NMFS address and fix inconsistencies with respect to information provided regarding the referenced sound sources.

Response: NMFS clarified which sound sources were referenced to 1 m. NMFS also clarified that it does not expect that the sounds produced by hydraulic grinders or pipe cutters are likely to result in take. Therefore, NMFS did not analyze those source any further.

Comment 6: The Commission recommended that NMFS require Hilcorp to ensure that the total number of days for each activity is accurate and consistent, and recommended that NMFS revise the number of days used to estimate the number of marine mammal takes for each of the proposed activities based on the number of days each type of activity is scheduled to occur regardless of the duration of those activities on a given day.

Response: The number of days of activity have been updated in the calculations for take estimates, and an updated Table 1 is included in the project description above.

Comment 7: The Commission recommended that NMFS require Hilcorp to revise the geohazard survey durations for each of the well sites (the four lower Cook Inlet OCS sites, the North Cook Inlet Unit site, and the two Trading Bay area sites) and re-estimate the number of marine mammal takes.

Response: Geohazard duration was calculated based on a worst-case scenario, as the precise scope of work will depend on results of other surveys. Therefore, the original estimate is still appropriate: 2,400 m of monitoring

distance in both directions yields 4,800 m total length of transect. This 4,800 m of transect distance, divided by 150 m transect width yields 32 transects. 4,800 m transect length multiplied by 32 transects yields 153.6 km transect length to be surveyed. If the distance is covered at a speed of 7.41 km/hour this results in 0.65 hours (38 minutes) to survey each transect. If surveying can occur for 12 hours per day, this results in 7.77 days to survey one well grid. This duration (7/77 days) multiplied by the number of wells results in durations of: 31 days for OCS wells, eight days for Northern Cook Inlet wells, and 15.5 days for Trading Bay wells.

Comment 8: The Commission recommended that NMFS determine which of the proposed activities will actually occur this year and which will be delayed until 2020, and revise the numbers of marine mammal takes accordingly.

Response: As noted above, these activities are progressive and dependent on results from the previous year, so predicting activities by year is challenging. Hilcorp has provided a “worst case” 5-year scenario of activities. Based on the predicted schedule, we have used June 1 to May 31 as the annual scenario described in the Estimated Take Section below. Therefore, we attempt to use “Year 1 or Season 1” terminology, as these activities are not confined to single calendar years (January to December).

One of the primary challenges with the forecasting annual activities is how to break up and analyze components associated with the OCS exploratory drilling (*i.e.*, VSP, conductor pipe driving, geohazard). Hilcorp has clarified that the plan is to drill all 4 wells between June 1 2020–2021 (Year 2), as long as everything goes well. So, we have included a shallow hazard survey in April–May 2020 (Year 1) over 2 of the 4 wells, and then a suite of drilling activities (VSP, conductor pipe driving) over all 4 wells in June 2020–2021 (Year 2), with the other 2 wells surveyed for shallow hazards (shallow hazard survey must be conducted within a few months of the planned drilling, so we would do shallow hazard in between the wells). To be conservative, we have included drilling activities (VSP, conductor pipe, and shallow hazard) for 1 of 4 wells in Years 3 and 4, in the event OCS activities take longer than the planned 1 year. Tables 11 through 18 have been updated accordingly.

Comment 9: The Commission noted several inconsistencies regarding source levels presented in either the application or the proposed rule which

did not result in the correct outputs for Level A harassment isopleths. The Commission did not agree with several pulse durations used in the proposed rule, including the chosen pulse duration for the profiler (boomer), which the Commission suggests is too long at 90 msec for a repetition rate of 30 msec, as well as VSP and impact pile driving, for which the Commission suggests the pulse durations were too short at 20 msec. The Commission recommended that NMFS recalculate all of the Level A harassment zones and revise the numbers of marine mammal takes and mitigation measures accordingly.

Response: The exposure estimates have been updated using the NMFS 2018 guidance and updated user spreadsheet inputs. Per the Commission’s comments, the boomer pulse duration was adjusted to 0.1 sec (100 ms). The VSP pulse duration was kept at 0.02 sec (20 ms). When speaking to the Hilcorp engineers, they indicated that the seismic pulse for VSP is generally the same as for 3D seismic survey, or generally 20 ms. The impact pipe driving was adjusted to 0.1 sec (100 ms) per the Commission’s comments. It is important to note that the specific equipment for everything other than the 3D seismic survey is not known at this time because contractors have not been selected; these are estimates only, although the equipment will be required to be within the parameters outlined in the proposed rule. If peak measurements were not available, the RMS was used to calculate peak. Many of the SSV reports prior to 2016 did not include peak or SEL. They only included RMS for the 190/180/160/120 dB thresholds, such as the VSP and water jet.

The inputs used are as follows:

3D/2D seismic survey: 217 dB peak/185 dB SEL @100 m; 2.05 m/s vessel speed, pulse duration 0.02 s, repetition rate every 6 s;

- Profiler (boomer): 212 dB peak @1 m; 2.05 m/s vessel speed, pulse duration 0.1 s, repetition rate every 6 s;

- VSP: 227 dB rms @1 m; 4 hrs per day; pulse duration 0.02 s; repetition rate 6 s;

- Water jet: 176 dB rms @1 m; 3 hrs per day;

- Pipe driving: 195 dB rms @55 m; 1 pile per day; 0.100 s; 25 strikes per pile

- Vib pile driving: 160 dB rms @10 m; 5 piles per day; 90 min per pile

Table 4 has been updated accordingly.

Comment 10: The Commission recommended that, until the behavior thresholds are updated, NMFS require Hilcorp to use the 120- dB re 1 μ Pa threshold rather than the 160-dB re 1

μ Pa threshold for intermittent, non-impulsive sources, such as chirps.

Response: Please see our Notice of Proposed Rulemaking (83 FR 37638; August 1, 2018) for the discussion related to acoustic terminology and thresholds. The Commission repeats a recommendation made in prior letters concerning proposed authorization of take incidental to the use of scientific sonars (such as echosounders). As we have described in responses to those prior comments (*e.g.*, 83 FR 36370), our evaluation of the available information leads us to disagree with this recommendation. After review of the Commission’s recommendation in this case, our assessment is unchanged. While the Commission presents certain valid points in attempting to justify their recommendation (*e.g.*, certain sensitive species are known to respond to sound exposures at lower levels), these points do not ultimately support the recommendation.

First, we provide here some necessary background on implementation of acoustic thresholds. NMFS has historically used generalized acoustic thresholds based on received levels to predict the occurrence of behavioral disturbance rising to the level of Level B harassment, given the practical need to use a relatively simple threshold based on information that is available for most activities. Thresholds were selected largely in consideration of measured avoidance responses of mysticete whales to airgun signals and to industrial noise sources, such as drilling. The selected thresholds of 160 dB rms SPL and 120 dB rms SPL, respectively, have been extended for use for estimation of behavioral disturbance rising to the level of Level B harassment associated with noise exposure from sources associated with other common activities.

The Commission misinterpreted how NMFS characterizes scientific sonars, so we provide clarification here. Sound sources can be divided into broad categories based on various criteria or for various purposes. As discussed by Richardson et al. (1995), source characteristics include strength of signal amplitude, distribution of sound frequency and, importantly in context of these thresholds, variability over time. With regard to temporal properties, sounds are generally considered to be either continuous or transient (*i.e.*, intermittent). Continuous sounds, which are produced by the industrial noise sources for which the 120-dB behavioral threshold was selected, are simply those for which sound pressure level remain above ambient sound during the observation period (ANSI,

2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Simply put, a continuous noise source produces a signal that continues over time, while an intermittent source produces signals of relatively short duration having an obvious start and end with predictable patterns of bursts of sound and silent periods (*i.e.*, duty cycle) (Richardson and Malme, 1993). It is this fundamental temporal distinction that is most important for categorizing sound types in terms of their potential to cause a behavioral response. For example, Gomez et al. (2016) found a significant relationship between source type and marine mammal behavioral response when sources were split into continuous (*e.g.*, shipping, icebreaking, drilling) versus intermittent (*e.g.*, sonar, seismic, explosives) types. In addition, there have been various studies noting differences in responses to intermittent and continuous sound sources for other species (*e.g.*, Neo et al., 2014; Radford et al., 2016; Nichols et al., 2015).

Sound sources may also be categorized based on their potential to cause physical damage to auditory structures and/or result in threshold shifts. In contrast to the temporal distinction discussed above, the most important factor for understanding the differing potential for these outcomes across source types is simply whether the sound is impulsive or not. Impulsive sounds, such as those produced by airguns, are defined as sounds which are typically transient, brief (< 1 sec), broadband, and which consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). These sounds are generally considered to have greater potential to cause auditory injury and/or result in threshold shifts. Non-impulsive sounds can be broadband or narrowband (*i.e.*, tonal), brief or prolonged, and continuous or intermittent, and typically do not have the high peak pressure with rapid rise/decay time that impulsive sounds have (ANSI, 1995; NIOSH, 1998). Because the selection of the 160-dB behavioral threshold was focused largely on airgun signals, this threshold has historically been referred to as the “impulse noise” threshold (including by NMFS). However, this longstanding confusion in terminology—*i.e.*, the erroneous impulsive/continuous dichotomy—presents a narrow view of the sound sources to which the thresholds apply and inappropriately implies a limitation in scope of applicability for the 160-dB behavioral threshold in particular.

An impulsive sound is by definition intermittent; however, not all

intermittent sounds are impulsive. Many sound sources for which it is generally appropriate to consider the authorization of incidental take are in fact either impulsive (and intermittent) (*e.g.*, impact pile driving) or continuous (and non-impulsive) (*e.g.*, vibratory pile driving). However, scientific sonars present a less common case where the sound produced is considered intermittent but non-impulsive. Herein lies the crux of the Commission’s argument, *i.e.*, that because chirps used by Hilcorp are not impulsive sound sources, they must be assessed using the 120-dB behavioral threshold appropriate for continuous noise sources. However, given the existing paradigm—dichotomous thresholds appropriate for generic use in evaluating the potential for behavioral disturbance rising to the level of Level B harassment resulting from exposure to continuous or intermittent sound sources—the Commission does not adequately explain why potential harassment from an intermittent sound source should be evaluated using a threshold developed for use with continuous sound sources. As we have stated in prior responses to this recommendation, consideration of the preceding factors leads to a conclusion that the 160-dB threshold is more appropriate for use than the 120-dB threshold.

As noted above, the Commission first claims generically that we are using an incorrect threshold, because scientific sonars do not produce impulse noise. However, in bridging the gap from this generic assertion to their specific recommendation that the 120-dB continuous noise threshold should be used, the Commission makes several leaps of logic that we address here. The Commission’s justification is in large part seemingly based on the Commission’s citation to examples in the literature of the most sensitive species responding at lower received levels to sources dissimilar to those considered here. There are three critical errors in this approach.

First, the citation of examples of animals “responding to sound” does not equate to Level B harassment, as defined by the MMPA. As noted above under “Background,” the MMPA defines Level B harassment as acts with the potential to disturb a marine mammal by causing disruption of behavioral patterns. While it is possible that some animals do in fact experience Level B harassment upon exposure to intermittent sounds at received levels less than the 160-dB threshold, this is not in and of itself adequate justification for using a lower threshold. Implicit in the use of a step function for quantifying Level B

harassment is the realistic assumption, due to behavioral context and other factors, that some animals exposed to received levels below the threshold will in fact experience harassment, while others exposed to levels above the threshold will not. Moreover, a brief, transient behavioral response alone should not necessarily be considered as having the potential to disturb by disrupting behavioral patterns.

We note that the Commission cites Lurton and DeRuiter (2011), which suggests 130 dB as a reasonable behavioral response threshold. Given that a “behavioral response threshold” does not equate to a Level B harassment threshold, we are unsure about the potential implications. In addition, Lurton and DeRuiter casually offered this threshold as a result of a “conservative approach” using “response thresholds of the most sensitive species studied to date.” NMFS does not agree with any suggestion that this equates to an appropriate Level B harassment threshold. Watkins and Schevill (1975) noted that when sperm whales were exposed to “temporarily interrupted” sound production in response to sound from pingers, no avoidance behavior was observed, and the authors note that “there appeared to be no startle reactions, no sudden movements, or changes in the activity of the whales.” Kastelein et al. (2006a) described the response of harbor porpoise to an experimental acoustic alarm (discussed below; averaged source level of 145 dB), while also noting that a striped dolphin showed no reaction to the alarm, despite both species being able to clearly detect the signal.

Second, unlike the studies discussed above, which relate to echosounders, many of the cited studies do not present a relevant comparison. These studies discuss sources that are not appropriately or easily compared to the sources considered here, and address responses of animals in experimental environments that are not appropriately compared to the likely exposure context here. For example, aside from the well-developed literature concerning “acoustic harassment” or “acoustic deterrent” devices—which are obviously designed for the express purpose of harassing marine mammals (usually specific species or groups)—Kastelein et al. (2006b) describe harbor seal responses to signals used as part of an underwater data communication network. In this case, seals in a pool were exposed to signals of relatively long duration (1–2 seconds) and high duty cycle for 15 minutes, with experimental signals of continuously

varying frequency, three different sound blocks, or frequency sweeps. These seals swam away from the sound (though they did not attempt to reduce exposure by putting their heads out of the water), but this result is of questionable relevance to understanding the likely response of seals in the wild that may be exposed to a 1-ms single-frequency signal from an echosounder moving past the seal as a transient stimulus.

Some studies do not provide a relevant comparison not only because of differences in the source, but because they address sources (in some cases multiple sources) that are stationary (for extended periods of time in some cases); whereas, Hilcorp's use of sub-bottom profilers will be infrequent and transient in any given location. Morton (2000) presents only brief speculation that an observed decline in abundance of Pacific white-sided dolphin coincided with introduction of 194-dB (source level) acoustic deterrent devices—an observation that is not relevant to consideration of a single mobile source that would be transient in space and time relevant to a receiver. Morton and Symonds (2002) similarly address displacement from a specific area due to a profusion of “high-powered” deterrent devices (the same 194-dB system discussed briefly in Morton (2000)) placed in restricted passages for extended time periods (6 years).

Third, the Commission's sources tend to pertain to the most sensitive species, which does not support an argument that the 120-dB threshold should be applied to all species. NMFS has acknowledged that the scientific evidence indicates that certain species are, in general, more acoustically sensitive than others. In particular, harbor porpoise and beaked whales are considered to be behaviorally sensitive, and it may be appropriate to consider use of lower Level B harassment thresholds for these species. NMFS is considering this issue in its current work of developing new guidelines for assessing Level B harassment; however, until this work is completed and new guidelines are identified (if appropriate), the existing generic thresholds are retained. Moreover, as is discussed above for other reasons, the majority of examples cited by the Commission are of limited relevance in terms of comparison of sound sources. In support of their statement that numerous researchers have observed marine mammals responding to sound from sources claimed to be similar to those considered herein, the Commission cites numerous studies; however, the vast majority of these

studies address responses of harbor porpoise or beaked whales to various types of acoustic alarms or deterrent devices.

We acknowledge that the Commission presents legitimate points in support of defining a threshold specific to non-impulsive, intermittent sources, and that, among the large number of cited studies, there are a few that show relevant results of individual animals responding to exposure at lower received levels in ways that could be considered harassment under the MMPA. As noted in a previous comment response, NMFS is currently engaged in an ongoing effort to develop updated guidance regarding the effects of anthropogenic sound on marine mammal behavior. However, prior to conclusion of this effort, NMFS will continue using the historical Level B harassment thresholds (or derivations thereof) and will appropriately evaluate behavioral disturbance rising to the level of Level B harassment due to intermittent sound sources relative to the 160-dB threshold.

Comment 11: The Commission recommended that NMFS clarify what density estimates were used to determine the numbers of takes and ensure the density estimates for marine mammals other than beluga whales are consistent with its stated method for calculating densities based on sightings from aerial surveys from 2000–2016.

Response: The densities used are detailed in Table 7 for Cook Inlet beluga whales and Table 8 for all other marine mammal species. Table 8 in the proposed rule included incorrect density estimates from a previous version of exposure calculations that included hours surveyed as part of the calculation, while also correcting for distance. The densities in Table 9 of this final rule are the correct densities based on NMFS aerial survey data, using number of animals sighted divided by distance surveyed. The values in Table 9 are the densities used to calculate exposure estimates for this final rule.

Comment 12: The Commission recommended that NMFS specify the relevant densities, ensonified areas associated with both Level A and B harassment for the various proposed activities, the number of days each activity would occur, and finally the numbers of takes prior to issuing the final rule.

Response: Based on updated durations of activities, ensonified areas and updated exposure estimates are contained in the relevant tables throughout the final rule.

Comment 13: The Commission recommended that NMFS provide the

numbers of beluga whales that could be taken during the proposed activities and any assumptions made to reduce those takes.

Response: The method for estimating takes of Cook Inlet beluga whale is described in the Take Estimation section below. The number of beluga whales that could be exposed during each year is listed in Tables 12–16. There are no assumptions made to reduce authorized take from estimated exposure.

Comment 14: The Commission recommended that NMFS authorize the total estimated number of harbor seal takes in a given year for each year from 2019–2024 rather than presuming only 25 percent of the population would be taken during the course of the five years of activities.

Response: NMFS is authorizing the total number of instances of exposure resulting from the take calculation. Note that NMFS is not equating the total number of instances of exposure to the number of individual harbor seals that may be taken, as that would lead to an overestimation of harbor seal occurrence in the survey area. The explanation for why the calculation results in overestimation of individuals is described in the Take Estimation section below. Based on consideration of the factors described further in the Estimated Take section, the number of individual harbor seals that may be taken by Level A or Level B harassment will not exceed 25 percent of the population. However, NMFS agrees with this comment from the Commission, and is authorizing an annual number of harbor seal takes rather than a certain number over the five years of activities authorized by this rule.

Comment 15: The Commission recommended that, in the final rule, NMFS explicitly require Hilcorp to conduct SSVs at the beginning of the proposed activities for 3D seismic and sub-bottom profiler surveys and use those measurements to verify and adjust, if necessary, the extents of the Level A and B harassment zones.

Response: SSVs for 3D seismic and sub-bottom profiler use are required in the final rule.

Comment 16: The Commission recommended that NMFS (1) specify how Hilcorp should enumerate the numbers of animals taken when observers are only monitoring a portion of the Level B harassment zones, and (2) require Hilcorp to keep a tally of the numbers of marine mammals taken, alert NMFS when the number of authorized beluga whale takes has been reached, and follow any guidance provided.

Response: A description of how Hilcorp should record and report takes has been added to the Monitoring section below. The specific extrapolation method to be used by Hilcorp will be submitted to NMFS Alaska Regional Office (AKR) and the Office of Protected Resources (OPR) for approval before seismic activity may begin. Hilcorp will contact NMFS AKR and OPR when the number of takes authorized for that year has been reached.

Comment 17: The Commission recommends that NMFS prohibit Hilcorp from using power-down procedures as a mitigation measure for seismic surveys in Cook Inlet. The Center for Biological Diversity (CBD) commented that power-downs should be required for all species within the safety zone.

Response: As noted by the Commission, a power down requirement would potentially lead to the need for termination of survey lines. The need to revisit missed survey lines to reacquire data is likely to result in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. NMFS has removed the use of power downs as a mitigation measure for seismic surveys in this rulemaking.

Comment 18: The Commission recommends that NMFS prohibit the use of a mitigation gun to avoid implementing ramp-up procedures.

Response: Mitigation guns have been removed as a mitigation measure from the final rule. While it is possible that use of a mitigation gun could provide a “warning” sound to marine mammals in the vicinity of the seismic survey source, it is likely that the use of mitigation guns would emit sound into the water at a time that the environment would otherwise be devoid of any airgun-related sound.

Comment 19: The Commission recommends that NMFS specify in the final rule that observers be placed on the source vessel (for seismic and geohazard surveys) or on the drilling rig (for pile/pipe driving and VSP) to monitor the Level A and B harassment zones for the proposed sound-generating activities.

Response: NMFS has specified placement of at least two on-duty PSOs on the source vessel (for seismic and geohazard surveys) or one PSO on the drill rig (for pipe driving and VSP). However, for seismic surveying, at least one on-duty PSO will be required to be stationed on a mitigation vessel.

Comment 20: The Commission recommended that NMFS (1) consult

with Hilcorp regarding the numerous issues raised in this letter and direct the applicant to revise the application accordingly, and (2) publish a revised proposed rule prior to issuance of a final rule.

Response: NMFS has consulted with Hilcorp, which has corrected errors contained in their Petition for regulations, and in this final rule NMFS has corrected errors that were in the proposed rule. These corrections are discussed in this final rule in the Estimated Take sections. As these corrections did not substantively change NMFS’ findings, a revised proposed rule was not published.

Comment 21: The International Association of Geophysical Contractors (IAGC) commented that a 7,300 m shutdown zone for beluga whales was unnecessary and impractical.

Response: NMFS has revised the mitigation and monitoring scheme, taking into consideration comments received during the public comment period. A 7,300 m monitoring zone is not required as it is not feasible or practicable to cover that area during seismic surveying. Instead, a 1,500 m safety zone will be implemented. This 1,500 m safety zone requires observers on the source vessel and the mitigation vessel to observe to a distance of 1,500 m during seismic activity. Hilcorp plans to conduct a SSV for 3D seismic surveys during the course of the activities authorized by this rule, and mitigation and monitoring may be adjusted based on the results of the SSV. However, in light of concerns surrounding the status of Cook Inlet beluga whales, NMFS implemented a shutdown measure that requires Hilcorp to shut down active sound sources from which take could occur if a Cook Inlet beluga whale is sighted at any distance within the relevant Level B harassment isopleths.

Comment 22: The IAGC commented that the specifications for data collected by protected species observers were impractical, and that collecting data on environmental variables distracted observers from monitoring safety and exclusion zones.

Response: NMFS disagrees with the commenter about the burden of collecting the required information. Applicants are required to collect information that improves our understanding of the effects of their activity. While an applicant could propose that a separate team or project could accomplish those objectives, Hilcorp proposed that their own PSOs collect the required monitoring information simultaneously with their observation duties. Information about environmental conditions informs

detectability of certain species and provides detail about potential accuracy of the reported information. The IAGC also commented that recording these details could be distracting for a PSO. However, for many activities, more than one PSO is on watch simultaneously to ensure monitoring coverage is not compromised while recording other essential pieces of information.

Comment 23: The IAGC commented that sound source verification studies are complicated and burdensome for operators, as the results are highly variable and should be removed from the final rule requirements.

Response: NMFS disagrees with the IAGC comments that the requirement for SSVs should be removed. Cook Inlet is a unique environment with characteristics that are difficult to quantify using generic sound source studies. Additionally, very few SSVs of sub-bottom profiler sounds are available to characterize potential disturbance from the use of a sub-bottom profiler, which is an increasingly used technology. While SSVs can be unusable if conducted improperly, Hilcorp has agreed to submit their SSV plans to NMFS’ acousticians to ensure that the data will be collected in a format that is useful in the future. Additionally, mitigation and monitoring measures tied to acoustic zones may be adjusted based on the results of the SSV.

Comment 24: The Environmental Investigation Agency (EIA) commented that NMFS did not consider all possible sources of take by discounting take of marine mammals from echosounders and side scan sonar operating at frequencies greater than 220 kHz but producing subharmonics within hearing ranges of marine mammals.

Response: The intended operating frequencies of this equipment is at 200kHz or greater, which is outside the hearing range of marine mammals in Cook Inlet. Subharmonics produced in the 90–130kHz range are not an intended byproduct of the equipment, and when the equipment is set up correctly, subharmonics should not be produced. As stated in the Deng et al. (2015) study cited by the EIA, the subharmonics produced were at sound levels so low that they were “well below potentially harmful levels”.

Comment 25: The EIA commented that NMFS failed to reflect the full potential impact of noise sources, specifically the sensitivity of Cook Inlet beluga whales to anthropogenic noise.

Response: NMFS has considered the sensitivity of all marine mammal species in Cook Inlet to anthropogenic activity, including the sensitivity of Cook Inlet beluga whales. Literature

indicating the responses of beluga whales to anthropogenic activity, particularly seismic activity in the Beaufort Sea, is considered in this final rule. Behavioral responses to pile driving have also been considered in the rule, as NMFS discussed avoidance behavior as a possible effect of Hilcorp's activity. The short term nature of the activity in any one location, either through the use of mobile sources or localized drill activity that continues for a short amount of time before moving to a different drill rig, allows beluga whales to return to favored areas while activity continues in other locations. Additionally, the area identified as most sensitive for Cook Inlet beluga whales, the area of the Susitna Delta between the Susitna and Beluga Rivers, has been excluded from activity during periods when beluga whales are known to occur frequently. While literature suggests that beluga whales may react to anthropogenic sounds, by requesting take Hilcorp is requesting permission to incidentally harass marine mammals by emitting anthropogenic noise. Mitigation and monitoring measures required by NMFS are directed at reducing potential impact of the sound, not to completely avoid behavioral harassment.

Comment 26: The EIA commented that NMFS did not conduct an adequate assessment of cumulative effects in the draft Environmental Assessment (EA).

Response: NMFS fulfilled its requirement under NEPA to analyze potential effects of Hilcorp's activities in conjunction with other activities that may overlap spatially or temporally in the past, present, or reasonably foreseeable future, with Hilcorp's activities or the marine mammals that may be impacted by these activities. During public comment, additional activities that should be included in the cumulative impacts assessment were raised, and these activities have been included in the final Environmental Assessment.

Comment 27: The EIA expressed concern about potential renewal of the proposed incidental take authorization.

Response: NMFS does not propose to renew the incidental take regulations in this final rule. The regulations would be valid for five years from the date of issuance with a maximum of five annual Letters of Authorization requested under these regulations.

Comment 28: The Cook Inlet Regional Citizens Advisory Council (CIRCAC) commented that the dates proposed for 3D seismic activity in the proposed rule differ from the dates set forth in Hilcorp's Marine Mammal Mitigation and Monitoring Plan.

Response: During the time period encompassing the process of requesting incidental take regulations, drafting the proposed rule, and preparing this final rule, Hilcorp's proposed timelines have been delayed slightly from what was intended in their original application. To account for these delays, tables in this final rule referring to amounts of take authorized by year have been labeled using Year 1, Year 2, etc., instead of using specific calendar dates.

Comment 29: The CIRCAC expressed concern regarding the scope of the activities covered under the rulemaking and the ambiguity in dates and locations of certain components of the activities.

Response: While there is potential uncertainty associated with these activities, NFMS required and Hilcorp provided information on specified activities, as well as a specified geographic area. Hilcorp provided details about all potential activities as well as where and when they could occur. Hilcorp's application included information on the maximum possible level of activity; therefore, any changes to these planned activities in the future would result in fewer activities being carried out than initially proposed. If for example, geohazard surveys do not indicate that it is feasible to conduct exploratory drilling activities at a particular site, Hilcorp would be conducting less activity than considered in this rule, and the effects would be less, not more, impactful to marine mammals than those effects analyzed in this rule. Additionally, to ensure the activities are within the scope of this rule, NMFS is requiring Hilcorp to obtain annual Letters of Authorization, thereby requiring Hilcorp to provide specific detail about each year's activities so that NMFS can determine whether these activities comport with the regulations.

Comment 30: The CIRCAC commented on a lack of description of effects from developing the causeway inside Chinitna Bay on Cook Inlet beluga whales and their prey species. They also commented that proposed pile driving activities in Chinitna Bay overlap with time periods when beluga whales have been documented in the Chinitna Bay.

Response: NMFS analyzed the effects of potential pile driving on marine mammal species for the building of the causeway at Chinitna Bay. Potential erosion of the area due to the creation of the causeway is not likely to result in take of marine mammals, and therefore is not part of this incidental take authorization. As referenced in the comment letter, erosion of habitat for prey species, such as crangonid shrimp

and polychaetes, could certainly be a possible impact resulting from the causeway construction. However, the size of the causeway and its construction area, relative to the total available habitat for crangonid shrimp or polychaetes in middle and lower Cook Inlet, is likely very small. The construction in this area will include pile driving and rock laying for construction of a causeway extending 1,200 ft into the bay. The Iniskin causeway will result in 2.65 acres of seafloor disturbance and temporary loss of habitat. The causeway itself is likely to impact local streams and the anadromous fish (including smolt) by altering the flow of water within Chinitna Bay. The turbidity resulting from pile driving and rock laying is expected to be localized and largely indistinguishable from ambient turbidity. After the causeway is no longer needed for the project, it is proposed that rock fill be removed and relocated to a landowner-approved upland fill area, exposing the natural mud flat surface. Tidal action, wave action, and currents will naturally restore the area disturbed by the causeway. Overall, seafloor disturbance and habitat alteration could have highly localized, short-term effects on marine mammals and their prey species. Potential effects from seafloor disturbance are likely to limit the foraging quality of the disturbed area temporarily, but prey species would likely navigate to suitable nearby habitat until the habitat was returned to acceptable conditions for these species. Accordingly, marine mammals would likely forage elsewhere, and any effects on their foraging would be immeasurably small, and thus insignificant.

Comment 31: Several commenters suggested that passive acoustic monitoring (PAM) should be used in addition to the proposed mitigation and monitoring. They highlight environmental differences between upper and lower Cook Inlet and suggest PAM would be successful in the lower Inlet.

Response: NMFS has required PAM in several previous incidental take authorizations in Cook Inlet, including activity in mid and lower Cook Inlet. These efforts have not resulted in successful deployment of PAM or useful detections of marine mammals to inform mitigation and monitoring during the activities. NMFS looks forward to advances in technology that could make PAM a practicable mitigation measure in these areas in the future. However, at the time of this rulemaking, NMFS has elected to require additional mitigation

measures outside of PAM to mediate impacts of Hilcorp's activities on marine mammals, including the use of aerial surveys for spotting beluga whales in the area and the use of additional mitigation vessels to expand visual PSO coverage.

Comment 32: The CIRCAC commented that there are no monitoring requirements related to marine mammal prey species.

Response: The monitoring requirement under MMPA Section 101(a)(5)(A) is intended to provide information that helps us understand the impacts of the specified activity on the affected species and stocks. While monitoring of prey species could be included as part of a monitoring plan, if the applicant submitted it, it is not required, and Hilcorp did not propose it. Hilcorp will conduct visual observations of marine mammals before, during and after sound-producing activities that have the potential to result in take. These visual observations will help us better understand the impacts of activities on behavioral responses of marine mammals to particular types of sound. These monitoring efforts can provide valuable information on species occurrence and seasonality of occurrence, more detail regarding habitat use, and information about temporary habitat abandonment and timing of animal return to the affected area.

Comment 33: The Center for Biological Diversity (CBD) commented that NMFS did not consider population-level effects of noise from the proposed activities.

Response: NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals and recognizes that these activities have the potential to impact marine mammals through threshold shifts, behavioral effects, stress responses, and auditory masking. However, NMFS has determined that the nature of such potentially transitory exposure—any given location will be exposed to noise from these activities only relatively briefly and infrequently—means that the likelihood of any impacts to fitness from the authorized take, including from detrimental energetic effects or reproductive impacts, is low. NMFS has also prescribed a robust suite of mitigation measures, such as a beluga-specific exclusion zone and extended distance shutdown zone, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. Further characterization of these short-

term, recoverable effects with respect to long-term population success are unknown. However, disruption to behaviors such as feeding, breeding, and vocalizing, which are essential functions, are analyzed within this rule.

Comment 34: The CBD commented that NMFS underestimated take of Cook Inlet beluga whales by not accounting for beluga hearing sensitivities and using densities based on seasonal aerial surveys.

Response: NMFS' take estimate for Cook Inlet belugas uses the best available science concerning hearing sensitivities, occurrence, and seasonality of the species. Regarding hearing sensitivity, the NMFS Acoustic Guidance uses the best available science, vetted through peer review, to characterize the thresholds for onset of TTS and PTS in marine mammal hearing for all underwater sounds. To best assess these onset thresholds for all marine mammals, the species were divided into functional hearing groups. The mid-frequency cetacean group includes beluga whales and was derived based on beluga whale data, as data from nine beluga whales was used in creating the composite audiogram in the NMFS Acoustic Guidance. The paper cited by CBD (Mooney et al, 2018) does not illustrate a particular portion of beluga whale hearing range that has been mischaracterized; rather, that paper highlights the amount of variation in hearing sensitivity across individuals within a population. The paper concludes that testing auditory evoked potentials of several individuals in a population is necessary to accurately describe sensitivity and variance in hearing. NMFS agrees that these pieces of information would be crucial in quantifying the sensitivity of Cook Inlet beluga whales, but currently this data does not exist. NMFS uses the best available science in the form of the Acoustic Guidance to determine potential onset of PTS and TTS. Aside from our acoustic thresholds, NMFS can only qualitatively consider the sensitivity of beluga whales to anthropogenic sounds, particularly in light of the potentially high variance in sensitivity across individuals. Because of this uncertainty and lack of data on the sensitivity for the Cook Inlet stock of beluga whales, NMFS is requiring Hilcorp to shut down activities when any beluga is sighted within the relevant Level B harassment isopleth.

Regarding density, NMFS carried two potential densities all the way through the analysis—the first based purely on the NMFS summer aerial surveys mentioned in CBD's comment letter, and the second using the aerial surveys

as the basis for a model that accounts for beluga whale presence as well as beluga whale count data. While the data is collected in the summer, this is the best scientific information available.

Rigorous surveys for Cook Inlet beluga whales outside of summer months are not considered feasible, largely due to safety concerns because of weather conditions. Monitoring reports of previous incidental take authorizations issued in Cook Inlet with take of Cook Inlet beluga whales reveal that sightings of Cook Inlet beluga whales are often substantially lower than the calculated exposure estimate or take authorized. This data, couple with the beluga-specific mitigation measures included in this rule, suggest that take of Cook Inlet belugas is not underestimated.

Comment 35: The CBD commented that NMFS relies on avoidance to make its negligible impact determination, while ignoring that avoidance can be a detrimental behavior.

Response: NMFS does not rely on avoidance behaviors to make its negligible impact determination. NMFS agrees that avoidance of preferred habitat may temporarily limit optimal feeding or other biologically important behaviors. However, the majority of the proposed activities will occur in habitat that is not known to be of particular significance to Cook Inlet beluga whales. For those activities that are conducted near habitat thought to be important to beluga whale behavior such as mud flats in the Susitna River Delta, a time-area closure will be implemented so beluga whales will be able to access this habitat during the summer, which is when they frequent upper Cook Inlet. In combination, the density of Cook Inlet beluga whales in the area of the activity, which inform the take estimation, coupled with mitigation and monitoring measures and knowledge of the range of Cook Inlet beluga whales during the months of operation proposed by Hilcorp, suggest a finding of negligible impact of these effects on Cook Inlet beluga whales.

Comment 36: The CBD commented that NMFS should count all exposures as separate takes, and that counting all exposures of an animal that occur within one day as one take is an underestimate.

Response: For the purposes of consistency in estimating the numbers of takes, we do not consider one individual as taken more than one time in a day, even if modeling or direct knowledge might show that an individual would likely be exposed to sound or other stressors in a manner that we would consider a take multiple separate times in one day. For the

purposes of analyzing the impacts of these takes to the stock, it is important to understand the likely nature of these instances of take within a day (*e.g.*, momentary exposure versus multiple hours, high level versus low level of intensity of acoustic exposure). We acknowledge that certain harbor seals are likely to swim in and out of a potentially ensonified area without remaining in the ensonified zone for the entire daily duration of an activity. Also, of note, just because activities continue for hours at a time, that does not mean that mobile marine mammals are exposed (to sometimes mobile sources) for all of those hours, as in many cases they would be expected to move away. While certain species, such as Cook Inlet beluga whales, Steller sea lions, and harbor seals, are known to exhibit site fidelity, Hilcorp's activities are not planned to occur directly in biologically important habitat for any of these marine mammal species in Cook Inlet. Therefore, site fidelity may not automatically equate to increased duration of exposure, especially given the use of mobile sources, as the habitat that animals are likely to frequent, such as important haulouts or river mouths, are near the activity, but primarily are outside of the calculated acoustic isopleths. NMFS requires that data be collected on the number of animals that are taken and the frequency of takes. While NMFS does not anticipate that multiple Level B harassments of the same animal within 2 hours would substantively alter the fitness of that animal, NMFS would request that the frequency of those takes is reported. However, in certain environments or circumstances, such as the use of a mobile source where an individual of a certain species is sighted, not sighted for a number of hours, and sighted again, it is unlikely that, without substantial uniquely identifiable markings, a PSO would know they are sighting a repeat individual. Therefore, in most instances, these sightings would be reported as separate takes during the activity.

Comment 37: The CBD commented that NMFS must consider the best available scientific information regarding noise and marine mammals, noting some sources in the proposed rule are decades old. The CBD also commented that NMFS overlooked particularly important references regarding sensitivity of marine mammals to airgun sounds, citing Miller et al. (2005) and Gomez et al. (2016).

Response: NMFS has considered the best available science in this rulemaking. Certain papers, particularly papers pertaining to basic physiology, biology, and acoustics, formed a

baseline knowledge that is expanded upon in recent publications. However, the age of certain papers does not negate their validity or quality of science. As appropriate, NMFS considers the best available science and consistently reviews recent literature to inform our analyses. While the papers cited by CBD are part of the general body of literature regarding marine mammals and anthropogenic noise, they each present shortcomings. The Miller et al (2005) paper is a case study of a marine seismic survey in Canadian waters of the Beaufort Sea. Beluga whales were recorded during this study with potential avoidance behaviors recorded at various distances. NMFS does not dispute that avoidance is a potential outcome of seismic activity, as discussed in our Effects on Marine Mammals section below. However, the conclusion of the Miller et al (2005) paper states that the mitigation measures undertaken during the survey, many of which are similar to measures required in this rulemaking, were found to be effective. Additionally, the results of the Gomez et al (2016) paper, suggest that, for the studies reviewed in this paper, received level did not explain the severity of the behavioral response to anthropogenic sound sources. For some sources, including seismic sources, it is possible that distance to the source may have a more direct relationship to a behavioral response than the received level. Gomez et al (2016) ultimately concluded there were insufficient data to identify a dose-response relationship between received level and severity of behavioral response. This supports NMFS' analysis that there is uncertainty in the severity and type of response that animals may exhibit in response to Hilcorp's activities. However, to minimize impacts to the best of our ability, NMFS is implementing mitigation measures in line with those found to be effective in Miller et al (2005). Time-area closures at areas and times of biological importance, airgun shutdowns, and ramp-up of airguns are all measures that are discussed in the paper and that are required in this rule.

Comment 38: The CBD commented that the negligible impact statement does not consider: Above-water impacts to seals and sea lions that are hauled out, risk of ship strike from non-source project vessels, entanglement from seismic survey cables, and increased risk of oil spills from the activities.

Response: NMFS does not consider above-water acoustic impacts to seals and sea lions in this rulemaking because none are expected, as described in the description of Iniskin Peninsula activities above. None of the proposed

activities are likely to result in take from above-water acoustic disturbance in the vicinity of hauled out seals and sea lions, as any animals potentially exposed to those sounds above water would also be exposed to underwater sound that rises to the level of take. Additionally, takes of marine mammals due to ship strike from non-source project vessels is not considered because it is not anticipated or authorized, as described in the proposed rule section titled *Ship Strike*. All project vessels and non-Hilcorp project vessels are subject to maritime regulations, and take of marine mammals due to ship strike is not authorized. Oil spills are not considered because take of marine mammals due to oil spills are not anticipated or authorized. Hilcorp is required to comply with all regulations related to oil drilling and is responsible for ensuring its compliance with those regulations. An oil spill, or a violation of other federal regulations, is not authorized under this rule. Entanglements in Hilcorp's streamers are also not authorized. While seismic streamers can extend a kilometer or farther behind the source vessel, Hilcorp employs a chase vessel behind the streamers to monitor and prevent potential entanglement hazards, primarily entanglement of other vessels. No entanglement events from seismic streamer equipment have been previously reported to NMFS.

Comment 39: The CBD commented that NMFS is authorizing more than small numbers of takes of marine mammals due to Hilcorp's activity.

Response: As described in NMFS' Notice of Issuance of Final IHA (83 FR 63268; December 7, 2018), NMFS established that one-third of the individuals of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to “small numbers.” NMFS proposed to authorize a smaller proportion of takes than one third of the individuals in a stock, the highest of which is 25% for the Cook Inlet stock of harbor seals. As described in the Take Estimation section below, this authorized number of instances of take is likely an overestimate of the number of individuals taken, but was used to support our small numbers finding nonetheless. For Cook Inlet beluga whales, the authorized take, by Level B harassment only, accounts for 11 percent of the population annually, which NMFS also considers small.

Comment 40: The CBD commented that NMFS' definition of small numbers is conflated with the negligible impact

requirement by defining small numbers relative to the overall population.

Response: The small numbers finding and negligible impact determination are separate findings and must both be made for this rulemaking. NMFS disagrees that our definitions are duplicative in nature. The small numbers finding is based purely on the numbers of individuals taken relative to the stock or population abundance, whether that information is quantitative or qualitative. The negligible impact determination considers relevant biological and contextual factors, *i.e.*, the anticipated impacts to the individuals and the stock, of the take authorized. Please see the Notice of Issuance of Final IHA (83 FR 63268), which includes a full discussion of NMFS' rationale regarding how the agency should implement the MMPA small numbers standard and, therefore, addresses the commenter's issues.

Comment 41: The CBD commented that the small numbers determination is flawed, as there are instances in which estimated exposures are higher than authorized take, particularly for Cook Inlet beluga whales and harbor seals.

Response: The small numbers finding is based on the number of individuals proposed to be taken relative to the population size. As described in the Estimated Take section below, particularly for harbor seals, NMFS expects multiple exposures of the same individuals, but does not expect 40 percent of the individuals in the entire population to be taken during activity. Based on the range and site fidelity of harbor seals, it is implausible that such a large proportion of the total population would be behaviorally disturbed to the point of Level B harassment during Hilcorp's temporally and spatially limited activities. Additionally, despite the calculations for the exposure estimate, as required in our reporting measures, once the authorized number of takes has been reached, the activity must cease. Therefore, NMFS made the small numbers finding based on the number of takes of individuals authorized. In this case, NMFS will authorize 11,784 instances of exposure of harbor seals; however, based on factors described in the Take Estimation section below, we do not expect the estimated exposures to result in take of more than 25 percent of the population. Please see the Notice of Issuance of Final IHA (83 FR 63268) for a full discussion of NMFS' rationale regarding how the agency should implement the MMPA small numbers standard.

Comment 42: The CBD commented that the proposed activities will have an

unmitigable adverse impact on the availability of Cook Inlet belugas for subsistence use.

Response: NMFS disagrees with this assertion. As described in the Least Practicable Adverse Impact section below, a moratorium on subsistence hunting of Cook Inlet belugas has been in place for over 10 years. The criteria established for when subsistence hunt of Cook Inlet beluga could resume included the need for a ten year average abundance estimate to exceed 350 animals, as well as a requirement for an increasing population trajectory; therefore, there are no active subsistence uses of beluga whales that the activity could interfere with.

Comment 43: The CBD commented that NMFS failed to ensure the least practicable adverse impact. This included failing to consider alternative mitigation measures to reduce impacts of the activities, including reducing activities in all biologically important areas and utilizing PAM.

Response: In the proposed rule, NMFS described its consideration of passive acoustic monitoring and described previous attempts to use PAM in previous geophysical surveys in Cook Inlet. These attempts have not been successful, and NMFS has elected to not require further attempts of PAM at this time. Instead, NMFS has chosen to require a mitigation vessel for extended visual observation coverage, as well as aerial surveys specifically directed at searching for Cook Inlet beluga whales during seismic activity. Based on the intended purpose of Hilcorp's activities and the locations of certain project sets, it was not practicable to exclude all biologically important areas (BIAs) for Cook Inlet beluga whales from Hilcorp's action area. NMFS is required to analyze what was proposed by Hilcorp, which included oil and gas activities at specific lease sale sites that lie within Cook Inlet beluga whale BIAs. However, NMFS has continued to require a seasonal exclusion zone at the Susitna River Delta to protect essential critical habitat for Cook Inlet beluga whales. Additionally, NMFS has added an additional closure during seismic surveying at the mouth of the Kasilof River, which is also part of the Cook Inlet beluga whale BIA, from January 1 to May 31. No other BIAs for marine mammals are designated in Cook Inlet or in Hilcorp's action area. The next closest BIA, which is located south of the Kachemak Peninsula, is for fin whales.

Comment 44: The CBD commented that the purpose and need of the EA are too narrowly defined.

Response: The EA evaluates the impacts of issuing an incidental take authorization for the take of marine mammals. As described in the EA (and described in the context of the MMPA in the proposed rule) and summarized in the FONSI, the effects of the marine mammal take anticipated and authorized will not significantly impact the quality of the human environment.

Comment 45: The CBD commented that NMFS failed to consider a reasonable range of alternatives, as the alternatives considered in the EA did not contain additional monitoring beyond that considered in the proposed rule.

Response: NMFS considered several alternatives, including additional mitigation measures that are not required in this final rule. In accordance with NEPA and CEQ Regulations, NMFS, to the fullest extent possible, integrates the requirements of NEPA with other regulatory processes required by law and by agency practice, so that all procedures run concurrently, rather than consecutively. Accordingly, while the EA considered two designated alternatives (issuance or non-issuance of the rule and LOAs), additional mitigation alternatives were considered in the rule issuance process. For example, some of the potential mitigation measures, discussed further below, were included in the proposed rule with our rationale for not proposing to require these mitigation measures (*i.e.* multiple unsuccessful deployments of several types of PAM). Because of the limited success of certain monitoring technologies such as PAM and night vision in Cook Inlet, NMFS did not find additional reasonable alternatives to carry through the analysis in the EA. However, the requirements in this final rule include mitigation beyond what was proposed by Hilcorp and what was presented in the proposed rule, as an additional mitigation vessel with at least one on-duty PSO is now required during seismic activity.

Comment 46: The CBD commented that the EA's affected environment sections, including sections on marine mammal habitat, biological environment, and socioeconomic development, are incomplete.

Response: Further detail has been added to these sections in the final EA.

Comment 47: The CBD commented that the draft EA did not include sufficient detail on impacts to marine mammal habitat, including critical habitat for ESA-listed marine mammals.

Response: Additional detail has been added to the relevant sections in the final EA.

Comment 48: The CBD commented that description of potential effects of the proposed action on marine mammals in the EA is deficient, including insufficient discussion of behavioral and physiological impacts. Effects on prey species were also noted to be lacking.

Response: The discussion of potential effects to marine mammals and their prey species has been expanded in the Final EA.

Comment 49: The CBD commented that the EA does not address potential impacts to subsistence uses. The CBD stated that removal of one animal from the Cook Inlet beluga whale population has a population level effect. The CBD also noted that lack of spatial overlap between the proposed activities and subsistence hunted animals does not alleviate concerns about availability for subsistence uses.

Response: NMFS considered potential impacts to subsistence uses of marine mammals in Section 3.3.1 of the Final EA. NMFS does not solely rely on lack of spatial overlap to conclude the activities are unlikely to have effects on subsistence use. In our proposed rule, we described the history of subsistence hunting of Cook Inlet beluga whales and explained why it is unlikely that subsistence hunting for Cook Inlet beluga whales will resume over the next five years. Additionally, the number of individual harbor seals likely to be taken by Hilcorp's activities would primarily be taken by Level B harassment. While harbor seals may temporarily be displaced due to certain coastal construction such as the causeway construction, most of Hilcorp's work will not occur onshore and will not displace harbor seals from land-based haulouts where they can be hunted or prevent hunters from approaching hauled out animals. The land-based work will not occur at known harbor seal haulouts and will not prevent hunters from pursuing seals at haulouts. NMFS is not authorizing any serious injury or mortality, or any other take that could potentially be considered a removal from the population.

Comment 50: The CBD commented that certain aspects were lacking in the cumulative effects section of the EA. They commented that NMFS should include a proposed nationwide five-year leasing program and potential additional oil and gas activity in Cook Inlet. They commented that spill related-effects or effects of other disasters at Pebble Mine are not considered. They also noted discussion of Alaska LNG's proposed work and the Alaska Gasline Development Corporation's plans for a pipeline was missing from the cumulative effects section.

Response: NMFS thanks CBD for raising the Alaska LNG and pipeline development activities as projects that should be included in the Cumulative Impacts section of the EA. They have been added accordingly. The proposed leasing program was not included in the EA as activity that could directly affect marine mammals, their habitat, or their prey, as it is not expected to occur in the foreseeable future. Particularly in Cook Inlet, a lease sale does not always translate to immediate drilling or other geophysical testing in the lease blocks. It would be appropriate to consider these activities once the leases have been granted. Additionally, oil spills or other disasters stemming from man-made structures in Cook Inlet are not considered, as they are not authorized and are a breach of regulations. It is the responsibility of the applicants to comply with all additional regulations, and to work with the state to obtain approval of their Oil Discharge Prevention and Contingency Plans (ODPCP).

Comment 51: The CBD commented that the EA failed to quantify greenhouse gas emissions of drilling and production and the impacts of continued use of oil platforms beyond their intended lifespan.

Response: NMFS does not quantify greenhouse gas emissions from drilling, as this is outside the scope of our assessment. The amount and extent of drilling by Hilcorp is unknown, and the drilling activity itself is not authorized by NMFS under the MMPA. Additionally, use of drill rigs beyond

their lifespan is not a practice that is authorized or condoned by NMFS, and is therefore not considered to be likely in the foreseeable future.

Description of Marine Mammals in the Area of Specified Activities

Eleven species of marine mammal have the potential to occur in the action area during the five year period of activities conducted by Hilcorp. These species are described in further detail below.

Table 2 lists all species with expected potential for occurrence in Cook Inlet and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' 2017 U.S. Alaska and Pacific SARs (Muto *et al.*, 2017; Carretta *et al.*, 2017). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs and draft 2018 SARs (available online at: <https://www.fisheries.noaa.gov/action/2018-draft-marine-mammal-stock-assessment-reports-available>).

TABLE 2—SPECIES WITH THE POTENTIAL TO OCCUR IN COOK INLET, ALASKA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance sur- vey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	<i>Eschrichtius robustus</i>	Eastern Pacific	-/-; N	20,990 (0.05, 20,125, 2011) ..	624	4.25

TABLE 2—SPECIES WITH THE POTENTIAL TO OCCUR IN COOK INLET, ALASKA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance sur- vey) ²	PBR	Annual M/SI ³
Family Balaenopteridae (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Northeastern Pacific	E/D; Y	3,168 (0.26, 2,554, 2013)	5.1	0.4
Minke whale	<i>Balaenoptera acutorostrata</i>	Alaska	-/-; N	N/A	N/A	0
Humpback whale	<i>Megaptera novaeangliae</i>	Western North Pacific	E/D; Y	1,107 (0.3, 865, 2006)	3	3.2
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	<i>Delphinapterus leucas</i>	Cook Inlet	E/D; Y	312 (0.1, 287, 2014)	0.54	0.57
Killer whale	<i>Orcinus orca</i>	Alaska Resident	-/-; N	2,347 (N/A, 2,347, 2012)	24	1
		Alaska Transient	-/-; N	587 (N/A, 587, 2012)	5.9	1
Family Phocoenidae (por- poises):						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Alaska	-/-; Y	31,046 (0.214, N/A, 1998)	Undet	72
Dall's porpoise	<i>Phocoenoides dalli</i>	Alaska	-/-; N	83,400 (0.097, N/A, 1993)	Undet	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	<i>Eumetopias jubatus</i>	Western	E/D; Y	53,303 (N/A, 53,303, 2016) ...	320	241
California sea lion	<i>Zalophus californianus</i>	U.S.	-/-; N	296,750 (153,337, N/A, 2011)	9,200	331
Family Phocidae (earless seals):						
Harbor seal	<i>Phoca vitulina</i>	Cook Inlet/Shelikof	-/-; N	27,386 (25,651, N/A, 2011) ...	770	234

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case]

³ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Fin Whales

For management purposes, three stocks of fin whales are currently recognized in U.S. Pacific waters: Alaska (Northeast Pacific), California/Washington/Oregon, and Hawaii. Recent analyses provide evidence that the population structure should be reviewed and possibly updated. However, substantially new data on the stock structure is lacking (Muto *et al.* 2017). Fin whales, including the Northeastern Pacific stock, are listed as endangered under the ESA.

Mizroch *et al.* (2009) provided a comprehensive summary of fin whale sightings data, including whaling catch data and determined there could be at least six populations of fin whales. Evidence suggests two populations are migratory (eastern and western North Pacific) and two to four more are year-round residents in peripheral seas such as the Gulf of California, East China Sea, Sanriku-Hokkaido, and possibly the Sea of Japan. The two migratory stocks are likely mingling in the Bering Sea in July and August. Moore *et al.* (1998, 2006), Watkins *et al.* (2000), and Stafford *et al.* (2007) documented high rates of calling along the Alaska coast beginning in August/September and lasting through

February. Fin whales are regularly observed in the Gulf of Alaska during the summer months, even though calls are seldom detected during this period (Stafford *et al.* 2007). Instruments moored in the southeast Bering Sea detected calls over the course of a year and found peaks from September to November as well as in February and March (Stafford *et al.* 2010). Delarue *et al.* (2013) detected calls in the northeastern Chukchi Sea from instruments moored from July through October from 2007 through 2010.

Fin whales are found seasonally in the Gulf of Alaska, Bering Sea, and as far north as the northern Chukchi Sea (Muto *et al.* 2017). Surveys conducted in coastal waters of the Aleutians and the Alaska Peninsula found that fin whales occurred primarily from the Kenai Peninsula to the Shumagin Islands and were abundant near the Semidi Islands and Kodiak Island (Zerbini *et al.* 2006). An opportunistic survey conducted on the shelf of the Gulf of Alaska found fin whales concentrated west of Kodiak Island in Shelikof Strait, and in the southern Cook Inlet region. Smaller numbers were also observed over the shelf east of Kodiak to Prince William Sound (AFSC, 2003). In the northeastern Chukchi Sea,

visual sightings and acoustic detections have been increasing, which suggests the stock may be re-occupying habitat used prior to large-scale commercial whaling (Muto *et al.* 2017). Most of these areas are feeding habitat for fin whales. Fin whales are rarely observed in Cook Inlet, and most sightings occur near the entrance of the inlet. During the NMFS aerial surveys in Cook Inlet from 2000–2016, 10 sightings of 26 estimated individual fin whales in lower Cook Inlet were observed (Shelden *et al.* 2013, 2015, 2016).

Humpback Whales

Currently, three populations of humpback whales are recognized in the North Pacific, migrating between their respective summer/fall feeding areas and winter/spring calving and mating areas as follows (Baker *et al.* 1998; Calambokidis *et al.* 1997). Although there is considerable distributional overlap in the humpback whale stocks that use Alaska, the whales seasonally found in lower Cook Inlet are probably of the Central North Pacific stock (Muto *et al.* 2017). Listed as endangered under the ESA, this stock has recently been estimated at 7,890 animals (Muto *et al.* 2017). The Central North Pacific stock winters in Hawaii and summers from

British Columbia to the Aleutian Islands (Calambokidis *et al.* 1997), including Cook Inlet.

Humpback whales in the high latitudes of the North Pacific Ocean are seasonal migrants that feed on euphausiids and small schooling fishes (Muto *et al.* 2017). During the spring, these animals migrate north and spend the summer feeding in the prey-rich sub-polar waters of southern Alaska, British Columbia, and the southern Chukchi Sea. Individuals from the Western North Pacific (endangered), Hawaii (not listed under the ESA), and the Mexico (threatened) DPSs migrate to areas near and potentially in the Petition region. However, most of the individuals that migrate to the Cook Inlet area are likely from the Hawaii DPS and not the Western North Pacific or Mexico DPSs (NMFS 2017).

In the summer, humpback whales are regularly present and feeding in the Cook Inlet region, including Shelikof Strait, Kodiak Island bays, and the Barren Islands, in addition to Gulf of Alaska regions adjacent to the southeast side of Kodiak Island (especially Albatross Banks), the Kenai and Alaska peninsulas, Elizabeth Island, as well as south of the Aleutian Islands.

Humpbacks also may be present in some of these areas throughout autumn (Muto *et al.* 2017). Humpback whales have been observed during marine mammal surveys conducted in Cook Inlet. However, their presence is largely confined to lower Cook Inlet. Recent monitoring by Hilcorp in upper Cook Inlet has also included 3 humpback whale sightings near Tyonek (Sitkiewicz *et al.* 2018). During SAExploration's 2015 seismic program, three humpback whales were observed in Cook Inlet; two near the Forelands and one in Kachemak Bay (Kendall *et al.* 2015). During NMFS' Cook Inlet beluga whale aerial surveys from 2000–2016, there were 88 sightings of 191 estimated individual humpback whales in lower Cook Inlet (Shelden *et al.* 2017). They have been regularly seen near Kachemak Bay during the summer months (Rugh *et al.* 2005). There are observations of humpback whales as far north as Anchor Point, with recent summer observations extending to Cape Starichkof (Owl Ridge 2014). Although several humpback whale sightings occurred mid-inlet between Iniskin Peninsula and Kachemak Bay, most sightings occurred outside of the Petition region near Augustine, Barren, and Elizabeth Islands (Shelden *et al.* 2013, 2015, 2017).

Ferguson *et al.* (2015) has established Biologically Important Areas (BIAs) as part of the NOAA Cetacean Density and

Distribution Mapping Working Group (CetMap) efforts. This information supplements the quantitative information on cetacean density, distribution, and occurrence by: (1) Identifying areas where cetacean species or populations are known to concentrate for specific behaviors, or be range-limited, but for which there is not sufficient data for their importance to be reflected in the quantitative mapping effort; and (2) providing additional context within which to examine potential interactions between cetaceans and human activities. A "Feeding Area" BIA for humpback whales in the Gulf of Alaska region encompasses the waters east of Kodiak Island (the Albatross and Portlock Banks), a target for historical commercial whalers based out of Port Hobron, Alaska (Ferguson *et al.* 2015; Reeves *et al.* 1985; Witteveen *et al.* 2007). This BIA also includes waters along the southeastern side of Shelikof Strait and in the bays along the northwestern shore of Kodiak Island. The highest densities of humpback whales around the Kodiak Island BIA occur from July–August (Ferguson *et al.* 2015).

Minke Whale

Minke whales are most abundant in the Gulf of Alaska during summer and occupy localized feeding areas (Zerbini *et al.* 2006). Concentrations of minke whales have occurred along the north coast of Kodiak Island (and along the south coast of the Alaska Peninsula (Zerbini *et al.* 2006). The current estimate for minke whales between Kenai Fjords and the Aleutian Islands is 1,233 individuals (Zerbini *et al.* 2006). During shipboard surveys conducted in 2003, three minke whale sightings were made, all near the eastern extent of the survey from nearshore Prince William Sound to the shelf break (NMML 2003).

Minke whales become scarce in the Gulf of Alaska in fall; most whales are thought to leave the region by October (Consiglieri *et al.* 1982). Minke whales are migratory in Alaska, but recently have been observed off Cape Starichkof and Anchor Point year-round (Muto *et al.* 2017). During Cook Inlet-wide aerial surveys conducted from 1993 to 2004, minke whales were encountered three times (1998, 1999, and 2006), both times off Anchor Point 16 miles northwest of Homer (Shelden *et al.* 2013, 2015, 2017). A minke whale was also reported off Cape Starichkof in 2011 (A. Holmes, pers. comm.) and 2013 (E. Fernandez and C. Hesselbach, pers. comm.), suggesting this location is regularly used by minke whales, including during the winter. Several minke whales were recorded off Cape Starichkof in early

summer 2013 during exploratory drilling (Owl Ridge 2014), suggesting this location is regularly used by minke whales year-round. During Apache's 2014 survey, a total of 2 minke whale groups (3 individuals) were observed during this time period, one sighting to the southeast of Kalgin Island and another sighting near Homer (Lomac-MacNair *et al.* 2014). SAExploration noted one minke whale near Tuxedni Bay in 2015 (Kendall *et al.* 2015). This species is unlikely to be seen in upper Cook Inlet but may be encountered in the mid and lower Inlet.

Killer Whales

Two different stocks of killer whales inhabit the Cook Inlet region of Alaska: The Alaska Resident Stock and the Gulf of Alaska, Aleutian Islands, Bering Sea Transient Stock (Muto *et al.* 2017). Seasonal and year-round occurrence has been noted for killer whales throughout Alaska (Braham and Dahlheim 1982), where whales have been labeled as "resident," "transient," and "offshore" type killer whales (Dahlheim *et al.* 2008; Ford *et al.* 2000). The killer whales using Cook Inlet are thought to be a mix of resident and transient individuals from two different stocks: The Alaska Resident Stock, and the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock (Allen and Angliss 2015). Although recent studies have documented movements of Alaska Resident killer whales from the Bering Sea into the Gulf of Alaska as far north as southern Kodiak Island, none of these whales have been photographed further north and east in the Gulf of Alaska where regular photo-identification studies have been conducted since 1984 (Muto *et al.* 2017).

Killer whales are occasionally observed in lower Cook Inlet, especially near Homer and Port Graham (Shelden *et al.* 2003; Rugh *et al.* 2005). The few whales that have been photographically identified in lower Cook Inlet belong to resident groups more commonly found in nearby Kenai Fjords and Prince William Sound (Shelden *et al.* 2003). The availability of these prey species largely determines the likeliest times for killer whales to be in the area. During aerial surveys conducted between 1993 and 2004, killer whales were observed on only three flights, all in the Kachemak and English Bay area (Rugh *et al.* 2005). However, anecdotal reports of killer whales feeding on belugas in upper Cook Inlet began increasing in the 1990s, possibly in response to declines in sea lion and harbor seal prey elsewhere (Shelden *et al.* 2003). One killer whale group of two individuals was observed during the 2015

SAExploration seismic program near the North Foreland (Kendall *et al.* 2015). During NMFS aerial surveys, killer whales were observed in 1994 (Kamishak Bay), 1997 (Kachemak Bay), 2001 (Port Graham), 2005 (Iniskin Bay), 2010 (Elizabeth and Augustine Islands), and 2012 (Kachemak Bay; Shelden *et al.* 2013). Eleven killer whale strandings have been reported in Turnagain Arm, six in May 1991, and five in August 1993. This species is expected to be rarely seen in upper Cook Inlet but may be encountered in the mid and lower Inlet.

Gray Whales

Gray whales have been reported feeding near Kodiak Island, in southeastern Alaska, and south along the Pacific Northwest (Allen and Angliss 2013). Because most gray whales migrating through the Gulf of Alaska region are thought to take a coastal route, BIA boundaries for the migratory corridor in this region were defined by the extent of the continental shelf (Ferguson *et al.* 2015).

Most gray whales calve and breed from late December to early February in protected waters along the western coast of Baja California, Mexico. In spring, the ENP stock of gray whales migrates approximately 8,000 km (5,000 mi) to feeding grounds in the Bering and Chukchi seas before returning to their wintering areas in the fall (Rice and Wolman 1971). Northward migration, primarily of individuals without calves, begins in February; some cow/calf pairs delay their departure from the calving area until well into April (Jones and Swartz 1984). An unusual mortality event (UME) has been declared for gray whales along the Pacific coast, including Alaska. As of June 6, 2019, six gray whales have stranded in Alaska in 2019. The cause of the UME is not known at the time of writing; while a subset of necropsied individuals appear to be emaciated, this observation is not consistent across all strandings in the UME.

Gray whales approach the action area in late March, April, May, and June, and leave again in November and December (Consiglieri *et al.* 1982; Rice and Wolman 1971) but migrate past the mouth of Cook Inlet to and from northern feeding grounds. Some gray whales do not migrate completely from Baja to the Chukchi Sea but instead feed in select coastal areas in the Pacific Northwest, including lower Cook Inlet (Moore *et al.* 2007). Most of the population follows the outer coast of the Kodiak Archipelago from the Kenai Peninsula in spring or the Alaska Peninsula in fall (Consiglieri *et al.* 1982;

Rice and Wolman 1971). Though most gray whales migrate past Cook Inlet, small numbers have been noted by fishers near Kachemak Bay, and north of Anchor Point (BOEM 2015). During the NMFS aerial surveys, gray whales were observed in the month of June in 1994, 2000, 2001, 2005 and 2009 on the east side of Cook Inlet near Port Graham and Elizabeth Island but also on the west side near Kamishak Bay (Shelden *et al.* 2013). One gray whale was sighted as far north at the Beluga River. Additionally, summering gray whales were seen offshore of Cape Starichkof by marine mammal observers monitoring Buccaneer's Cosmopolitan drilling program in 2013 (Owl Ridge 2014). During Apache's 2012 seismic program, nine gray whales were observed in June and July (Lomac-MacNair *et al.* 2013). During Apache's seismic program in 2014, one gray whale was observed (Lomac-MacNair *et al.* 2014). During SAExploration's seismic survey in 2015, no gray whales were observed (Kendall *et al.* 2015). This species is unlikely to be seen in upper Cook Inlet but may be encountered in the mid and lower Inlet.

Cook Inlet Beluga Whales

The Cook Inlet beluga whale DPS is a small geographically isolated population that is separated from other beluga populations by the Alaska Peninsula. The population is genetically distinct from other Alaska populations suggesting the peninsula is an effective barrier to genetic exchange (O'Corry-Crowe *et al.* 1997). The Cook Inlet beluga whale population is estimated to have declined from 1,300 animals in the 1970s (Calkins 1989) to about 340 animals in 2014 (Shelden *et al.* 2015). The precipitous decline documented in the mid-1990s was attributed to unsustainable subsistence practices by Alaska Native hunters (harvest of >50 whales per year) (Mahoney and Shelden 2000). In 2006, a moratorium to cease hunting was agreed upon to protect the species. In April 2011, NMFS designated critical habitat for the beluga under the ESA (76 FR 20180) as shown on Figure 13 of the application. NMFS finalized the Conservation Plan for the Cook Inlet beluga in 2008 (NMFS 2008a). NMFS finalized the Recovery Plan for Cook Inlet beluga whales in 2016 (NMFS 2016a).

The Cook Inlet beluga stock remains within Cook Inlet throughout the year (Goetz *et al.* 2012a). Two areas, consisting of 7,809 km² (3,016 mi²) of marine and estuarine environments considered essential for the species' survival and recovery were designated critical habitat. However, in recent years the range of the beluga whale has

contracted to the upper reaches of Cook Inlet because of the decline in the population (Rugh *et al.* 2010). Area 1 of the Cook Inlet beluga whale critical habitat encompasses all marine waters of Cook Inlet north of a line connecting Point Possession (61.04° N, 150.37° W) and the mouth of Three Mile Creek (61.08.55° N, 151.04.40° W), including waters of the Susitna, Little Susitna, and Chickaloon Rivers below mean higher high water (MHHW). This area provides important habitat during ice-free months and is used intensively by Cook Inlet beluga between April and November (NMFS 2016a).

Since 1993, NMFS has conducted annual aerial surveys in June, July or August to document the distribution and abundance of beluga whales in Cook Inlet. The collective survey results show that beluga whales have been consistently found near or in river mouths along the northern shores of upper Cook Inlet (*i.e.*, north of East and West Foreland). In particular, beluga whale groups are seen in the Susitna River Delta, Knik Arm, and along the shores of Chickaloon Bay. Small groups had also been recorded seen farther south in Kachemak Bay, Redoubt Bay (Big River), and Trading Bay (McArthur River) prior to 1996 but very rarely thereafter. Since the mid-1990s, most (96 to 100 percent) beluga whales in upper Cook Inlet have been concentrated in shallow areas near river mouths, no longer occurring in the central or southern portions of Cook Inlet (Hobbs *et al.* 2008). Based on these aerial surveys, the concentration of beluga whales in the northernmost portion of Cook Inlet appears to be consistent from June to October (Rugh *et al.* 2000, 2004a, 2005, 2006, 2007).

Though Cook Inlet beluga whales can be found throughout the inlet at any time of year, they spend the ice-free months generally in the upper Cook Inlet, shifting into the middle and lower Inlet in winter (Hobbs *et al.* 2005). In 1999, one beluga whale was tagged with a satellite transmitter, and its movements were recorded from June through September of that year. Since 1999, 18 beluga whales in upper Cook Inlet have been captured and fitted with satellite tags to provide information on their movements during late summer, fall, winter, and spring. Using location data from satellite-tagged Cook Inlet belugas, Ezer *et al.* (2013) found most tagged whales were in the lower to middle inlet (70 to 100 percent of tagged whales) during January through March, near the Susitna River Delta from April to July (60 to 90 percent of tagged whales) and in the Knik and Turnagain Arms from August to December.

During the spring and summer, beluga whales are generally concentrated near the warmer waters of river mouths where prey availability is high and predator occurrence is low (Moore *et al.* 2000). Beluga whales in Cook Inlet are believed to mostly calve between mid-May and mid-July, and concurrently breed between late spring and early summer (NMFS 2016a), primarily in upper Cook Inlet. Movement was correlated with the peak discharge of seven major rivers emptying into Cook Inlet. Boat-based surveys from 2005 to the present (McGuire and Stephens 2017), and initial results from passive acoustic monitoring across the entire inlet (Castellote *et al.* 2016) also support seasonal patterns observed with other methods. Other surveys also confirm Cook Inlet belugas near the Kenai River during summer months (McGuire and Stephens 2017).

During the summer and fall, beluga whales are concentrated near the Susitna River mouth, Knik Arm, Turnagain Arm, and Chickaloon Bay (Nemeth *et al.* 2007) where they feed on migrating eulachon (*Thaleichthys pacificus*) and salmon (*Onchorhynchus* spp.) (Moore *et al.* 2000). Data from tagged whales (14 tags between July and March 2000 through 2003) show beluga whales use upper Cook Inlet intensively between summer and late autumn (Hobbs *et al.* 2005). Critical Habitat Area 1 reflects this summer distribution.

As late as October, beluga whales tagged with satellite transmitters continued to use Knik Arm and Turnagain Arm and Chickaloon Bay, but some ranged into lower Cook Inlet south to Chinitna Bay, Tuxedni Bay, and Trading Bay (McArthur River) in the fall (Hobbs *et al.* 2005). Data from NMFS aerial surveys, opportunistic sighting reports, and satellite-tagged beluga whales confirm they are more widely dispersed throughout Cook Inlet during the winter months (November–April), with animals found between Kalgin Island and Point Possession. In November, beluga whales moved between Knik Arm, Turnagain Arm, and Chickaloon Bay, similar to patterns observed in September (Hobbs *et al.* 2005). By December, beluga whales were distributed throughout the upper to mid-inlet. From January into March, they moved as far south as Kalgin Island and slightly beyond in central offshore waters. Beluga whales also made occasional excursions into Knik Arm and Turnagain Arm in February and March despite ice cover greater than 90 percent (Hobbs *et al.* 2005).

During Apache's seismic test program in 2011 along the west coast of Redoubt Bay, lower Cook Inlet, a total of 33

beluga whales were sighted during the survey (Lomac-MacNair *et al.* 2013). During Apache's 2012 seismic program in mid-inlet, a total of 151 sightings of approximately 1,463 estimated individual beluga whales were observed (Lomac-MacNair *et al.* 2013). During SAExploration's 2015 seismic program, a total of eight sightings of approximately 33 estimated individual beluga whales were visually observed during this time period and there were two acoustic detections of beluga whales (Kendall *et al.* 2015). Hilcorp recently reported 143 sightings of beluga whales May–August while conducting pipeline work in upper Cook Inlet, which is not near the area that seismic surveys are proposed but near some potential well sites (Sitkiewicz *et al.* 2018).

Ferguson *et al.* (2015) delineated one “Small” and “Resident” BIA for Cook Inlet beluga whales. Small and Resident BIAs are defined as “areas and time within which small and resident populations occupy a limited geographic extent” (Ferguson *et al.* 2015). The Cook Inlet beluga whale BIA was delineated using the habitat model results of Goetz *et al.* 2012 and the critical habitat boundaries (76 FR 20180).

Harbor Porpoise

In Alaskan waters, three stocks of harbor porpoises are currently recognized for management purposes: Southeast Alaska, Gulf of Alaska, and Bering Sea Stocks (Muto *et al.* 2017). Porpoises found in Cook Inlet belong to the Gulf of Alaska Stock which is distributed from Cape Suckling to Unimak Pass and most recently was estimated to number 31,046 individuals (Muto *et al.* 2017). They are one of the three marine mammals (the other two being belugas and harbor seals) regularly seen throughout Cook Inlet (Nemeth *et al.* 2007), especially during spring eulachon and summer salmon runs.

Harbor porpoises primarily frequent the coastal waters of the Gulf of Alaska and Southeast Alaska (Dahlheim *et al.* 2000, 2008), typically occurring in waters less than 100 m deep (Hobbs and Waite 2010). The range of the Gulf of Alaska stock includes the entire Cook Inlet, Shelikof Strait, and the Gulf of Alaska. Harbor porpoises have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh *et al.* 2005a). Although they have been frequently observed during aerial surveys in Cook Inlet (Shelden *et al.* 2014), most sightings are of single animals, and are concentrated at

Chinitna and Tuxedni bays on the west side of lower Cook Inlet (Rugh *et al.* 2005) and in the upper inlet. The occurrence of larger numbers of porpoise in the lower Cook Inlet may be driven by greater availability of preferred prey and possibly less competition with beluga whales, as belugas move into upper inlet waters to forage on Pacific salmon during the summer months (Shelden *et al.* 2014).

The harbor porpoise frequently has been observed during summer aerial surveys of Cook Inlet, with most sightings of individuals concentrated at Chinitna and Tuxedni Bays on the west side of lower Cook Inlet (Figure 14 of the application; Rugh *et al.* 2005). Mating probably occurs from June or July to October, with peak calving in May and June (as cited in Consiglieri *et al.* 1982). Small numbers of harbor porpoises have been consistently reported in the upper Cook Inlet between April and October, except for a recent survey that recorded higher numbers than typical. NMFS aerial surveys have identified many harbor porpoise sightings throughout Cook Inlet. During Apache's 2012 seismic program, 137 sightings (190 individuals) were observed between May and August (Lomac-MacNair *et al.* 2013). Lomac-MacNair *et al.* 2014 identified 77 groups of harbor porpoise totaling 13 individuals during Apache's 2014 seismic survey, both from vessels and aircraft, during the month of May. During SAExploration's 2015 seismic survey, 52 sightings (65 individuals) were observed north of the Forelands (Kendall *et al.* 2015).

Recent passive acoustic research in Cook Inlet by Alaska Department of Fish and Game (ADF&G) and the Marine Mammal Laboratory (MML) have indicated that harbor porpoises occur more frequently than expected, particularly in the West Foreland area in the spring (Castellote *et al.* 2016), although overall numbers are still unknown at this time. Hilcorp recently reported 29 sightings of 44 harbor porpoises while conducting pipeline work in upper Cook Inlet (Sitkiewicz *et al.* 2018).

Dall's Porpoise

Dall's porpoises are widely distributed throughout the North Pacific Ocean including preferring deep offshore and shelf-slopes, and deep oceanic waters (Muto *et al.* 2017). The Dall's porpoise range in Alaska extends into the southern portion of the Petition region (Figure 14 of the application). Dall's porpoises are present year-round throughout their entire range in the northeast including the Gulf of Alaska,

and occasionally the Cook Inlet area (Morejohn 1979). This porpoise also has been observed in lower Cook Inlet, around Kachemak Bay, and rarely near Anchor Point (Owl Ridge 2014; BOEM 2015).

Throughout most of the eastern North Pacific they are present during all months of the year, although there may be seasonal onshore-offshore movements along the west coast of the continental United States and winter movements of populations out of areas with ice such as Prince William Sound (Muto *et al.* 2017). Dall's porpoises were observed (2 groups, 3 individuals) during Apache's 2014 seismic survey which occurred in the summer months (Lomac-MacNair *et al.* 2014). Dall's porpoises were observed during the month of June in 1997 (Iniskin Bay), 199 (Barren Island), and 2000 (Elizabeth Island, Kamishak Bay and Barren Island) (Shelden *et al.* 2013). Dall's porpoises have been observed in lower Cook Inlet, including Kachemak Bay and near Anchor Point (Owl Ridge 2014). One Dall's porpoise was observed in August north of Nikiski in the middle of the Inlet during SAExploration's 2015 seismic program (Kendall *et al.* 2015).

Harbor Seal

Harbor seals occupy a wide variety of habitats in freshwater and saltwater in protected and exposed coastlines and range from Baja California north along the west coasts of Washington, Oregon, and California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. Harbor seals are found throughout the entire lower Cook Inlet coastline, hauling out on beaches, islands, mudflats, and at the mouths of rivers where they whelp and feed (Muto *et al.* 2017).

The major haul out sites for harbor seals are located in lower Cook Inlet. The presence of harbor seals in upper Cook Inlet is seasonal. In Cook Inlet, seal use of western habitats is greater than use of the eastern coastline (Boveng *et al.* 2012). NMFS has documented a strong seasonal pattern of more coastal and restricted spatial use during the spring and summer for breeding, pupping, and molting, and more wide-ranging seal movements within and outside of Cook Inlet during the winter months (Boveng *et al.* 2012). Large-scale patterns indicate a portion of harbor seals captured in Cook Inlet move out of the area in the fall, and into habitats within Shelikof Strait, Northern Kodiak Island, and coastal habitats of the Alaska Peninsula, and are most

concentrated in Kachemak Bay, across Cook Inlet toward Iniskin and Iliamna Bays, and south through the Kamishak Bay, Cape Douglas and Shelikof Strait regions (Boveng *et al.* 2012).

A portion of the Cook Inlet seals move into the Gulf of Alaska and Shelikof Strait during the winter months (London *et al.* 2012). Seals move back into Cook Inlet as the breeding season approaches and their spatial use is more concentrated around haul-out areas (Boveng *et al.* 2012; London *et al.* 2012). Some seals expand their use of the northern portion of Cook Inlet. However, in general, seals that were captured and tracked in the southern portion of Cook Inlet remained south of the Forelands (Boveng *et al.* 2012). Important harbor seal haul-out areas occur within Kamishak and Kachemak Bays and along the coast of the Kodiak Archipelago and the Alaska Peninsula. Chinitna Bay, Clearwater and Chinitna Creeks, Tuxedni Bay, Kamishak Bay, Oil Bay, Pomeroy and Iniskin Islands, and Augustine Island are also important spring-summer breeding and molting areas and known haul-outs sites (Figure 15 of the application). Small-scale patterns of movement within Cook Inlet also occur (Boveng *et al.* 2012). Montgomery *et al.* (2007) recorded over 200 haul out sites in lower Cook Inlet alone. However, only a few dozen to a couple hundred seals seasonally occur in upper Cook Inlet (Rugh *et al.* 2005), mostly at the mouth of the Susitna River where their numbers vary in concert with the spring eulachon and summer salmon runs (Nemeth *et al.* 2007; Boveng *et al.* 2012).

The Cook Inlet/Shelikof Stock is distributed from Anchorage into lower Cook Inlet during summer and from lower Cook Inlet through Shelikof Strait to Unimac Pass during winter (Boveng *et al.* 2012). Large numbers concentrate at the river mouths and embayments of lower Cook Inlet, including the Fox River mouth in Kachemak Bay, and several haul outs have been identified on the southern end of Kalgin Island in lower Cook Inlet (Rugh *et al.* 2005; Boveng *et al.* 2012). Montgomery *et al.* (2007) recorded over 200 haul-out sites in lower Cook Inlet alone. During Apache's 2012 seismic program, harbor seals were observed in the project area from early May until the end of the seismic operations in late September (Lomac-MacNair *et al.* 2013). Also in 2012, up to 100 harbor seals were observed hauled out at the mouths of the Theodore and Lewis rivers during monitoring activity associated with Apache's 2012 Cook Inlet seismic program. During Apache's 2014 seismic program, 492 groups of harbor seals (613

individuals) were observed. This was the highest sighting rate of any marine mammal observed during the summer of 2014 (Lomac-MacNair *et al.* 2014). During SAExploration's 2015 seismic survey, 823 sightings (1,680 individuals) were observed north and between the Forelands (Kendall *et al.* 2015). Hilcorp recently reported 313 sightings of 316 harbor seals while conducting pipeline work in upper Cook Inlet (Sitkiewicz *et al.* 2018).

Steller Sea Lions

The western DPS (WDPS) stock of Steller sea lions most likely occurs in Cook Inlet (78 FR 66139). The center of abundance for the Western DPS is considered to extend from Kenai to Kiska Island (NMFS 2008b). The WDPS of the Steller sea lion is defined as all populations west of longitude 144° W to the western end of the Aleutian Islands. The range of the WDPS includes 38 rookeries and hundreds of haul out sites. The Hilcorp action area only considers the WDPS stock. The most recent comprehensive aerial photographic and land-based surveys of WDPS Steller sea lions in Alaska were conducted during the 2014 and 2015 breeding seasons (Fritz *et al.* 2015).

The WDPS of Steller sea lions is currently listed as endangered under the ESA (55 FR 49204) and designated as depleted under the MMPA. Critical habitat was designated on August 27, 1993 (58 FR 45269) south of the project area in the Cook Inlet region (Figure 16 of the application). The critical habitat designation for the WDPS of Steller sea lions was determined to include a 37 km (20 nm) buffer around all major haul outs and rookeries, and associated terrestrial, atmospheric, and aquatic zones, plus three large offshore foraging areas (Figure 16 of the application). NMFS also designated no entry zones around rookeries (50 CFR 223.202). Designated critical habitat is located outside Cook Inlet at Gore Point, Elizabeth Island, Perl Island, and Chugach Island (NMFS 2008b).

The geographic center of Steller sea lion distribution is the Aleutian Islands and the Gulf of Alaska, although as the WDPS has declined, rookeries in the west became progressively smaller (NMFS 2008b). Steller sea lion habitat includes terrestrial sites for breeding and pupping (rookeries), resting (haul outs), and marine foraging areas. Nearly all rookeries are at sites inaccessible to terrestrial predators on remote rocks, islands, and reefs. Steller sea lions inhabit lower Cook Inlet, especially near Shaw Island and Elizabeth Island (Nagahut Rocks) haul out sites (Rugh *et al.* 2005) but are rarely seen in upper

Cook Inlet (Nemeth *et al.* 2007). Steller sea lions occur in Cook Inlet but south of Anchor Point around the offshore islands and along the west coast of the upper inlet in the bays (Chinitna Bay, Iniskin Bay, etc.) (Rugh *et al.* 2005). Portions of the southern reaches of the lower inlet are designated as critical habitat, including a 20-nm buffer around all major haulout sites and rookeries. Rookeries and haul out sites in lower Cook Inlet include those near the mouth of the inlet, which are far south of the project area. Steller sea lions feed largely on walleye pollock, salmon, and arrowtooth flounder during the summer, and walleye pollock and Pacific cod during the winter (Sinclair and Zeppelin 2002). Except for salmon, none of these are found in abundance in upper Cook Inlet (Nemeth *et al.* 2007).

Steller sea lions can travel considerable distances (Baba *et al.* 2000). Steller sea lions are not known to migrate annually, but individuals may widely disperse outside of the breeding season (late May to early July; Jemison *et al.* 2013; Allen and Angliss 2014). Most adult Steller sea lions inhabit rookeries during the breeding season (late May to early July). Some juveniles and non-breeding adults occur at or near rookeries during the breeding season, but most are on haul outs. Adult males may disperse widely after the breeding season and, during fall and winter, many sea lions increase use of haul outs, especially terrestrial sites but also on sea ice in the Bering Sea (NMFS 2008b).

Steller sea lions have been observed during marine mammal surveys conducted in Cook Inlet. In 2012, during Apache's 3D Seismic surveys, there were three sightings of approximately four individuals in upper Cook Inlet (Lomac-MacNair *et al.* 2013). Marine mammal observers associated with Buccaneer's drilling project off Cape Starichkof observed seven Steller sea lions during the summer of 2013 (Owl Ridge 2014). During SAEExploration's 3D Seismic Program in 2015, four Steller sea lions were observed in Cook Inlet. One sighting occurred between the West and East Forelands, one near Nikiski and one northeast of the North Foreland in the center of Cook Inlet (Kendall *et al.* 2015). During NMFS Cook Inlet beluga whale aerial surveys from 2000–2016, there were 39 sightings of 769 estimated individual Steller sea lions in lower Cook Inlet (Shelden *et al.* 2017). Sightings of large congregations of Steller sea lions during NMFS aerial surveys occurred outside the Petition region, on land in the mouth of Cook Inlet (e.g., Elizabeth and Shaw Islands). Hilcorp recently reported 1 sighting of

2 Steller sea lions while conducting pipeline work in upper Cook Inlet (Sitkiewicz *et al.* 2018).

California Sea Lions

There is limited information on the presence of California sea lions in Alaska. From 1973 to 2003, a total of 52 California sea lions were reported in Alaska, with sightings increasing in the later years. Most sightings occurred in the spring; however, they have been observed during all seasons. California sea lion presence in Alaska was correlated with increasing population numbers within their southern breeding range (Maniscalco *et al.* 2004).

There have been relatively few California sea lions observed in Alaska, most are often alone or occasionally in small groups of two or more and usually associated with Steller sea lions at their haulouts and rookeries (Maniscalco *et al.* 2004). California sea lions are not typically observed farther north than southeast Alaska, and sightings are very rare in Cook Inlet. California sea lions have not been observed during the annual NMFS aerial surveys in Cook Inlet. However, a sighting of two California sea lions was documented during for the Apache 2012 seismic survey (Lomac-MacNair *et al.* 2013). Additionally, NMFS' anecdotal sighting database has four sightings in Seward and Kachemak Bay.

The California sea lion breeds from the southern Baja Peninsula north to Año Nuevo Island, California. Breeding season lasts from May to August, and most pups are born from May through July. A UME was declared in 2013 for California sea lions in southern California, primarily for pups and yearlings. However, the UME does not extend through the Pacific Northwest or to Alaska, but California sea lions have been included in this rule to cover the unlikely occurrence of lone individuals that occur in Cook Inlet every few years. Their nonbreeding range extends northward into British Columbia and occasionally farther north into Alaskan waters. California sea lions have been observed in Alaska during all four seasons; however, most of the sightings have occurred during the spring (Maniscalco *et al.* 2004).

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; [https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-](https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region)

[mammal-stock-assessment-reports-region](https://www.fisheries.noaa.gov/species-directory/)), and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/species-directory/>).

All species that could potentially occur in the survey areas are included in Table 2. As described below, all 11 species (with 12 managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorizing take of those species.

In addition, sea otters may be found in Cook Inlet. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is

estimated to occur between approximately 7 Hz and 35 kHz;

- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;

- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus*; including two members of the genus *Lagenorhynchus*, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;

- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz; and

- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Eleven marine mammal species (eight cetacean and three pinniped (two otariid and one phocid) species) have the reasonable potential to co-occur with the survey activities. Please refer to Table 2. Of the cetacean species that may be present, four are classified as low-frequency cetaceans (*i.e.*, all mysticete species), two are classified as mid-frequency cetaceans (*i.e.*, all delphinid and ziphiid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.*, harbor porpoise and *Kogia* spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive

success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this rule in as much as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the “loudness” of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener’s position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urlick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu\text{Pa}^2\text{-s}$)

represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0–p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk–pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.*, 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;

- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;

- Biological: Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and

- Anthropogenic: Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see

Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.*, airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.*, omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

As described above, two types of sub-bottom profiler will also be used by Hilcorp during the geotechnical and geohazard surveys: A low resolution unit (1–4 kHz) and a high resolution unit (2–24 kHz).

Potential Effects of Underwater Sound—Please refer to the information given previously (“Description of Active Acoustic Sound Sources”) regarding sound, characteristics of sound types, and metrics used in this document. Note that, in the following discussion, we refer in many cases to a recent review

article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.*, Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal’s hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airguns.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal’s hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays, sub-bottom profilers, drill rig construction, or sheet pile driving are

reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.*, 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (e.g., change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Tal *et al.*, 2015). The suite of activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

1. **Threshold Shift**—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (i.e., tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (e.g., Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals. There is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; e.g., Kryter *et al.*, 1966; Miller, 1974) which would induce mild TTS (a 6-dB threshold shift approximates TTS onset;

e.g., Southall *et al.*, 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis, and PTS cumulative sound exposure level (SELcum) thresholds are 15 to 20 dB higher than TTS SELcum thresholds (Southall *et al.*, 2007). Given the higher level of sound combined with longer exposure duration necessary to cause PTS, it is expected that limited PTS could occur from the activities. For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (e.g., Nachtigall and Supin, 2013; Miller *et al.*, 2012; Finneran *et al.*, 2015; Popov *et al.*, 2016). Given the higher level of sound, longer durations of exposure necessary to cause PTS, it is possible but unlikely PTS would occur during the seismic surveys, geotechnical surveys, or other exploratory drilling activities.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran *et al.* (2015) measured hearing thresholds in three captive

bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects is likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaticaorientalis*)) and five species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (i.e., mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the

relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016).

Marine mammals in the action area during the activities are less likely to incur TTS hearing impairment from some of the sources to be used due to the characteristics of the sound sources, particularly sources such as the water jets, which include lower source levels (176 dB @1m) and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (e.g., harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.*, 2009; Kastelein *et al.*, 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.*, intermittent exposure results in lower levels of TTS) (Mooney *et al.*, 2009a; Finneran *et al.*, 2010).

Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS (much less PTS). Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause temporary threshold shift and will likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the sub-bottom profiler and other geophysical survey equipment makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel. Boebel *et al.* (2005) concluded similarly for single and multibeam echosounders, and more recently, Lurton (2016) conducted a modeling exercise and concluded similarly that likely potential for acoustic injury from these types of systems is negligible, but that behavioral response cannot be ruled out. Animals may avoid the area around the survey vessels, thereby reducing exposure. Effects of non-pulsed sound on marine

mammals, such as vibratory pile driving, are less studied. In a study by Malme *et al.* (1986) on gray whales as well as Richardson *et al.* (1997) on beluga whales, the only reactions documented in response to drilling sound playbacks were behavioral reactions. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

2. Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (e.g., minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (e.g., Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (e.g., whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a “progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,” rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater

behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (e.g., Barkaszi *et al.*, 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (e.g., Frankel and Clark 2000; Ng and Leung 2003; Nowacek *et al.* 2004; Goldbogen *et al.* 2013). Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known

foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.* 2001; Nowacek *et al.* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). A determination of whether foraging disruptions incur fitness consequences requires information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.*, 2006; Miller *et al.*, 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were six percent lower during exposure than control periods (Miller *et al.*, 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.*, 2009). Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the

tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2001, 2005, 2006; Gailey *et al.*, 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment, and the numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 hours of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity,

providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μ Pa²-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (i.e., 10-minute SELcum of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.*, 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.*, 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*, 1994; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of

the sound does not occur (e.g., Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil 1997; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch 1992; Daan *et al.* 1996; Bradshaw *et al.* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that

there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in³ or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during and post-seismic survey (Gailey *et al.*, 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

Marine mammals are likely to avoid the activities, especially harbor porpoises, while the harbor seals might be attracted to them out of curiosity. However, because the sub-bottom profilers and seismic equipment operate from moving vessels, the area (relative to the available habitat in Cook Inlet) and time that this equipment will be affecting a given location is very small. Further, for mobile sources, once an area has been surveyed, it is not likely that it will be surveyed again, therefore reducing the likelihood of repeated geophysical and geotechnical survey impacts within the survey area. The isopleths for harassment for the stationary sources considered in this document are small relative to those for mobile sources. Therefore, while the sound is concentrated in the same area for the duration of the activity (duration of pile driving, VSP, etc), the amount of area affected by noise levels which we expect may cause harassment are small relative to the mobile sources. Additionally, animals may more predictably avoid the area of the disturbance as the source is stationary. Overall duration of these sound sources

is still short and unlikely to cause more than temporary disturbance.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from Hilcorp's use of high resolution geophysical survey equipment, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.*, 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.*, 2006; Brownell *et al.*, 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site. This may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.*, a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.*, 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be

more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for high resolution geophysical (HRG) survey applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

3. Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Seyle, 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response will not pose serious fitness consequences. However, when

an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, will presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007). There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources, are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory seismic and geophysical surveys creates conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. While the noise from drilling related activities are more continuous and longer term, those sounds are generated at a much lower

level than the mobile sources discussed earlier.

4. Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds, such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (e.g., Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (e.g., Miller *et al.*

2000; Foote *et al.* 2004; Parks *et al.* 2007; Holt *et al.* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore 2014). Masking can be tested directly in captive species (*e.g.*, Erbe 2008) but, in wild populations, it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Branstetter *et al.* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.*, from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Marine mammal communications are not likely masked appreciably by the sub-profiler or seismic survey's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. The probability for conductor pipe driving masking acoustic signals important to the behavior and survival of marine mammal species is low. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for short durations. It is possible that vibratory pile driving resulting from this action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area will result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA will occur concurrently within the zones of behavioral harassment already estimated for vibratory pile and conductor pipe driving, and which have already been taken into account in the exposure analysis. Pile driving will occur for limited durations across multiple widely dispersed sites, thus we do not anticipate masking to significantly affect marine mammals.

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.*, fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus 2001; Laist *et al.* 2001; Vanderlaan and Taggart 2007; Conn and Silber 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.* 2010; Gende *et al.* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne and Kennedy, 1999;). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kt. The chances of a lethal injury decline from approximately 80 percent at 15 kt to approximately 20 percent at 8.6 kt. At speeds below 11.8 kt, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kt.

Hilcorp's seismic vessels will travel at approximately 4 knots (7.41 km/hour) while towing seismic survey gear and a maximum of 4.5 knots (8.3 km/hr) while conducting geotechnical and geohazard

surveys (Faithweather, 2018). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.*, commercial shipping). Commercial fishing vessels were responsible for three percent of recorded collisions, while no such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kt) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = $0-5.5 \times 10^{-6}$; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we require a robust ship strike avoidance protocol (see "Mitigation"), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the

relatively slow speed of the vessel towing gear, the presence of marine mammal observers, and the short duration of the survey, we believe that the possibility of ship strike is discountable. Further, were a strike of a large whale to occur, it is unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding

When a living or dead marine mammal swims or floats onto shore and becomes "beached" or incapable of returning to sea, the event is a "stranding" (Geraci *et al.* 1999; Perrin and Geraci 2002; Geraci and Lounsbury 2005). The legal definition for a stranding under the MMPA is (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxins, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Eaton, 1979; Best 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Fair and Becker 2000; Moberg, 2000; Romero 2004; Sih *et al.* 2004).

Use of military tactical sonar has been implicated in several stranding events (in specific circumstances), although one stranding event was associated with

the use of seismic airguns. This event occurred in the Gulf of California, coincident with seismic reflection profiling by the R/V Maurice Ewing operated by Lamont-Doherty Earth Observatory (LDEO) of Columbia University and involved two Cuvier's beaked whales (Hildebrand 2004). The vessel had been firing an array of 20 airguns with a total volume of 8,500 in³ (Hildebrand 2004). Most known stranding events have involved beaked whales, though a small number have involved deep-diving delphinids or sperm whales (*e.g.*, Southall *et al.* 2013). In general, long duration (~1 second) and high-intensity sounds (≤ 235 dB SPL) have been implicated in stranding events (Hildebrand 2004). With regard to beaked whales, mid-frequency sound has been implicated in a few specific cases (when causation can be determined) (Hildebrand 2004). Although seismic airguns create predominantly low-frequency energy, the signal does include a mid-frequency component. Based on the information presented above, we have considered the potential for the survey to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

Other Potential Impacts

Here, we briefly address the potential risks due to entanglement and contaminant spills. We are not aware of any records of marine mammal entanglement in towed arrays such as those considered here. The discharge of trash and debris is prohibited (33 CFR 151.51–77) unless it is passed through a machine that breaks up solids such that they can pass through a 25-mm mesh screen. All other trash and debris must be returned to shore for proper disposal with municipal and solid waste. Some personal items may be accidentally lost overboard. However, U.S. Coast Guard and Environmental Protection Act regulations require operators to become proactive in avoiding accidental loss of solid waste items by developing waste management plans, posting informational placards, manifesting trash sent to shore, and using special precautions such as covering outside trash bins to prevent accidental loss of solid waste. There are no meaningful entanglement risks posed by the described activity, and entanglement risks are not discussed further in this document.

Marine mammals could be affected by accidentally spilled diesel fuel from a vessel associated with survey activities. Quantities of diesel fuel on the sea surface may affect marine mammals

through various pathways: Surface contact of the fuel with skin and other mucous membranes, inhalation of concentrated petroleum vapors, or ingestion of the fuel (direct ingestion or by the ingestion of oiled prey) (*e.g.*, Geraci and St. Aubin, 1980, 1990). However, the likelihood of a fuel spill during any particular geophysical survey is considered to be remote, and the potential for impacts to marine mammals would depend greatly on the size and location of a spill and meteorological conditions at the time of the spill. Spilled fuel would rapidly spread to a layer of varying thickness and break up into narrow bands or windows parallel to the wind direction. The rate at which the fuel spreads would be determined by the prevailing conditions such as temperature, water currents, tidal streams, and wind speeds. Lighter, volatile components of the fuel would evaporate to the atmosphere almost completely in a few days. Evaporation rate may increase as the fuel spreads because of the increased surface area of the slick. Rougher seas, high wind speeds, and high temperatures also tend to increase the rate of evaporation and the proportion of fuel lost by this process (Scholz *et al.*, 1999). We do not anticipate potentially meaningful effects to marine mammals as a result of any contaminant spill resulting from the survey activities, and contaminant spills are not discussed further in this document.

Similarly, marine mammals could be affected by spilled hazardous materials generated by the drilling process. Large and small quantities of hazardous materials, including diesel fuel and gasoline, will be handled, transported, and stored following the rules and procedures described in the Spill Prevention, Control, and Countermeasure (SPCC) Plan. Spills and leaks of oil or wastewater arising from the activities that reach marine waters could result in direct impacts to the health of exposed marine mammals. Individual marine mammals could show acute irritation or damage to their eyes, blowhole or nares, and skin; fouling of baleen, which could reduce feeding efficiency; and respiratory distress from the inhalation of vapors (Geraci and St. Aubin 1990). Long-term impacts from exposure to contaminants to the endocrine system could impair health and reproduction (Geraci and St. Aubin 1990). Ingestion of contaminants could cause acute irritation to the digestive tract, including vomiting and aspiration into the lungs, which could result in pneumonia or death (Geraci and St.

Aubin 1990). However, the measures outlined in Hilcorp's spill plan minimize the risk of a spill such that we do not anticipate potentially meaningful effects to marine mammals as a result of oil spills from this activity nor is take from spills authorized and oil spills are not discussed further in this document.

Anticipated Effects on Marine Mammal Habitat

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pulsed sound on fish, although several are based on studies in support of construction projects (e.g., Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior, although the behavioral threshold currently observed is <150 dB RMA re 1 μ Pa. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from survey activities at the project area will be temporary avoidance of the area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Information on seismic airgun impacts to zooplankton, which represent an important prey type for mysticetes, is limited. However, McCauley *et al.* (2017) reported that experimental exposure to a pulse from a 150 in³ airgun decreased zooplankton abundance when compared with controls, as measured by sonar and net tows, and caused a two- to threefold increase in dead adult and larval zooplankton. Although no adult krill were present, the study found that all larval krill were killed after air gun passage. Impacts were observed out to the maximum 1.2 km range sampled. The reaction of fish to airguns depends on the physiological state of the fish, past exposures, motivation (e.g., feeding, spawning, migration), and other environmental factors. While we agree that some studies have demonstrated that airgun sounds might affect the distribution and behavior of some

fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017), other studies have shown no or slight reaction to airgun sounds (e.g., Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012).

In general, impacts to marine mammal prey are expected to be limited due to the relatively small temporal and spatial overlap between the survey and any areas used by marine mammal prey species. The activities will occur over a relatively short time period in a given area and will occur over a very small area relative to the area available as marine mammal habitat in Cook Inlet. We do not have any information to suggest the survey area represents a significant feeding area for any marine mammal, and we believe any impacts to marine mammals due to adverse effects to their prey will be insignificant due to the limited spatial and temporal impact of the activities. However, adverse impacts may occur to a few species of fish and to zooplankton. Packard *et al.* (1990) showed that cephalopods were sensitive to particle motion, not sound pressure, and Mooney *et al.* (2010) demonstrated that squid statocysts act as an accelerometer through which particle motion of the sound field can be detected. Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.*, 2011; Sole *et al.*, 2013). However, these controlled exposures involved long exposure to sounds dissimilar to airgun pulses (i.e., 2 hours of continuous exposure to 1-second sweeps, 50–400 Hz). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.*, 2000b; Samson *et al.*, 2014).

Indirect impacts from spills or leaks could occur through the contamination of lower-trophic-level prey, which could reduce the quality and/or quantity of marine mammal prey. In addition, individuals that consume contaminated prey could experience long-term effects to health (Geraci and St. Aubin 1990). However, the likelihood of spills and leaks, as described above, is low. This likelihood, in combination with Hilcorp's spill plan to reduce the risk of hazardous material spills, is such that its effect on prey is not considered further in this document.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses

all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators) and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (e.g., produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscape are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays or other sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under “Acoustic Effects”), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, e.g., Barber *et al.*, 2010; Pijanowski *et al.*, 2011; Francis and Barber 2013; Lillis *et al.* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they will also likely be of short duration and transient in any given area due to the nature of these surveys. Sub-bottom profiler use is also expected to be short term and not concentrated in one location for an extended period of time. The activities related to exploratory drilling, while less transitory in nature, are anticipated to have less severe effects due to lower source levels and therefore smaller disturbance zones than the mobile sources considered here. Nonetheless,

we acknowledge the general addition of multiple sound source types into the area, which are expected to have intermittent impacts on the soundscape, typically of relatively short duration in any given area.

In summary, activities associated with the action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species or on the quality of acoustic habitat. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this rule, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination. The methodology used to calculate estimated take has not changed from the proposed rule. Errors in NMFS User Spreadsheet input values have been corrected and are reflected in bold font in Table 4. Correcting these errors has resulted in different exposure estimates for most species than those presented in the proposed rule. The correct densities for non-beluga species are now reflected in Table 9. These are the densities that were used for the take analysis in the proposed rule but were not the values presented in Table 9 in the proposed rule.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as use of seismic survey and construction equipment has the potential to result in disruption of behavioral patterns for individual

marine mammals. There is also some potential for auditory injury (Level A harassment) to result from equipment such as seismic airguns, primarily for mysticetes and high frequency species, because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for mid-frequency cetaceans. The required mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to experience behavioral disturbance (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (e.g., frequency, predictability,

duty cycle), the environment (e.g., bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on the available science and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral disturbance rising to the level of Level B Harassment. NMFS predicts that marine mammals are likely to experience behavioral disturbance sufficient to constitute Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μ Pa (rms) for continuous (e.g., vibratory pile-driving, drilling) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources.

Hilcorp's activity includes the use of continuous (vibratory pile driving, water jet) and impulsive (seismic airguns, sub-bottom profiler, conductor pipe driving, VSP) sources, and therefore the 120 and 160 dB re 1 μ Pa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Hilcorp's activity includes the use of impulsive (seismic airguns, sub-bottom profiler, conductor pipe driving, VSP) and non-impulsive (vibratory pile driving, water jet) sources.

These thresholds for PTS are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: <http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm>.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds *	
	Impulsive	Non-impulsive
LOW-FREQUENCY (LF) CETACEANS	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
MID-FREQUENCY (MF) CETACEANS	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds *	
	Impulsive	Non-impulsive
HIGH-FREQUENCY (HF) CETACEANS	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
PHOCID PINNIPEDS (PW) (UNDERWATER)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
OTARIID PINNIPEDS (OW) (UNDERWATER)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sounds has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sounds exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for the Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, is it valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

2D Seismic Survey—The area of ensonification for the 2D seismic survey was calculated using the NMFS user spreadsheet tab for mobile sources. The in-water source line is 6 km in length and only one line will be surveyed each day. Therefore, the line length surveyed each day for the 2D seismic survey is 6 km.

3D Seismic Survey—The area of ensonification for the 3D seismic survey was calculated using the NMFS user spreadsheet tab for mobile sources. The line length is approximately 27.78 km (15 nm), which will take approximately 3.75 hrs to survey at a vessel speed of 4 knots (7.5 km/hr) with a turn of 1.5 hrs. In a 24-hr period, assuming no delays, the survey team will be able to collect data on 4.5 lines or approximately 127 km. The distance in between line lengths is 3.7 km (2 nm), so there will be overlap of the area of Level B harassment ensonification, resulting in an overestimation of exposures. Instead, the total daily area of ensonification was calculated using GIS. The Level B harassment radii were added to each track line estimated to be traveled in a 24-hour period, and when there was overlapping areas, the resulting polygons were merged to one large polygon to eliminate the chance that the areas could be summed multiple times over the same area. The results of the overall area are summarized in Table 6 below and shown on Figure 19 in the application (only showing Level B harassment).

Geohazard Sub-bottom Profiler for Well Sites—The area of ensonification for the sub-bottom profiler used during the geohazard surveys for the well sites was calculated by multiplying the distances (in km) to the NMFS thresholds by the distance of the line (in km) to be surveyed each day. The maximum required monitoring distance from the well site per BOEM is 2,400 m (or a total length of 4,800 m in diameter) and the minimum transect width is 150 m, so the total maximum number of transects to be surveyed is 32 (4,800 m/150 m). The total distance to be surveyed is 153.60 km (4.8 km \times 32 transects). Assuming a vessel speed of 4 knots (7.41 km/hr), it will take approximately 0.65 hrs (38 minutes) to survey a single transect of 4.8 km (time = distance/rate). Assuming the team is surveying for 50 percent of the day (or 12 hrs), the total number of days it will take to survey the total survey grid is 7.77 days (0.65 hr \times 12 hr). Similar to the 3D seismic survey, there will be overlap in the Level B harassment ensonification of the sound because of the distance in between the transects. However, because the area and grid to be surveyed depends on the results of the 3D survey and the specific location, NMFS used this overestimate for purposes of this rulemaking. The total line length to be surveyed per day is 19.76 km (total distance to be surveyed 153.6 km/total days 7.77).

Geohazard Sub-bottom Profiler for Pipeline Maintenance—The area of ensonification for the sub-bottom profiler used during geohazard surveys for the pipeline maintenance was calculated by multiplying the distances (in km) to the NMFS thresholds by the distance of the line (in km) to be surveyed each day. The assumed

transect grid is 300 m by 300 m with 150 m transect widths, so the total to be surveyed is 2,400 m (2.4 km). Assuming a vessel speed of 4 knots (7.41 km/hr), it will take approximately 0.08 hrs (4.86 min) to survey a single transect. The total number of days it will take to survey the grid is 1 day. Similar to the 3D seismic survey, there will be overlap of the Level B harassment ensonification area because of the distance in between the transects. However, because the area and grid to be surveyed depends on the results of the 3D survey and the specific location, NMFS uses this overestimate for purposes of this rule. The total line length to be surveyed per day is 2.4 km.

Other sources—For stationary sources, area of a circle to the relevant Level A or Level B harassment isopleths was used to determine ensonified area. These sources include: conductor pipe driving, VSP, vibratory sheet pile driving, and water jets. Take estimates for conductor pipe driving and vibratory sheet pile driving were recalculated from the proposed to the final rule using the most updated version of the NMFS User spreadsheet (2018) as minor changes were made in the relevant calculations in the spreadsheet from the 2016 version originally used by Hilcorp.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet (updated in NMFS, 2018) that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes by Level A harassment. We note that because of some of the assumptions included in the methods

used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available; and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For stationary sources such as conductor pipe driving or vibratory pile driving, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it will not incur PTS. For mobile sources such as seismic airguns or sub-bottom profilers, the User

Spreadsheet predicts the closest distance at which a stationary animal will not incur PTS if the sound source traveled by the animal in a straight line at a constant speed. Some changes to duration (number of days of activity) were made in response to comments that highlighted some errors in calculation methodology. In the proposed rule, exposures on partial days of work were summed in error. If work may occur for a half day in one location and a different half day in another—two days should be used as the number of days of activity, not one. The amount of work proposed has not changed, but the characterization of the work as far as number of days required to complete has changed. The changes in durations used in the User Spreadsheet are outlined below.

For 2D seismic surveying, 10 days of seismic activity will consist of in-water work (remaining 20 days are on land). For 3D seismic surveying, duration has been reduced from 90 days to 60 days. VSP consists of two days of activity per well, resulting in eight days of activity for the OCS wells and four days of activity for the Trading Bay wells. Pipe driving lasts three days per well, resulting in 12 days of pipe driving for the OCS well and 6 days of pipe driving for the Trading Bay wells.

Inputs used in the User Spreadsheet, and the resulting isopleths are reported below (Tables 4, 5, and 6). Transmission loss used for all calculation was practical spreading (15 LogR).

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Table 4. NMFS User Spreadsheet Inputs.

Changes from Table 4 in the proposed rule reflected in bold.							
Activity	Type of Source	Source Level	Weighting Factor Adjustment	Source Velocity	Pulse Duration	Repetition Rate	Duration per Day
2D/3D seismic	mobile, impulsive	217 dB peak @ 100 m 185 dB SEL @ 100 m	1 kHz	2.05 m/s	0.02 s	every 6 s	N/A
Sub-bottom Profiler (boomer)	mobile, impulsive	212 dB peak @ 1 m	4 kHz	2.05 m/s	0.1 s	Every 6 s	N/A
Pipe driving	stationary, impulsive	195 dB rms @ 55 m	2 kHz	N/A	0.1 s strike duration	25 strikes/pile	1 pile/day
VSP	stationary, impulsive	227 dB rms @ 1m	1 kHz	N/A	0.02 s	Every 6 s	4 hrs/day
Vibratory sheet pile driving	stationary, non-impulsive	160 dB rms @ 10 m	2.5 kHz	N/A	N/A	90 min/pile	5 piles/day
Water jet	stationary, non-impulsive	176 dB rms @ 1 m	2 kHz	N/A	N/A	N/A	3 hrs/day

Table 5. Calculated Distances to NMFS Level A Harassment Thresholds.

Activity	Level A Harassment														
	Low Frequency Cetaceans			Mid Frequency Cetaceans			High Frequency Cetaceans			Phocids			Otariids		
	Impulsive		Non-Impulsive	Impulsive		Non-Impulsive	Impulsive		Non-Impulsive	Impulsive		Non-Impulsive	Impulsive		Non-Impulsive
	219 dB pk	183 dB SEL	199 dB SEL	230 dB pk	185 dB SEL	198 dB SEL	202 dB pk	155 dB SEL	173 dB SEL	218 dB pk	185 dB SEL	201 dB SEL	232 dB pk	203 dB SEL	219 dB SEL
2D/3D seismic	74	399	--	14	<1	--	1,000	45	--	86	66	--	10	1	--
Sub-bottom profiler	<1	19	--	<1	1	--	5	277	--	<1	12	--	<1	<1	--
Pipe driving	1	638	--	<1	23	--	19	760	--	2	342	--	<1	25	--
VSP	3	9,259	--	<1	79	--	46	2,160	--	4	2,782	--	<1	205	--
Vibratory sheet pile driving	--	--	22	--	--	2	--	--	33	--	--	14	--	--	<1
Water jet	--	--	14	--	--	<1	--	--	13	--	--	8	--	--	1

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TABLE 6—CALCULATED DISTANCES TO NMFS LEVEL B THRESHOLDS

Activity	Level B harassment	
	Impulsive	Non-impulsive
	160 dB rms	120 dB rms
2D/3D seismic	7,330	.....
Sub-bottom profiler	2,929	.....
Pipe driving	1,630	.....
VSP	2,470	.....
Vibratory sheet pile driving .....	.....	4,642
Water jet .....	.....	860

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Beluga whale—Historically, beluga whales were observed in both upper and lower Cook Inlet in June and July (Rugh *et al.* 2000). However, between 1993 and 1995, less than 3 percent of all of the annual sightings were in the lower inlet, south of the East and West Forelands, hardly any (one whale in Tuxedni Bay in 1997 and two in Kachemak Bay in 2001) have been seen in the lower inlet

during these surveys 1996–2016 (Rugh *et al.* 2005; Sheldon *et al.* 2013, 2015, 2017). Because of the extremely low sighting rates, it is difficult to provide an accurate estimate of density for beluga whales in the mid and lower Cook Inlet region.

Goetz *et al.* (2012b) developed a habitat-based model to estimate Cook Inlet beluga density based on seasonally collected data. The model was based on sightings, depth soundings, coastal substrate type, environmental sensitivity index, anthropogenic disturbance, and anadromous fish

streams to predict densities throughout Cook Inlet. The result of this work is a beluga density map of Cook Inlet, which predicts spatially explicit density estimates for Cook Inlet belugas. Using data from the GIS files provided by NMFS and the different project locations, the resulting estimated density is shown in Table 7. The water jets will be used on pipelines throughout the middle Cook Inlet region, so the higher density for the Trading Bay area was used. Densities resulting from this model are summarized in Table 7 below.

TABLE 7—COOK INLET BELUGA WHALE DENSITY BASED ON GOETZ HABITAT MODEL

Project location	Project activity	Beluga whale density (ind/km ²)
Lower Cook Inlet (OCS)	3D seismic, geohazard, pipe driving	0.00
Lower Cook Inlet (east side)	2D seismic	0.00–0.011106
Iniskin Bay area	Sheet pile driving	0.024362
North Cook Inlet Unit	Geohazard, pipe driving	0.001664
Trading Bay area	Geohazard, pipe driving, water jets	0.004453–0.015053

Other Marine Mammals—Density estimates of species other than beluga whales were estimated from the NMFS June aerial surveys conducted for beluga whales between 2000 and 2016 (Rugh *et al.* 2005; Shelden *et al.* 2013, 2015, 2017). Although these surveys are only flown for a few days in one month, they represent the best available relatively

long-term dataset for marine mammal sightings in Cook Inlet. Table 8 below summarizes the maximum marine mammals observed for each year for the survey and area covered. To estimate density, the total number of individuals per species sighted during surveys was divided by the distance flown on the surveys. The total number of animals

observed accounts for both lower and upper Cook Inlet, so this density estimate is higher than what is anticipated for the lower Cook Inlet area. There are no density estimates available for California sea lions for Cook Inlet so largest potential group size was used.

TABLE 8—DENSITY ESTIMATES FOR COOK INLET BELUGA WHALES IN ACTION AREA

Area/activity	NMFS density ¹	Goetz density ²
Lower Cook Inlet OCS (3D seismic, geohazard, pipe driving, VSP)	0.000593	0.0000
Lower Cook Inlet—east side (2D seismic)	0.000593	0.011106
Lower Cook Inlet—west side Iniskin (vibratory sheet pile driving)	0.000593	0.024362
Trading Bay Unit (pipe driving, VSP, geohazard)	0.000593	0.015053
Middle Cook Inlet (routine maintenance: geohazard, water jet)	0.000593	0.001664–0.015053

TABLE 9—DENSITY ESTIMATES FOR OTHER MARINE MAMMALS IN ACTION AREA

Species	Estimated density (# marine mammals/km ²)
Beluga whale:	
Lower and Middle Cook Inlet ¹	0.00006
Lower Cook Inlet ²	0.01111
North Cook Inlet Unit ²	0.00166
Trading Bay area ²	0.01505
Iniskin Peninsula ²	0.02436
Humpback whale	0.00189
Minke whale	0.00001
Gray whale	0.0008
Fin whale	0.00031
Killer whale	0.00064
Dall's porpoise	0.00016
Harbor porpoise	0.00468
Harbor seal	0.24871
Steller sea lion	0.00811

¹ NMFS aerial survey combined lower and middle Cook Inlet density.

² Goetz *et al.* 2012(b) habitat-based model density. No density available for California sea lions in Cook Inlet.

Duration

The duration was estimated for each activity and location. For some projects, like the 3D seismic survey, the design of the project is well developed; therefore, the duration is well-defined. However, for some projects, the duration is not well developed, such as activities around the lower Cook Inlet well sites, because the duration depends on the results of previous studies and equipment availability. Our assumptions regarding these activities, which were used to estimate duration, are discussed below.

2D Seismic—A single vessel is capable of acquiring a source line in approximately 1–2 hrs and only one source line will be collected in one day to allow for all the node deployments and retrievals, and intertidal and land zone shot holes drilling. There are up to 10 source lines, so assuming all operations run smoothly, there will only

be 2 hrs per day over 10 days of airgun activity. The duration that was used to assess exposures from the 2D seismic survey is 10 days.

3D Seismic—The total anticipated duration of the survey is 45–60 days, including delays due to equipment, weather, tides, and marine mammal shut downs. The duration that was used to assess exposures from the 3D seismic survey is 60 days.

Geohazard Surveys (Sub-bottom profiler)—Assuming surveying occurs 50 percent of the day (or 12 hrs), the total number of days it will take to survey the total geohazard survey grid for a single well is 7.77 days. This duration was multiplied by the number of wells per site resulting in 31.1 days for the four Lower Cook Inlet OCS wells, 7.7 days for the North Cook Inlet Unit well, and 15.5 days for the two Trading Bay area wells.

The total number of days it will take to survey the geohazard survey grid for

a pipeline maintenance is 1 day. This duration was multiplied by the number of anticipated surveys per year (high estimate of three per year), for a total of three days.

Drive Pipe—It takes approximately three days to install the drive pipe per well with only 25 percent of the day necessary for actual pipe driving. This duration was multiplied by the number of wells per site resulting in three days for each of the four lower Cook Inlet wells for a total of 12 days and a total of six days for the two Trading Bay area wells. Drive pipe installation is not part of the activities planned at the North Cook Inlet site.

VSP—It takes approximately two days to perform the VSP per well with only 25 percent of the day necessary for actual seismic work. VSP is not part of the plugging and abandonment (P&A) activities at the North Cook Inlet site. This duration was multiplied by the number of wells per site, resulting in

two days for each of the four lower Cook Inlet wells for a total of eight days and four day for the two Trading Bay area wells.

Vibratory Sheet Pile Driving—The total number of days expected to install the sheet pile dock face using vibratory hammers on the rock causeway is 14–20 days with only 25 percent of the day for actual pile driving. 20 days was used as the duration for the calculation.

Water jets—Water jets are only used when needed for maintenance; therefore, the annual duration was estimated to evaluate exposures. Each water jet event was estimated to be 30 minutes or less in duration. We acknowledge that due to the short duration of this activity, it is possible that take will not occur—however, we are including consideration of potential take to conservatively ensure coverage

for the applicant. It was estimated that a water jet event occurs three times a month, resulting in only 1.5 hrs per month of water jet operation. Water jets are used during ice-free months, so this duration was multiplied by 7 months (May–November) resulting in 21 days.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. The numbers of each marine mammal species that could potentially be exposed to sounds associated with the activities that exceed NMFS' acoustic Level A and B harassment criteria were estimated per type of activity and per location. The specific years when these activities might occur are not known at this time, so this method of per activity per location allows for flexibility in

operations and provides NMFS with appropriate information for assessing potential exposures. Individual animals may be exposed to received levels above our harassment thresholds more than once per day, but NMFS considers animals only “taken” once per day. Exposures refer to any instance in which an animal is exposed to sound sources above NMFS' Level A or Level B harassment thresholds. The estimated exposures (without any mitigation) per activity per location were calculated by multiplying the density of marine mammals (# of marine mammals/km²) by the area of ensonification (km²) and the duration (days per year). These results of these calculations are presented in Tables 10 and 11 below.

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Table 10. Estimated number of Level A harassment exposures per activity and location over five years.

Species	3D seismic	2D seismic	Iniskin	Water jets	Sub-bottom Profiler				Pipe driving		VSP		Total Anticipated Level A Harassment Takes Over 5 Years
	LCI	LCI	LCI	MCI	LCI	NCI	TB	MCI	LCI	TB	LCI	TB	
Humpback whale	6.80	0.05	0.00	0.00	0.02	0.01	0.01	0.00	0.03	0.01	4.07	2.03	13
Minke whale	0.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0
Gray whale	0.29	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.09	0
Fin whale	1.19	0.01	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.00	0.71	0.36	2
Killer whale	0.07	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0
Beluga whale NMFS ¹	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0
Beluga whale Goetz ²	0.00	0.01	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0
Dall's porpoise	1.31	0.01	0.00	0.00	0.03	0.01	0.01	0.00	0.00	0.00	0.02	0.01	1
Harbor porpoise	37.25	0.29	0.00	0.00	0.81	0.20	0.40	0.01	0.10	0.05	0.55	0.27	40
Harbor seal	287.11	2.26	0.00	0.00	1.89	0.47	0.95	0.02	1.09	0.55	5.80	2.90	303
Steller sea lion	0.70	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1
California sea lion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0
Total	334.81	2.65	0.00	0.00	2.76	0.69	1.38	0.03	1.24	0.62	11.35	5.67	360

¹LCI – Lower Cook Inlet Wells, ²NCI – North Cook Inlet Unit well, ³TB = Trading Bay wells, ⁴MCI – Middle Cook Inlet Pipeline Maintenance

Table 11. Estimated number of Level B harassment exposures per activity and location over five years.

Species	3D seismic	2D seismic	Iniskin	Water jets	Sub-bottom profiler				Pipe driving		VSP		Total Anticipated Level B Harassment Takes Over 5 Years
	LCI	LCI	LCI	MCI	LCI	NCI	TB	MCI	LCI	TB	LCI	TB	
Humpback whale	85.43	0.83	2.56	0.09	3.40	0.85	1.70	0.04	0.19	0.09	0.29	0.14	96
Minke whale	0.45	0.00	0.01	0.00	0.02	0.00	0.01	0.00	0.00	0.00	0.00	0.00	1
Gray whale	3.60	0.04	0.11	0.00	0.14	0.04	0.07	0.00	0.01	0.00	0.01	0.01	4
Fin whale	14.99	0.15	0.45	0.02	0.60	0.15	0.30	0.01	0.03	0.02	0.05	0.03	17
Killer whale	29.02	0.28	0.87	0.03	1.15	0.29	0.58	0.01	0.06	0.03	0.10	0.05	32
Beluga whale NMFS ¹	26.83	0.26	0.80	0.03	1.07	0.27	0.53	0.01	0.06	0.03	0.09	0.05	30
Beluga whale Goetz ²	0.00	4.88	32.98	0.73	0.00	0.75	13.54	0.00	0.00	0.75	0.00	1.15	55
Dall's porpoise	7.42	0.07	0.22	0.01	0.30	0.07	0.15	0.00	0.02	0.01	0.03	0.01	8
Harbor porpoise	211.70	2.06	6.33	0.23	8.42	2.10	4.21	0.10	0.47	0.23	0.72	0.36	237
Harbor seal	11,255.01	109.38	336.67	12.14	447.52	111.88	223.76	5.24	24.91	12.46	38.14	19.07	12,596
Steller sea lion	366.99	3.57	10.98	0.40	14.59	3.65	7.30	0.17	0.81	0.41	1.24	0.62	411
California sea lion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	12,001.45	121.52	391.98	13.67	477.20	120.05	252.14	5.59	26.56	14.04	40.66	21.49	13,487

¹LCI – Lower Cook Inlet Wells, ²NCI – North Cook Inlet Unit well, ³TB = Trading Bay wells, ⁴MCI – Middle Cook Inlet Pipeline Maintenance

which take will be authorized across the five-year period covered by the rule. It is challenging to specify the activities that will definitively occur in a specific year because many of the activities are progressive (*i.e.*, they depend on results and/or completion of the previous activity). The best estimate of the breakdown of activities and their associated takes, by year, are provided in Tables 13–17. The maximum number of takes that could be authorized in a

particular year are specified below in Table 18, based on the largest grouping of activities Hilcorp could potentially conduct within a year. The scenario in Table 18 is accordingly used to conservatively ensure that NMFS can make the necessary annual findings. The most realistic scenario over the 5-year period includes 3D seismic surveys in the first season, activities for one well in the second season in lower Cook Inlet, as well as the plugging and

abandonment activities in North Cook Inlet Unit and the two wells in the Trading Bay area. For the third season, we have included activities for drilling two wells in lower Cook Inlet and the final well in the fourth season. Each year, the applicant will submit an application for an LOA with the specific details of the planned work for that year with estimated take numbers.

TABLE 12—SUMMARY OF ACTIVITIES CONSIDERED BY YEAR

Year	Activity	Area
Year 1	OCS 3D seismic	LCI.
	OCS geohazard of 2 wells	LCI.
	Pipeline maintenance (geohazard, water jet)	MCI.
Year 2	Pile driving at Iniskin	LCI (Iniskin).
	OCS drilling activities (geohazard, pipe driving, VSP) at up to 2 wells	LCI.
	Trading Bay drilling activities (geohazard, pipe driving, VSP) at 2 wells	TB.
	P&A activities (geohazard) at 1 well	NCI.
	Pipeline maintenance (geohazard, water jet)	MCI.
Year 3	OCS drilling activities (geohazard, pipe driving, VSP) at 1 well	LCI.
	2D seismic	LCI.
	Pipeline maintenance (geohazard, water jet)	MCI.
Year 4	OCS drilling activities (geohazard, pipe driving, VSP) at 1 well	LCI.
	Pipeline maintenance (geohazard, water jet)	MCI.
Year 5	Pipeline maintenance (geohazard, water jet)	MCI.

LCI—Lower Cook Inlet Wells, NCI—North Cook Inlet Unit well, TB = Trading Bay wells, MCI—Middle Cook Inlet Pipeline Maintenance.

Table 13. Estimated exposures for first year of activity.

[illegible]

Table 14. Estimated exposures for second year of activity.

[illegible]

[illegible]

Table 15. Estimated exposures for third year of activity.

[illegible]

Table 16. Estimated exposures for fourth year of activity.

	Level A Harassment						Level B Harassment					
	LCI	LCI	LCI	MCI	MCI		LCI	LCI	LCI	MCI	MCI	
	OCS geohazard	OCS pipe driving	OCS VSP	Maintenance geohazard	Maintenance water jets	Total	OCS geohazard	OCS pipe driving	OCS VSP	Maintenance geohazard	Maintenance water jets	Total
Humpback whale	0.01	0.01	1.02	0.00	0.00	1.03	0.85	0.05	0.07	0.04	0.09	1.10
Minke whale	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.01
Gray whale	0.00	0.00	0.04	0.00	0.00	0.04	0.04	0.00	0.00	0.00	0.00	0.05
Fin whale	0.00	0.00	0.18	0.00	0.00	0.18	0.15	0.01	0.01	0.01	0.02	0.19
Killer whale	0.00	0.00	0.00	0.00	0.00	0.00	0.29	0.02	0.02	0.01	0.03	0.37
Beluga whale (NMFS)	0.00	0.00	0.00	0.00	0.00	0.00	0.27	0.01	0.02	0.01	0.03	0.34
Beluga whale (Goetz)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.73	0.73
Dall's porpoise	0.01	0.00	0.00	0.00	0.00	0.01	0.07	0.00	0.01	0.00	0.01	0.10
Harbor porpoise	0.20	0.03	0.14	0.01	0.00	0.37	2.10	0.12	0.18	0.10	0.23	2.73
Harbor seal	0.47	0.27	1.45	0.02	0.00	2.22	111.88	6.23	9.53	5.24	12.14	145.02
Steller sea lion	0.00	0.00	0.00	0.00	0.00	0.00	3.65	0.20	0.31	0.17	0.40	4.73
California sea lion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

TABLE 17—ESTIMATED EXPOSURES FOR FIFTH YEAR OF ACTIVITY

	Level A harassment			Level B harassment		
	MCI maintenance geohazard	MCI maintenance water jets	Total	MCI maintenance geohazard	MCI maintenance water jets	Total
Humpback whale	0.00	0.00	0.00	0.04	0.09	0.13
Minke whale	0.00	0.00	0.00	0.00	0.00	0.00
Gray whale	0.00	0.00	0.00	0.00	0.00	0.01
Fin whale	0.00	0.00	0.00	0.01	0.02	0.02
Killer whale	0.00	0.00	0.00	0.01	0.03	0.04
Beluga whale (NMFS)	0.00	0.00	0.00	0.01	0.03	0.04
Beluga whale (Goetz)	0.00	0.00	0.00	0.00	0.73	0.73
Dall's porpoise	0.00	0.00	0.00	0.00	0.01	0.01
Harbor porpoise	0.01	0.00	0.01	0.10	0.23	0.33
Harbor seal	0.02	0.00	0.02	5.24	12.14	17.38
Steller sea lion	0.00	0.00	0.00	0.17	0.40	0.57
California sea lion	0.00	0.00	0.00	0.00	0.00	0.00

TABLE 18—ESTIMATED MAXIMUM EXPOSURES THAT MAY BE AUTHORIZED FOR EACH SPECIES IN A SINGLE YEAR

Species	Level A harassment		Level B harassment		Total maximum annual takes *	
	Annual estimated exposures	Annual takes authorized	Annual estimated exposures	Annual takes authorized	Annual takes authorized	Percent of population
Humpback whale	6.81	7	87.26	90	97	11.21
Minke whale	0.04	0	0.46	5	5	0.41
Gray whale	0.29	0	3.68	5	5	0.02
Fin whale	1.19	1	15.31	15	16	0.51
Killer whale (resident)	0.07	0	15.61	20	20	0.85
Killer whale (transient)	0.07	0	15.61	20	20	3.41
Beluga whale (NMFS)	0.06	0	27.40	35	35	10.67
Beluga whale (Goetz)	0.02	0	33.71	35	35	10.67
Dall's porpoise	1.32	1	7.58	10	11	0.01
Harbor porpoise	37.67	38	216.23	216	254	0.82
Harbor seal	288.07	288	11,496.15	11,496	11,784	** 25
Steller sea lion	0.70	1	374.85	375	376	0.74
California sea lion	0	0	0.00	5	5	0.00

* Total takes across five years for Level A harassment and Level B harassment can be found in Tables 10 and 11 respectively.

** The number of exposures authorized does not equal the number of individuals from the population that may be taken for reasons discussed below.

Based on the results of the acoustic harassment analysis, Hilcorp Alaska is requesting a small number of takes by Level A harassment for humpback whales, Dall's porpoises, harbor porpoises, Steller sea lions, and harbor seals. Neither Hilcorp nor NMFS anticipate that any of the activities will result in mortality or serious injury to marine mammals, but these species may be exposed to levels exceeding the Level A harassment thresholds. Seals are highly curious and exhibit high tolerance for anthropogenic activity, so they are likely to enter within the larger Level A harassment isopleths. Porpoises are difficult to observe at greater distances and usually only remain in an area for a short period of time. The total maximum takes authorized by Level A harassment annually are for 7 humpback whales, 1 fin whale, 1 Dall's porpoises, 38 harbor porpoises, and 288 harbor seals, and 1 Steller sea lion.

The maximum annual authorized takes by Level B harassment for minke and gray whale are rounded up to 5 animals, to account for any anomalies of multiple sightings within a year. The maximum annual authorized takes by Level B harassment for humpback whales is 90 animals, although it is not expected to approach this number as humpbacks are easily observable during monitoring efforts. The maximum annual authorized takes by Level B harassment for killer whales are rounded up to 20 animals to allow for multiple sightings of small groups. The maximum annual authorized takes by Level B harassment for Dall's and harbor porpoise are rounded up to 10 and 216 animals, respectively, due to the inconspicuous nature of porpoises. Take estimates for Cook Inlet beluga whales were calculated using densities from both the Goetz model and NMFS aerial surveys, which result in similar exposure estimates. To account for the

potential for unseen take of Cook Inlet beluga whales, the maximum annual takes authorized by Level B harassment at 35 animals.

The maximum annual authorized takes by Level B harassment for harbor seals is 11,496 exposures. The estimated number of instances of takes by Level B harassment of 11,496 resulting from the calculations outlined above is an overestimate due to the inclusion of haul out sites numbers in the underlying density estimate used to calculate take. Using the daily ensonified area \times number of survey days \times density method results in a reasonable estimate of the instances of take, but likely significantly overestimates the number of individual animals expected to be taken. With most species, even this overestimated number is still very small, and additional analysis is not really necessary to ensure minor impacts. However, because of the number and density of harbor seals in

the area, a more accurate understanding of the number of individuals likely taken is necessary to fully analyze the impacts and ensure that the total number of harbor seals taken is small.

As described below, based on monitoring results from the area, it is likely that the modeled number of estimated instances of harbor seal take referenced above is overestimated. The density estimate from NMFS aerial surveys includes harbor seal haulouts far south of the action area that may never move to an ensonified area. Further, we believe that we can reasonably estimate the comparative number of individual harbor seals that will likely be taken, based both on monitoring data, operational information, and a general understanding of harbor seal habitat use.

Using the daily ensonified area × number of survey days × density, the number of instances of exposure above the 160-dB threshold estimated for Hilcorp’s activity in Cook Inlet is large. However, when we examine monitoring data from previous activities, it is clear this number is an overestimate—compared to both aerial and vessel based observation efforts. Apache’s monitoring report from 2012 details that they saw 2,474 harbor seals from 29 aerial flights (over 29 days) in the vicinity of the survey during the month of June, which is the peak month for harbor seal haulout. In surveying the literature, correction factors to account for harbor seals in water based on land counts vary from 1.2 to 1.65 (Harvey & Goley, 2011). Using the most conservative factor of 1.65 (allowing us to consider that some of the other individuals on land may have entered the water at other points in day), if Apache saw 2,474 seals hauled out then there were an estimated 1,500 seals in the water during those 29 days. To account for the limited number of surveys (29 surveys), NMFS conservatively multiplied the number of seals by 5.5 to estimate the number of

seals that might have been seen if the aerial surveys were conducted for 160 days. This yields an estimate of 8,250 instances of seal exposure in the water, which is far less than the exposure estimate resulting from Hilcorp’s calculations. NMFS further reduced the estimate given the context of the activity. The activity with the highest potential take of harbor seal according to calculations is 3D seismic surveying, primarily due to the high source levels. However, the 3D seismic surveying is occurring primarily offshore, which is also the area where they are least likely to encounter harbor seals. The calculated exposures from 3D seismic surveying account for 92 percent of the total calculated harbor seal exposures across the five years of the project, accounting for a high proportion of the takes allocated to deeper water seismic activity which is less likely to spatially overlap with harbor seals. That the number of potential instances of exposure is likely less than calculated is also supported by the visual observations from Protected Species Observers (PSOs) on board vessels. PSOs in Cook Inlet sighted a total of 285 seals in water over 147 days of activity, which rises to about 310 if adjusted to reflect 160 days of effort. Given the size of the disturbance zone for these activities, it is likely that not all harbor seals that were exposed were seen by PSOs. However 310 is still far less than the estimate given by the density calculations.

Further, based on the residential nature of harbor seals and the number of offshore locations included in Hilcorp’s project, where harbor seals are unlikely to reside, NMFS estimated the number of individual harbor seals exposed, given the instances of exposures. Given these multiple methods, as well as the behavioral preferences of harbor seals for haulouts in certain parts of the Inlet (Montgomery *et al.*, 2007), and high concentrations at haulouts in the lower Inlet, it is

unreasonable to expect that more than 25 percent of the population, or 6,847 individuals, will be taken by Level B harassment during Hilcorp’s activity. Therefore, we estimate that 6,847 individuals may be taken, which equates to 25 percent of the estimated abundance in NMFS stock assessment report.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in this rule to reduce the impacts of the activity on subsistence uses are described in the *Mitigation* section. Last, the information from this section and the *Mitigation* section is analyzed to determine whether the necessary findings may be made in the *Unmitigable Adverse Impact Analysis and Determination* section.

The ADF&G conducted studies to document the harvest and use of wild resources by residents of communities on the east and west sides of Cook Inlet (Jones and Kostick 2016). Data on wild resource harvest and use were collected, including basic information about who, what, when, where, how, and how much wild resources are being used to develop fishing and hunting opportunities for Alaska residents. Tyonek was surveyed in 2013 (Jones *et al.*, 2015), and Nanwalek, Port Graham, and Seldovia were surveyed in 2014 (Jones and Kostick 2016). Marine mammals were harvested by three (Seldovia, Nanwalek, Port Graham) of the four communities but at relatively low rates. The harvests consisted of harbor seals, Steller sea lions, and northern sea otters (*Enhydra lutris*), the latter of which is managed by the U.S. Fish and Wildlife Service and not mentioned further.

TABLE 19—MARINE MAMMAL HARVEST BY TYONEK IN 2013 AND NIKISKI, PORT GRAHAM, SELDOVIA, AND NANWALEK IN 2014

Village	Harvest (pounds per capita)	Households attempting harvest number (% of residents)	Number of marine mammals harvested			
			Harbor seal	Steller sea lion	Northern sea otter	Beluga Whale
Tyonek	2	6 (6%)	6	0	0	0
Seldovia	1	2 (1%)	5	0	3	0
Nanwalek	11	17 (7%)	22	6	1	0
Port Graham	8	27 (18%)	16	1	24	0

In Tyonek, harbor seals were harvested between June and September by 6 percent of the households (Jones *et al.* 2015). Seals were harvested in several areas, encompassing an area stretching 20 miles along the Cook Inlet coastline from the McArthur River Flats north to the Beluga River. Seals were searched for or harvested in the Trading Bay areas as well as from the beach adjacent to Tyonek (Jones *et al.* 2015). In Seldovia, the harvest of harbor seals (5 total) occurred exclusively in December (Jones and Kostick 2016).

In Nanwalek, 22 harbor seals were harvested in 2014 between March and October, the majority of which occur in April. Nanwalek residents typically hunt harbor seals and Steller sea lions at Bear Cove, China Poot Bay, Tutka Bay, Seldovia Bay, Koyuktolik Bay, Port Chatam, in waters south of Yukon Island, and along the shorelines close to Nanwalek, all south of the Petition region (Jones and Kosick 2016).

According to the results presented in Jones and Kostick (2016) in Port Graham, harbor seals were the most frequently used marine mammal; tribal members harvested 16 in the survey year. Harbor seals were harvested in January, February, July, August, September, November, and December. Steller sea lions were used noticeably less and harvested in November and December.

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south-central region and participated in the yearly subsistence harvest (Stanek 1994). From 1994 to 1998, NMFS estimated 65 whales per year were taken in this harvest, including those successfully taken for food, and those struck and lost. NMFS has concluded that this number is high enough to account for the estimated 14 percent annual decline in population during this time (Hobbs *et al.* 2008). Actual mortality may have been higher, given the difficulty of estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Pub. L. 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations.

Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga

whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS 2008). On October 15, 2008, NMFS published a final rule that established long-term harvest limits on the Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibited harvest for a 5-year period (2008–2012), if the average abundance for the Cook Inlet beluga whales from the prior five years (2003–2007) is below 350 whales. The 2008 Cook Inlet Beluga Whale Subsistence Harvest Final Supplemental Environmental Impact Statement (NMFS 2008a) authorizes how many beluga whales can be taken during a 5-year interval based on the 5-year population estimates and 10-year measure of the population growth rate. Based on the 2008–2012 5-year abundance estimates, no hunt occurred between 2008 and 2012 (NMFS 2008a). The previous 5-year period that could have allowed for a harvest (2013–2017) required the previous five-year average (2008–2012) to be above 350 whales, which it was not and therefore no harvest occurred. Based on the current trajectory of the population and annual abundance estimates, Cook Inlet beluga whale population abundance is not expected to exceed 350 animals for a five year average during the duration of these regulations. The Cook Inlet Marine Mammal Council, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. No harvest has occurred since then and no harvest is likely in 2019 or within the duration of the regulations.

Residents of the Native Village of Tyonek are the primary subsistence users in Knik Arm area (73 FR 60976). No households hunted beluga whale locally in Cook Inlet due to conservation concerns (Jones *et al.* 2015). The project should not have any effect because no beluga harvest has taken place since 2005, and beluga hunts are not expected during the duration of the regulations, based on the abundance estimate average requirements discussed above.

Mitigation

Several changes have been made to mitigation requirements since publication of the proposed rule. As discussed in our Comment and Response section above, we received public comments raising questions

about the effectiveness of mitigation guns and power downs at minimizing the impacts of seismic surveys on marine mammals. After consideration of this evidence, and in maintaining consistency with mitigation requirements of other ITAs issued incidental to seismic surveys (83 FR 63268), we have removed the requirements for mitigation guns and power downs during seismic surveys. A mitigation vessel with at least one on-duty PSO will also be required, in addition to PSOs aboard the source vessel. Lastly, an additional exclusion zone during seismic activity has been added spanning the distance of the Level B harassment isopleth at the mouth of the Kaslof River between January 1 and May 31. Hilcorp is required to abide by all mitigation measures described in the Biological Opinion for Hilcorp Alaska and Harvest Alaska Oil and Gas Activities, Cook Inlet, Alaska (NMFS, 2019).

In order to issue an LOA under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) the manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation

(probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

In their application, Hilcorp proposed and NMFS is requiring mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of required mitigation measures into their project description based on

the above sources. Additional mitigation measures required by NMFS are discussed below.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, Hilcorp is required to implement the following mitigation measures for marine mammals:

- (1) Vessel-based and shore-based visual mitigation monitoring;
- (2) Establishment of a marine mammal exclusion zone (EZ) and safety zone (SZ);
- (3) Shutdown procedures;
- (4) Ramp-up procedures; and
- (5) Vessel strike avoidance measures.

In addition to the measures proposed by Hilcorp, NMFS requires the following mitigation measures: Use of a mitigation vessel to extend coverage of PSO monitoring distance, aerial overflights for pre-clearance before seismic surveys, seasonal closure of the Kasilof River during seismic, and seasonal closure of the Susitna River Delta.

Exclusion and safety zones—The EZ is defined as the area in which all operations are shut down in the event a marine mammal enters or is about to enter this zone based on distances to the Level A harassment threshold or what can be effectively monitored for the species. The SZ is an area larger than the EZ and is defined as a focal area beyond the standard exclusion zone to be monitored for the presence of protected species, and may be considered a Level B harassment. For all activities, if a marine mammal for which take is not authorized is seen within or entering the SZ, operations will shut down. Any time a beluga is sighted during the use of the equipment outlined in Table 20 below, activities will shut down. A minimum 10-meter shutdown zone will be observed for all in-water construction and heavy machinery.

The distances for the EZ and SZ for the activities are summarized in Table 20 below:

TABLE 20—RADII OF EXCLUSION ZONE (EZ) AND SAFETY ZONE (SZ) FOR HILCORP'S ACTIVITIES

Activity	Exclusion zone (EZ) radius	Safety zone (SZ) radius
2D/3D seismic survey	500 m	1,500 m
Sub-bottom profilers	100 m	1,500 m
Pipe driving	100 m	1,500 m
VSP	500 m	1,500 m
Sheet pile driving	100 m	1,500 m
Water jet	15 m	1,000 m
Hydraulic grinder*	N/A	500
Pinger*	N/A	500
Drilling*	N/A	500
Well construction activities*	N/A	500
Tug towing rig	N/A	1,500
Dynamic Positioning thrusters*	N/A	1,500
Aircraft in route*	N/A	500
Aircraft at rig*	N/A	500

* Indicates activities which we do not think results in take and therefore take is not proposed to be authorized. These mitigation measures are required under the Biological Opinion and have been included in this table for clarity of the applicant.

The distances described in Table 20 are generally smaller than the Level B harassment zones from various sources. Level B harassment exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B harassment zone that was not visible. If a PSO is monitoring the EZ and SZ and sees a marine mammal outside of those zones but within the Level B harassment isopleth, take will be recorded.

PSO Placement—For the 2D survey, PSOs will be stationed on the source vessel during all seismic operations and geohazard surveys when the sub-bottom profilers are used. Because of the proximity to land, PSOs may also be

stationed on land to augment the viewing area. For the 3D survey, PSOs will be stationed on at least two of the project vessels, the source vessel and the chase vessel. For the VSP, PSOs will be stationed on the drilling rig. For geohazard surveys, PSOs will be stationed on the survey vessel. The viewing area may be augmented by placing PSOs on a vessel specifically for mitigation purposes. During seismic, at least one PSO must be on duty aboard the mitigation vessel in addition to the PSOs on the source vessel.

Seismic Survey Mitigation

Aircraft—NMFS requires aerial overflights to clear the intended area of

seismic survey activity of beluga whales on a daily basis. Hilcorp will fly over the action area searching for belugas prior to ramp up of seismic airguns at the start of daylight hours of each day of seismic shooting and ramp up will not commence until the flights have confirmed the area appears free of beluga whales. Aerial flights are required before starting daylight seismic each day unless weather conditions make flying unsafe for aerial personnel. In these cases, Hilcorp may ramp up and begin seismic according to the other required protocols and the flights must be flown at the earliest safe window. This measure only applies to 2D and 3D seismic surveying, not to other sound

sources related to geohazard survey or well construction.

Clearing the Exclusion Zone—Prior to the start of daily activities for which take has been authorized or if activities have been stopped for longer than a 30-minute period, the PSOs will ensure the EZ is clear of marine mammals for a period of 30 minutes. Clearing the EZ means no marine mammals have been observed within the EZ for that 30-minute period. If any marine mammals have been observed within the EZ, ramp up cannot start until the marine mammal has left the EZ or has not been observed for a 30-minute period prior to the start of the survey.

Shutdowns—A shutdown is defined as suspending all airgun activities. The operating airguns will be shut down completely if a marine mammal is within or enters the EZ. The operations will shut down completely if a beluga whale is sighted. The shutdown procedure must be accomplished within several seconds (of a “one shot” period) of the determination that a marine mammal is within or enters the EZ. Airguns must be shutdown for turning between transect lines.

Following a shutdown, airgun activity may be reactivated only after the protected species has been observed exiting the applicable EZ. The animal will be considered to have cleared the EZ if it:

- Is visually observed to have left the EZ, or
- Has not been seen within the EZ for 15 min in the case of pinnipeds and porpoises
- Has not been seen within the EZ for 30 min in the case of cetaceans (except for beluga whales which cannot not be seen in the EZ or SZ).

Ramp up—A “ramp up” procedure gradually increases airgun volume at a specified rate. Ramp up is used at the start of airgun operations, including after a shutdown, and after any period greater than 30 minutes in duration without airgun operations. The rate of ramp up will be no more than 6 dB per 5-minute period. Ramp up will begin with the smallest gun in the array that is being used for all airgun array configurations. During the ramp up, the EZ for the full airgun array will be maintained.

If the complete EZ has not been visible for at least 30 minutes prior to the start of operations, ramp up will not commence. This means that it will not be permissible to ramp up the 24-gun source from a complete shut down in thick fog or at other times when the outer part of the EZ is not visible. Ramp up of the airguns will not be initiated if

a marine mammal is sighted within or entering the EZ at any time.

Speed or Course Alteration—If a marine mammal is detected outside the EZ and, based on its position and relative motion, is likely to enter the EZ, the vessel’s speed and/or direct course may, when practical and safe, be changed. This technique also minimizes the effect on the seismic program. The marine mammal activities and movements relative to the seismic and support vessels will be closely monitored to ensure that the marine mammal does not enter the EZ. If the mammal appears likely to enter the EZ, further mitigation actions must be taken, *i.e.*, either further course alterations or shutdown of the airguns.

Power downs—In response to public comments on this and other seismic incidental take authorizations, it has come to our attention that use of power downs may not be effective at reducing impacts to marine mammals and may result in more total noise emitted into the water. Therefore power downs are not included.

Geohazard Survey Mitigation

Clearing the Exclusion Zone—Prior to the start of daily activities for which take has been authorized or if activities have been stopped for longer than a 30-minute period, the PSOs will ensure the EZ is clear of marine mammals for a period of 30 minutes. Clearing the EZ means no marine mammals have been observed within the EZ for that 30-minute period. If any marine mammals have been observed within the EZ, ramp up cannot start until the marine mammal has left the EZ or has not been observed for a 30-minute period prior to the start of the survey.

Shutdowns—A shutdown is defined as suspending all sub-bottom profiler activities. The operating profiler will be shut down completely if a marine mammal is within or enters the EZ. The operations will shut down completely if a beluga whale is sighted. The shutdown procedure must be accomplished within several seconds (of a “one shot” period) of the determination that a marine mammal is within or enters the EZ.

Following a shutdown, sub-bottom profiler activity may be reactivated only after the protected species has been observed exiting the applicable EZ. The animal will be considered to have cleared the EZ if the animal:

- Is visually observed to have left the EZ,
- Has not been seen within the EZ for 15 min in the case of pinnipeds and porpoises, or

- Has not been seen within the EZ for 30 min in the case of cetaceans (except for beluga whales which cannot not be seen in the EZ or SZ).

Speed or Course Alteration—If a marine mammal is detected outside the EZ and, based on its position and relative motion, is likely to enter the EZ, the vessel’s speed and/or direct course may, when practical and safe, be altered. This technique also minimizes the effect on the survey program. The marine mammal activities and movements relative to the seismic and support vessels will be closely monitored to ensure that the marine mammal does not enter the EZ. If the mammal appears likely to enter the EZ, further mitigation actions must be taken, *i.e.*, either further course alterations or shutdown of the airguns.

Power downs—In response to public comments on this and other seismic incidental take authorizations, it has come to our attention that use of power downs may not be effective at reducing impacts to marine mammals and may result in more total noise emitted into the water. Therefore power downs have been removed are not included.

Pipe and Sheet Pile Driving Mitigation

Soon after the drill rig is positioned on the well head, the conductor pipe will be driven as the first stage of the drilling operation. Two PSOs (one operating at a time) will be stationed aboard the rig during this two to three day operation monitoring the EZ and the SZ. The impact hammer operator will be notified to shut down hammering operations if a marine mammal is sighted within or enters the EZ. A soft start of the hammering will begin at the start of each hammering session. The soft start procedure involves initially starting with three soft strikes, 30 seconds apart. This delayed-strike start alerts marine mammals of the pending hammering activity and provides them time to vacate the area. Monitoring will occur during all hammering sessions.

A dock face will be constructed on the rock causeway in Iniskin Bay. Two PSOs will be stationed either on a vessel or on land during the 14–21 day operation observing an EZ of 4.6 km for beluga whales. PSOs will implement similar monitoring and mitigation strategies as for the pipe installation.

For impact hammering, “soft-start” technique must be used at the beginning of each day’s pipe/pile driving activities to allow any marine mammal that may be in the immediate area to leave before pile driving reaches full energy.

- Clear the EZ 30 minutes prior to a soft-start to ensure no marine mammals are within or entering the EZ.

- Begin impact hammering soft-start with an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one minute waiting period, then two subsequent 3-strike sets.

- Immediately shut down all hammers at any time a marine mammal is detected entering or within the EZ.

- Initial hammering starts will not begin during periods of poor visibility (e.g., night, fog, wind).

- Any shutdown due to a marine mammal sighting within the EZ must be followed by a 30-minute all-clear period and then a standard, full ramp-up.

- Any shutdown for other reasons resulting in the cessation of the sound source for a period greater than 30 minutes, must also be followed by full ramp-up procedures.

Water Jet Mitigation

A PSO will be present on the dive support vessel when divers are using the water jet. Prior to in-water use of the water jet, the EZ around the DSV will be established. The water jet will be shut down if marine mammals are observed within the EZ.

Beluga Critical Habitat Mitigation

Hilcorp must not operate noise producing activities within 10 miles (16 km) of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15. The purpose of this mitigation measure is to protect beluga whales in the designated critical habitat in this area that is important for beluga whale feeding and calving during the spring and fall months. The range of the setback required by NMFS was designated to protect this important habitat area and also to create an effective buffer where sound does not encroach on this habitat. This seasonal exclusion is in effect from April 15–October 15. Activities can occur within this area from October 16–April 14.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require Incidental Take Authorization applicants conducting activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for

subsistence purposes. A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;

- A schedule for meeting with the affected subsistence communities to discuss planned activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

- A description of what measures the applicant has taken and/or will take to ensure that activities will not interfere with subsistence whaling or sealing; and

- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

Hilcorp Alaska has developed a Stakeholder Engagement Plan (SEP) and will implement this plan throughout the duration of the Petition. The SEP will help coordinate activities with local stakeholders and thus subsistence users, minimize the risk of interfering with subsistence hunting activities, and keep current as to the timing and status of the subsistence hunts. The Plan is provided in Appendix B of Hilcorp's application.

Hilcorp developed a list of relevant stakeholders who they needed to notify of their planned activities. This list included: Commercial and sport fishing groups/associations, various Native fisheries and entities as it pertains to subsistence fishing and/or hunting, marine mammal co-management groups, Cook Inlet Regional Citizens Advisory Council, local landowners, government and community organizations, and environmental NGOs. Hilcorp contacted the identified stakeholders and provided them a summary of their actions and discussed any potential concerns and mitigation. The list of contacts, dates of contact, and summaries of any concerns raised are available in a spreadsheet available on our website at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska>. Hilcorp will be required to abide by their stakeholder engagement plan, which will be updated each time Hilcorp applies for a LOA, and continue to engage stakeholders throughout the five years of activity.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on

the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

The PSOs will observe and collect data on marine mammals in and around

the project area for 15 (well activity) or 30 minutes (seismic activity) before, during, and for 30 minutes after all of Hilcorp's activities for which take has been authorized.

Protected Species Observer Qualifications

NMFS-approved PSOs must meet the following requirements:

1. Independent observers (*i.e.*, not construction personnel) are required;
2. At least one observer must have prior experience working as an observer;
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
5. NMFS will require submission and approval of observer CVs.

Monitoring Measures

Sound Source Verification—When site-specific measurements are not available for noise sources of concern for acoustic exposure, NMFS often requires a sound source verification (SSV) to characterize the sound levels, propagation, and to verify the monitoring zones (EZ and SZ). Hilcorp Alaska will conduct an SSV for the 3D seismic survey and sub-bottom profiler use in lower Cook Inlet. Hilcorp Alaska will work with NMFS to ensure the SSV is conducted properly and will provide the results to NMFS for review.

Mitigation vessel—During seismic surveying, Hilcorp will place an additional PSO aboard a mitigation vessel. This vessel will be 3,000 m (twice the safety zone distance) removed from the source vessel but not directly behind the airgun array. This PSO will monitor for the occurrence of marine mammals using the same safety zone distances as PSOs aboard the source vessel.

Hilcorp will implement a robust monitoring and mitigation program for marine mammals using NMFS-approved PSOs for Petition activities. Much of the activities will use vessel-based PSOs, but land- or platform-based PSOs may also be used to augment project-specific activities. Some details of the monitoring and mitigation program may change upon receipt of the individual LOAs issued by NMFS each year.

The main purposes of PSOs are: To conduct visual watches for marine mammals; to serve as the basis for implementation of mitigation measures; to document numbers of marine

mammals present; to record any reactions of marine mammals to Hilcorp's activities; and, to identify whether there was any possible effect on accessibility of marine mammals to subsistence hunters in Cook Inlet. These observations will provide the real-time data needed to implement some of the key measures.

PSOs will be on watch during all daylight periods for project-specific activities. Generally, work is conducted 24-hrs a day, depending on the specific activity.

- For 2D seismic surveys, the airgun operations will be conducted during daylight hours.
- For 3D seismic surveys, airgun operations will continue during the waning nighttime hours (ranges from 2230–0600 in early April to 0100–0300 in mid-May) as long as the full array is operating prior to nightfall. Night vision and infrared have been suggested for low visibility conditions, but these have not been useful in Cook Inlet or other Alaska-based programs. Passive acoustic monitoring has also been used in Cook Inlet and is typically required for seismic surveys but has not shown to be an effective solution in Cook Inlet's specific environmental conditions. A further discussion of previous passive acoustic monitoring efforts by several entities in Cook Inlet is provided in Section 13 of Hilcorp's application.

• For the sub-bottom profiler, operations will generally be conducted during daylight hours but may continue into the low visibility period as long as the profiler is operating prior to nightfall. Sub-bottom profiler operations may not begin under low visibility conditions.

- For pipe driving, VSP, and sheet pile driving, operations will generally be conducted during daylight hours.
- Water jet and hydraulic grinder are operated over a 24-hour period as they are limited to low tide conditions. Activities will not start during nighttime but will continue if already started.

Pre-Activity Monitoring—The exclusion zone will be monitored for 30 minutes prior to in-water construction/demolition activities. If a marine mammal is present within the exclusion zone, the activity will be delayed until the animal(s) leave the exclusion zone. Activity will resume only after the PSO has determined that, through sighting or by waiting (15 minutes for pinnipeds and porpoises, 30 minutes for cetaceans) without re-sighting, the animal(s) has moved outside the exclusion zone. If a marine mammal is observed within or entering the exclusion zone, the PSO who sighted that animal will notify all other PSOs and Hilcorp of its presence.

Post-Activity Monitoring—Monitoring of all zones will continue for 30 minutes following the completion of the activity.

For all activities, the PSOs will watch for marine mammals from the best available vantage point on the vessel or station. Ideally this vantage point is an elevated stable platform from which the PSO has an unobstructed 360° view of the water. The PSOs will scan systematically with the naked eye and with binoculars. When a mammal sighting is made, the following information about the sighting will be carefully and accurately recorded:

- Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (*e.g.*, none, avoidance, approach, paralleling), closest point of approach, and behavioral pace;
- Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare;
- The positions of other vessel(s) in the vicinity of the PSO location; and
- The vessel's position, speed, water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

An electronic database or paper form will be used to record and collate data obtained from visual observations.

The results of the PSO monitoring, including estimates of exposure to key sound levels, will be presented in monthly, annual, and final reports. Reporting will address the requirements established by NMFS in the LOAs. The technical report(s) will include the list below.

- Summaries of monitoring effort: Total hours, total distances, and distribution of marine mammals throughout the study period compared to sea state, and other factors affecting visibility and detectability of marine mammals;

- Analyses of the effects of various factors influencing detectability of marine mammals: Sea state, number of observers, and fog/glare;

- Species composition, occurrence, and distribution of marine mammal sightings including date, water depth, numbers, age/size/gender categories (when discernable), group sizes, and ice cover; and

- Analyses of the effects of seismic program:

- Sighting rates of marine mammals during periods with and without project

activities (and other variables that could affect detectability);

- Initial sighting distances versus project activity;
- Closest point of approach versus project activity;
- Observed behaviors and types of movements versus project activity;
- Numbers of sightings/individuals seen versus project activity;
- Distribution around the vessels versus project activity;
- Summary of implemented mitigation measures; and
- Estimates of “take by harassment.”

Reporting Measures

Immediate reports will be submitted to NMFS if 30 or more belugas are detected over the course of annual operations in the safety and exclusion zones during operation of sound sources to evaluate and make necessary adjustments to monitoring and mitigation. If the number of detected takes for any marine mammal species is met or exceeded, Hilcorp will immediately cease survey operations involving the use of active sound sources (*e.g.*, airguns and pingers) and notify NMFS Office of Protected Resources (OPR).

1. **Monthly Reports**—Monthly reports will be submitted to NMFS for all months during which in-water seismic activities take place. The monthly report will contain and summarize the following information:

- Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings.
- Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities.
- An estimate of the number (by species) exposed to the seismic activity (based on visual observation) at received levels greater than or equal to the NMFS thresholds discussed above with a discussion of any specific behaviors those individuals exhibited.
- A description of the implementation and effectiveness of the: (i) Terms and conditions of the Biological Opinion’s Incidental Take Statement (ITS); and (ii) mitigation measures of the LOA. For the Biological Opinion, the report must confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness for minimizing the adverse

effects of the action on ESA-listed marine mammals.

2. **Annual Reports**—Hilcorp must submit an annual report within 90 days after each activity year, starting from the date when the LOA is issued (for the first annual report) or from the date when the previous annual report ended. The annual report will include:

- Summaries of monitoring effort (*e.g.*, total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).
 - Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.*, sea state, number of observers, and fog/glare).
 - Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
 - Analyses of the effects of survey operations.
 - Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as: (i) Initial sighting distances versus survey activity state; (ii) closest point of approach versus survey activity state; (iii) observed behaviors and types of movements versus survey activity state; (iv) numbers of sightings/individuals seen versus survey activity state; (v) distribution around the source vessels versus survey activity state; and (vi) numbers of animals detected in the harassment/safety zone.
 - NMFS will review the draft annual reports. Hilcorp must then submit a final annual report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft annual report. If NMFS decides that the draft annual report needs no comments, the draft report will be considered to be the final report.
3. **Final Report**—Hilcorp will submit a final report, within 90 days of project completion at the end of the five-year period. This report will:
- Summarize the activities undertaken and the results reported in all previous reports;
 - Assess the impacts to marine mammals and their habitat;
 - Assess the cumulative impacts on marine mammals from the activities specified in in this rule; and
 - State the date(s), location(s), and findings of any research activities related to monitoring the effects on

noise-producing oil and gas activities on marine mammal populations.

4. **Discovery of Injured or Dead Marine Mammals**—In the event that personnel involved in the survey activities covered by the authorization discover an injured or dead marine mammal, Hilcorp must report the incident to the Office of Protected Resources (OPR), NMFS and to the Alaska Regional stranding coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Vessel Strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, Hilcorp must report the incident to OPR, NMFS and to regional stranding coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel’s speed during and leading up to the incident;
- Vessel’s course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

- To the extent practicable, photographs or video footage of the animal(s).

Actions to Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals—In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise the Hilcorp of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following:

- If at any time, the marine mammals die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise Hilcorp that the shutdown around the animals' location is no longer needed.
- Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises Hilcorp that all live animals involved have left the area (either of their own volition or following an intervention).

- If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with Hilcorp will be required to determine what measures are necessary to minimize that likelihood (e.g., extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Shutdown procedures are not related to the investigation of the cause of the stranding and their implementation is not intended to imply that the specified activity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number

of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Given the nature of activities, required mitigation and related monitoring, no serious injuries or mortalities are anticipated to occur as a result of Hilcorp's oil and gas activities in Cook Inlet, and none are authorized. The number of takes that are anticipated and authorized are expected to be limited mostly to short-term Level B harassment, although some PTS may occur. The seismic airguns and other sound sources do not operate continuously over a 24-hour period. Rather the airguns are operational for a few hours at a time with breaks in between, as surveys can only be conducted during slack tides, totaling a maximum of 12 hours a day for the most frequently used equipment. Sources other than airguns are likely to be used for much shorter durations daily than the 12 potential hours of airgun use.

Cook Inlet beluga whales, the Mexico DPS of humpback whales, fin whales, and the western stock of Steller sea lions are listed as endangered under the ESA. These stocks are also considered depleted under the MMPA. Beluga-specific mitigation measures, such as shutting down whenever beluga whales are sighted by PSOs and an exclusion zone at the Susitna River Delta months of high beluga concentrations, aim to minimize the effects of this activity on the population. Zerbini *et al.* (2006) estimated rates of increase of fin whales in coastal waters south of the Alaska, and data from Calambokidis *et al.* (2008) suggest the population of humpback whales by also be increasing. Steller sea lion trends for the western stock are

variable throughout the region with some decreasing and others remaining stable or even indicating slight increases. The other species that may be taken by harassment during Hilcorp's oil and gas program are not listed as threatened or endangered under the ESA nor as depleted under the MMPA.

Odontocete (including Cook Inlet beluga whales, killer whales, and harbor porpoises) reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. When in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 10–20 km (6–12 mi) of seismic vessels during aerial surveys (Miller *et al.*, 2005). However, as noted above, Cook Inlet belugas are more accustomed to anthropogenic sound than beluga whales in the Beaufort Sea. Therefore, the results from the Beaufort Sea surveys may be less applicable to potential reactions of Cook Inlet beluga whales. Also, due to the dispersed distribution of beluga whales in Cook Inlet during winter and the concentration of beluga whales in upper Cook Inlet from late April through early fall (i.e., far north of the seismic surveys), belugas will likely occur in small numbers in the majority of Hilcorp's survey area during the majority of Hilcorp's annual operational timeframe.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, such as changes in direction of travel, temporary avoidance, or alteration of behaviors such as breeding or feeding, falling within the MMPA definition of "Level B harassment." It is possible that Level A harassment take of marine mammals from sound sources such as seismic airguns may also occur. The duration of exposure from acoustic sources that we think have the potential to result in PTS are relatively short term and spatially limited, as compared to the extent of the Level B harassment zone. These relatively small PTS zones, combined with the short duration of potential exposure and the transitory nature of marine mammals most likely to be in the vicinity of the seismic vessel, indicate that the degree of PTS to any particular individual marine mammal would be small. Due to the short term duration of activities in any given area and the small geographic area in which

Hilcorp's activities will be occurring at any one time, it is unlikely that these activities will affect reproduction or survival of cetaceans in Cook Inlet. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions including breeding, foraging, and mating. In addition, NMFS seasonally restricts seismic survey operations in locations known to be important for beluga whale feeding, calving, or nursing. One of the primary locations for these biological life functions occur in the Susitna Delta region of upper Cook Inlet. NMFS will implement a 16 km (10 mi) seasonal exclusion from activities for which take has been authorized in this region from April 15 to October 15 annually. The highest concentrations of belugas are typically found in this area from early May through September each year. NMFS has incorporated a 2-week buffer on each end of this seasonal use timeframe to account for any anomalies in distribution and marine mammal usage. Additionally, NMFS has included a seasonal closure from January through May at the mouth of the Kasilof River, where belugas have been reported to aggregate primarily in the month of April.

Mitigation measures, such as dedicated marine mammal observers, and shutdowns when marine mammals are seen within defined ranges, are designed both to further reduce short-term reactions and minimize any effects on hearing sensitivity. In cases of PTS, for the reasons outlined above including limited duration of exposure and the transitory nature of marine mammals likely to occur close to the seismic vessel, the severity of PTS expected to occur in a few individual marine mammals would be low. In cases of Level B harassment, the effects of these activities are expected to be short-term, with no lasting biological consequence. Therefore, the exposure of cetaceans to sounds produced by Hilcorp's oil and gas activities is not anticipated to have an effect on annual rates of recruitment or survival of the affected species or stocks.

Some individual pinnipeds may be exposed to sound from the activities more than once during the timeframe of the project. Taking into account the mitigation measures that are planned, effects on pinnipeds are generally expected to be restricted to avoidance of

a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment," although some pinnipeds may approach close enough to sound sources undetected and incur PTS. Due to the solitary nature of pinnipeds in water, this is expected to be a small number of individuals and the calculated distances to the PTS thresholds incorporate a relatively long duration, making them conservative; however, the impacts of the authorized Level A harassment takes have been analyzed and, as indicated previously, due to the anticipated relatively shorter duration of exposure, any take by PTS would be expected to be of a lower degree. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of pinniped habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, the areas where the activities will take place are largely offshore and not known to be biologically important areas for pinniped populations. Therefore, the exposure of pinnipeds to sounds produced by this phase of Hilcorp's activity is not anticipated to have an effect on annual rates of recruitment or survival on those species or stocks.

The addition of multiple source and supply vessels, and noise due to vessel operations associated with the activities, will not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally. Given the large number of vessels in Cook Inlet and the apparent habituation to vessels by Cook Inlet beluga whales and the other marine mammals that may occur in the area, the aggregate vessel activity and its associated noise is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). As noted above, only one year of activity should reach the maximum annual authorized takes, which are the numbers used to make our findings in this rulemaking. Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect the fitness of individuals in a manner that would accrue to impacts on annual rates of recruitment or survival of marine mammals in the area. Based on the size

of Cook Inlet where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area will be minor based on the fact that other feeding areas exist elsewhere. Additionally, operations will not occur in the primary beluga feeding and calving habitat during times of high use by those animals. The mitigation measure of limiting activities around the Susitna Delta will also protect beluga whale prey and their foraging habitat.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Any small number of PTS takes incurred would be expected to be of a lower degree of hearing sensitivity loss;
- A majority of the impacts to marine mammals would be in the form of short-term, Level B harassment;
- Mitigation for beluga whales is extensive, including shutdowns at any distance and exclusion zones and avoiding exposure during critical foraging periods around the Susitna Delta;
- Location of activities is offshore which minimizes effects of activity on resident pinnipeds at haulouts;
- A large concentration of seismic surveying in the lower portions of Cook Inlet will extend into open water where densities of marine mammals are less than other parts of the Inlet; and
- Comprehensive land, sea, and aerial-based monitoring will maximize marine mammal detection rates as well as acoustic SSV to verify exposure levels.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken within a year to the most appropriate estimation of

abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

As described above in Table 18, the takes authorized represent less than 25 percent of any stock of population in the year of maximum activity. The authorized takes represent less than 10 percent of the stock abundance for nine species of marine mammals known to occur in Cook Inlet, Alaska. For the North Pacific stock of humpback whales, the authorized take of 97 individuals represents 11.21 percent of the stock. For Cook Inlet beluga whales, authorized take of 35 individuals annually represent 10.67 percent of the stock.

The exposures above the harassment threshold calculated for harbor seals would represent 43 percent of the Cook Inlet/Shelikof stock of approximately 27,386 animals if each instance of exposure represented a unique individual; however, that is not the case. The mathematical calculation that resulted in 11,496 Level B harassment exposures does not account for other factors that, when considered appropriately, suggest that far fewer individuals will be taken. The species' coastal nature, affinity for haulout sites in other portions of the Inlet, and absence during previous seismic surveys suggests that the number of individuals seals exposed to noise at or above the Level B harassment threshold, which likely represent repeated exposures of the same individual, is at a low enough level for NMFS to consider small.

In our Take Estimation section above, we describe the qualitative factors that suggest calculated exposure, specifically for seismic airgun use or drilling activities located offshore, is an overestimate of the number of individuals likely to occur within the Level A or Level B harassment zones.

Previous monitoring reports also help to provide context for the number of individual harbor seals likely to be taken. In 2012, SAExploration Inc. observers detected fewer than 300 seals during 116 days of operations, with 100 seals the most seen at once, at a river mouth, hauled out, not in the water or exposed to seismic activity. In 2014, Apache observers saw an estimated 613 individuals in 82 days of operation, mostly during non-seismic periods. Most harbor seals were recorded from the land station, not source vessels. Of the 492 groups of harbor seals seen, 441

were seen during non-seismic operations. The number of harbor seals observed and reported within the take zone in previous surveys suggests that the predicted instances of take of harbor seals for Apache's surveys may be overestimates. Further, the known distribution of this harbor seal stock, including the known preference for haulouts at river mouths, suggest that the number of exposures calculated through the daily ensonified method is a notable overestimate of the number of individual seals likely to be taken. When the previously described factors regarding the spatiotemporal distribution of this harbor seal stock throughout its range are considered, we believe that it is a reasonable prediction that not more than 25% of the individuals in the population will be taken by Level A or Level B harassment.

Based on the analysis contained herein of the activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an ITA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The project is unlikely to affect beluga whale harvests because no beluga harvest will take place in 2019, nor is one likely to occur in the other years that covered by the 5-year regulations and associated LOAs. This assumption is largely based on the lack of increased abundance of Cook Inlet beluga whales such that a 5-year population estimate average would exceed 350 individuals. Additionally, the action area is not an important native subsistence site for other subsistence species of marine mammals. Because of the relatively small number of marine mammals

harvested in Cook Inlet, the number affected by the action is expected to be extremely low. To further minimize any potential effects of their action on subsistence activities, Hilcorp is required to detail how they have engaged with stakeholders to discuss potential concerns regarding their planned activities, as well as how they will continue to engage with stakeholder during the course of their project. Hilcorp has outlined their communication plan for engaging with subsistence users in their Stakeholder Engagement Plan. Hilcorp will be required to abide by this plan and the plan will be updated every time Hilcorp applies for a LOA. Therefore, because the action will result in only temporary disturbances, the action will not impact the availability of these other marine mammal species for subsistence uses.

The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with Hilcorp's project but, because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), Hilcorp's program is not expected to have an impact on the subsistence use of harbor seals. Hilcorp's list of contacts who were notified about their activities includes communities and individuals who participate in subsistence hunting of harbor seals. Hilcorp will continue to coordinate with the identified stakeholders to ensure there are no conflicts between their activities and harbor seal subsistence hunts throughout the duration of these regulations, as required in the regulations and described in Hilcorp's Stakeholder Engagement Plan.

NMFS anticipates that any effects from Hilcorp's activities on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, will be short-term, site specific, and limited to inconsequential changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters. And any such potential reductions could be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. Based on the description of the specified activity, the measures described to minimize adverse effects

on the availability of marine mammals for subsistence purposes, and the required mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Hilcorp's activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to Hilcorp's oil and gas activities will contain an adaptive management component.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Hilcorp regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation or monitoring measures could be modified if new data suggests that such modifications will have a reasonable likelihood more effectively achieving the goals of the mitigation and monitoring and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of ITAs, NMFS consults internally, in this case with the Alaska Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species. NMFS is authorizing take of Cook Inlet beluga whale, Northeastern Pacific stock of fin whales, Western North Pacific, Hawaii, and Mexico DPS of humpback whales, and western DPS of Steller sea lions, which are listed under the ESA. The Permit and Conservation Division

requested initiation of section 7 consultation with the Alaska Region for the promulgation of 5-year regulations and the subsequent issuance of annual LOAs. The Alaska Region issued a Biological Opinion concluding that NMFS' action is not likely to adversely affect the listed species named above or adversely modify their critical habitat.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Hilcorp Alaska LLC is the only entity that is subject to the requirements in these regulations. Hilcorp employs thousands of people worldwide, and has a market value in the billions of dollars. Therefore, Hilcorp is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151 and include applications for regulations, subsequent LOAs, and reports.

Waiver of Delay in Effective Date

The Assistant Administrator for NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than Hilcorp is affected by the provisions of these regulations. Hilcorp has informed NMFS that it requests that this final rule take effect as soon as is possible so as to avoid the potential for disruption in Hilcorp's planned activities. NMFS was unable to accommodate the 30-day delay of effectiveness period due to the need for

additional time to address public comment and carry out required review, which was delayed by the lapse in federal appropriations in December 2018 and January 2019. The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOA are finalized as soon as is possible to avoid the potential for disruption in the Hilcorp's planned activities. In addition, the LOA allows for authorization of incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore the rule is also granting an exception to Hilcorp and relieving restrictions under the MMPA. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date.

List of Subjects in 50 CFR Part 217

Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 22, 2019.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart Q to part 217 to read as follows:

Subpart Q—Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska.

Sec.

217.160 Specified activity and specified geographical region.

217.161 Effective dates.

217.162 Permissible methods of taking.

217.163 Prohibitions.

217.164 Mitigation requirements.

217.165 Requirements for monitoring and reporting.

217.166 Letters of Authorization.

217.167 Renewals and modifications of Letters of Authorization and adaptive management.

217.168–217.169 [Reserved]

Subpart Q—Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska.

§ 217.160 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Hilcorp Alaska LLC (Hilcorp)

and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by Hilcorp may be authorized in Letters of Authorization (LOAs) only if it occurs within the action area defined in Cook Inlet, Alaska.

(c) The taking of marine mammals by Hilcorp is only authorized if it occurs incidental to Hilcorp's oil and gas activities including use of seismic airguns, sub-bottom profiler, vertical seismic profiling, pile driving, conductor pipe driving, and water jets.

§ 217.161 Effective dates.

Regulations in this subpart are effective July 30, 2019, through July 30, 2024.

§ 217.162 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.166, the Holder of the LOAs (hereinafter "Hilcorp") may incidentally, but not intentionally, take marine mammals within the area described in § 217.160(b) by Level A harassment and Level B harassment associated with oil and gas activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOAs.

§ 217.163 Prohibitions.

Notwithstanding takings contemplated in § 217.162 and authorized by LOAs issued under §§ 216.106 of this chapter and 217.166, no person in connection with the activities described in § 217.160 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 217.166;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the availability of such species or stock of marine mammal for taking for subsistence uses.

§ 217.164 Mitigation requirements.

When conducting the activities identified in § 217.160(c), the mitigation measures contained in any LOAs issued under §§ 216.106 of this chapter and 217.166 must be implemented. These mitigation measures must include but are not limited to:

(a) Hilcorp must conduct a sound source verification (SSV) for 3D seismic and sub-bottom profiler use. Results of this SSV must be sent to NMFS and mitigation and monitoring zones may be adjusted based on the results of the SSV.

(b) If any marine mammal species for which take is not authorized are sighted within or entering the relevant zones within which they are to be exposed to sound above the 120 dB re 1 μ Pa (rms) threshold for continuous (e.g., vibratory pile-driving, drilling) sources or the 160 dB re 1 μ Pa (rms) threshold for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources, Hilcorp must take appropriate action to avoid such exposure (e.g., by altering speed or course or by shutdown of the sound source).

(c) If the allowable number of takes in an LOA listed for any marine mammal species is met or exceeded, Hilcorp must immediately cease survey operations involving the use of active sound source(s), record the observation, and notify NMFS Office of Protected Resources.

(d) Hilcorp must notify NMFS Office of Protected Resources at least 48 hours prior to the start of oil and gas activities each year.

(e) Hilcorp must conduct briefings as necessary between vessel crews, marine mammal monitoring team, and other relevant personnel prior to the start of all survey activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(f) Hilcorp must establish monitoring and exclusion zones.

(1) For all relevant in-water activity, Hilcorp must implement shutdown zones/exclusion zones (EZs) with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 217.166. If a marine mammal is sighted within or entering the EZ, such operations must cease.

(2) For all relevant in-water activity, Hilcorp must designate safety zones for monitoring (SZ) with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 217.166 and record and report occurrence of marine mammals within these zones.

(3) For all relevant in-water activity, Hilcorp must implement a minimum EZ of a 10 m radius around the source.

(g) Hilcorp must implement shutdown measures.

(1) Hilcorp must deploy protected species observers (PSO) and PSOs must be posted to monitor marine mammals within the monitoring zones during use of active acoustic sources and pile driving in water.

(2) Monitoring must begin 15 minutes prior to initiation of stationary source activity and 30 minutes prior to initiation of mobile source activity, occur throughout the time required to complete the activity, and continue through 30 minutes post-completion of the activity. Pre-activity monitoring must be conducted to ensure that the EZ is clear of marine mammals, and activities may only commence once observers have declared the EZ clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the EZ, the marine mammals' behavior must be monitored and documented.

(3) A determination that the EZ is clear must be made during a period of good visibility (i.e., the entire EZ must be visible to the naked eye).

(4) If a marine mammal is observed within or entering the EZ, Hilcorp must halt all noise producing activities for which take is authorized at that location. If activity is delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed outside the EZ or the required amount of time (15 for porpoises and pinnipeds, 30 minutes for cetaceans) have passed without re-detection of the animal.

(5) Monitoring must be conducted by trained observers, who must have no other assigned tasks during monitoring periods. Trained observers must be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Hilcorp must adhere to the following additional observer qualifications:

(i) Hilcorp must use independent, dedicated, trained visual PSOs, meaning that the PSOs must be employed by a third-party observer provider, must not have tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an

approved PSO training course appropriate for their designated task.

(ii) Hilcorp must submit PSO resumes for NMFS review and approval.

Resumes must be accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.*, experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course. NMFS will approve or disapprove PSOs within one week from the time that the necessary information is received by NMFS, after which PSOs meeting the minimum requirements will automatically be considered approved.

(iii) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

(6) Operations must shut down completely if a beluga whale is sighted within the relevant Level B harassment isopleth.

(h) Hilcorp must implement soft start techniques for impact pile driving.

(1) Hilcorp must conduct an initial set of three strikes from the impact hammer 30 seconds apart, at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets.

(2) Soft start is required for any impact driving, including at the beginning of the day, after 30 minutes of pre-activity monitoring, and at any time following a cessation of impact pile driving of 30 minutes or longer.

(i) Hilcorp must implement ramp ups for seismic airgun use.

(1) Ramp up must be used at the start of airgun operations, including after a shutdown, and after any period greater than 30 minutes in duration without airgun operations.

(2) The rate of ramp up must be no more than 6 dB per 5-minute period.

(3) Ramp up must begin with the smallest gun in the array that is being used for all airgun array configurations.

(4) During the ramp up, the EZ for the full airgun array must be implemented.

(5) If the complete EZ has not been visible for at least 30 minutes prior to the start of operations, ramp up must not commence.

(6) Ramp up of the airguns must not be initiated if a marine mammal is sighted within or entering the EZ at any time.

(j) Hilcorp must use aircraft for mitigation.

(1) Hilcorp must use aircraft daily to survey the planned seismic survey area prior to the start of seismic surveying.

Surveying must not begin unless the aerial flights confirm the planned survey area for that day is clear of beluga whales. If weather conditions make flying before the start of seismic in daylight unsafe, Hilcorp may delay the aerial survey until weather conditions improve and it is safe to fly.

(2) If beluga whales are sighted during flights, start of seismic surveying must be delayed until it is confirmed the area is free of beluga whales.

(k) Hilcorp must implement exclusion zones for beluga whales.

(1) Hilcorp must not operate with noise producing activity within 10 miles (16 km) of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15.

Hilcorp must not conduct seismic activity within the Level B isopleth distance of the mouth of the Kasilof River between January 1 and May 31.

(m) Hilcorp must abide by all mitigation measures described in the Biological Opinion for Hilcorp Alaska and Harvest Alaska Oil and Gas Activities, Cook Inlet, Alaska.

§ 217.165 Requirements for monitoring and reporting.

(a) *Marine mammal monitoring protocols.* Hilcorp must conduct briefings between construction supervisors and crews and the observer team prior to the start of all pile driving and removal activities, and when new personnel join the work. Trained observers must receive a general environmental awareness briefing conducted by Hilcorp staff. At minimum, training must include identification of marine mammals that may occur in the project vicinity and relevant mitigation and monitoring requirements. All observers must have no other construction-related tasks while conducting monitoring.

(b) *Visibility.* Activities must only commence when the entire exclusion zone (EZ) is visible to the naked eye and can be adequately monitored. If conditions (*e.g.*, fog) prevent the visual detection of marine mammals, activities must not be initiated. For activities other than seismic surveying, activity must be halted in low visibility but vibratory pile driving or removal will be allowed to continue if started in good visibility.

(c) *Monitoring periods.* Monitoring must begin 15 minutes prior to initiation of stationary source activity and 30 minutes prior to initiation of mobile source activity, occur throughout the time required to complete the activity, and continue through 30 minutes post-completion of the activity.

Pre-activity monitoring must be conducted to ensure that the EZ is clear of marine mammals, and activities may only commence once observers have declared the EZ clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the EZ, the animals' behavior must be monitored and documented.

(d) *Placement of PSOs.* (1) At least one on-duty PSO must be placed on the source vessel (for seismic and geohazard surveys) or drill rig (for pipe driving and VSP).

(2) During seismic surveys a mitigation vessel must be used with at least one on-duty PSO aboard the vessel monitoring for marine mammal occurrence.

(e) *Reporting measures*—(1) *Take limits.* Hilcorp must contact NMFS when they have reached the limit of authorized takes of beluga whale within a year.

(2) *Monthly reports.* Monthly reports must be submitted to NMFS for all months during which in-water seismic activities take place. The monthly report must contain and summarize the following information: Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings; Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities; An estimate of the number (by species) exposed to the seismic activity (based on visual observation) at received levels greater than or equal to the NMFS thresholds discussed above with a discussion of any specific behaviors those individuals exhibited; A description of the implementation and effectiveness of the terms and conditions of the Biological Opinion's Incidental Take Statement (ITS) and mitigation measures of the LOA.

(3) *Annual reports.* (i) Hilcorp must submit an annual report within 90 days after each activity year, starting from the date when the LOA is issued (for the first annual report) or from the date when the previous annual report ended.

(ii) Annual reports will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed during the period of the report.

(iii) NMFS will provide comments within 30 days after receiving annual reports, and Hilcorp must address the

comments and submit revisions within 30 days after receiving NMFS comments. If no comment is received from the NMFS within 30 days, the annual report will be considered completed.

(4) *Final report.* (i) Hilcorp must submit a comprehensive summary report to NMFS not later than 90 days following the conclusion of marine mammal monitoring efforts described in this subpart.

(ii) The final report must synthesize all data recorded during marine mammal monitoring, and estimate the number of marine mammals that may have been harassed through the entire project.

(iii) NMFS will provide comments within 30 days after receiving this report, and Hilcorp must address the comments and submit revisions within 30 days after receiving NMFS comments. If no comment is received from the NMFS within 30 days, the final report will be considered as final.

(5) *Reporting of injured or dead marine mammals.* (i) In the event that personnel involved in the survey activities discover an injured or dead marine mammal, Hilcorp must report the incident to the Office of Protected Resources (OPR), NMFS (301-427-8401) and to regional stranding network (877-925-7773) as soon as feasible. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(B) Species identification (if known) or description of the animal(s) involved;

(C) Condition of the animal(s) (including carcass condition if the animal is dead);

(D) Observed behaviors of the animal(s), if alive;

(E) If available, photographs or video footage of the animal(s); and

(F) General circumstances under which the animal was discovered.

(ii) In the event of a ship strike of a marine mammal by any vessel involved in the survey activities, Hilcorp must report the incident to OPR, NMFS and to regional stranding networks as soon as feasible. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Species identification (if known) or description of the animal(s) involved;

(C) Vessel's speed during and leading up to the incident;

(D) Vessel's course/heading and what operations were being conducted (if applicable);

(E) Status of all sound sources in use;

(F) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

(G) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

(H) Estimated size and length of animal that was struck;

(I) Description of the behavior of the marine mammal immediately preceding and following the strike;

(J) If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

(K) Estimated fate of the animal (e.g., dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

(L) To the extent practicable, photographs or video footage of the animal(s).

(iii) In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise Hilcorp of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following:

(A) If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise Hilcorp that the shutdown around the animals' location is no longer needed.

(B) Otherwise, shutdown procedures must remain in effect until the Director of OPR, NMFS (or designee) determines and advises Hilcorp that all live animals involved have left the area (either of their own volition or following an intervention).

(C) If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with Hilcorp must occur to determine what measures are necessary to minimize that likelihood (e.g., extending the shutdown or moving operations farther away) and Hilcorp must implement those measures as appropriate.

(iv) If NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is

warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to Hilcorp indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information.

(A) Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and

(B) If available, description of the behavior of any marine mammal(s) observed preceding (i.e., within 48 hours and 50 km) and immediately after the discovery of the stranding.

(C) In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

§ 217.166 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Hilcorp must apply for and obtain (LOAs) in accordance with § 216.106 of this chapter for conducting the activity identified in § 217.160(c).

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to extend beyond the expiration date of these regulations.

(c) An LOA application must be submitted to the Director, Office of Protected Resources, NMFS, by March 1st of the year preceding the desired start date.

(d) An LOA application must include the following information:

(1) The date(s), duration, and the area(s) where the activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The estimated number of takes for each marine mammal stock potentially affected in each area for the period of effectiveness of the Letter of Authorization.

(4) An updated Stakeholder Engagement Plan detailing Hilcorp's meetings with stakeholders and any concerns raised that relate to marine mammals or subsistence activities.

(e) In the event of projected changes to the activity or to mitigation, monitoring, reporting (excluding changes made pursuant to the adaptive management provision of § 217.97(c)(1)) required by an LOA, Hilcorp must apply for and obtain a modification of LOAs as described in § 217.167.

(f) Each LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, their habitat, and the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(g) Issuance of the LOA(s) must be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under these regulations.

(h) If NMFS determines that the level of taking is resulting or may result in more than a negligible impact on the species or stocks of such marine mammal, the LOA may be modified or suspended after notice and a public comment period.

(i) Notice of issuance or denial of the LOA(s) must be published in the **Federal Register** within 30 days of a determination.

§ 217.167 Renewals and modifications of Letters of Authorization and adaptive management.

(a) An LOA issued under §§ 216.106 of this chapter and 217.166 for the activity identified in § 217.160(c) may be renewed or modified upon request by the applicant, provided that the following are met:

(1) Notification to NMFS that the activity described in the application submitted under § 217.160(a) will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming or remaining LOA period;

(2) Timely receipt (by the dates indicated) of monitoring reports, as required under § 217.165(C)(3);

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 217.165(c) and the LOA issued under §§ 216.106 of this chapter and 217.166, were undertaken and are expected to be undertaken during the period of validity of the LOA.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request as well as the proposed modification to the LOA. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the original determinations made for the regulations are in need of reconsideration; and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

(d) An LOA issued under §§ 216.16 of this chapter and 217.166 for the activity identified in § 217.160 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS, in response to new information and in consultation with Hilcorp, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of

mitigation and monitoring set forth in the preamble of these regulations.

(i) Possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures include:

(A) Results from Hilcorp's monitoring from the previous year(s).

(B) Results from marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Withdrawal or suspension.* NMFS will withdraw or suspend an LOA if, after notice and opportunity for public comment, NMFS determines these regulations are not being substantially complied with or that the taking allowed is or may be having more than a negligible impact on an affected species or stock specified in § 217.162(b) or an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The requirement for notice and comment will not apply if NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals. Notice will be published in the **Federal Register** within 30 days of such action.

§§ 217.168—217.169 [Reserved]

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Employee Benefits Security Administration

29 CFR Part 2510

Definition of “Employer” Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans and “Open MEPs” and Other Issues Under Section 3(5) of the Employee Retirement Income Security Act; Final Rule and Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security
Administration

29 CFR Part 2510

RIN 1210-AB88

Definition of “Employer” Under Section
3(5) of ERISA—Association Retirement
Plans and Other Multiple-Employer
PlansAGENCY: Employee Benefits Security
Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation under title I of the Employee Retirement Income Security Act (ERISA) that expands access to affordable quality retirement saving options by clarifying the circumstances under which an employer group or association or a professional employer organization (PEO) may sponsor a multiple employer workplace retirement plan under title I of ERISA (as opposed to providing an arrangement that constitutes multiple separate retirement plans). The final regulation does this by clarifying that employer groups or associations and PEOs can, when satisfying certain criteria, constitute “employers” within the meaning of ERISA for purposes of establishing or maintaining an individual account “employee pension benefit plan” within the meaning of ERISA. As an “employer,” a group or association, as well as a PEO, can sponsor a defined contribution retirement plan for its members (collectively referred to as “multiple employer plans” or “MEPs” unless otherwise specified). Thus, different businesses may join a MEP, either through a group or association or through a PEO. The final regulation also permits certain working owners without employees to participate in a MEP sponsored by an employer group or association. The final rule primarily affects groups or associations of employers, PEOs, plan participants, and plan beneficiaries. It does not affect whether groups, associations, or PEOs assume joint-employment relationships with member-employers or client employers. But it may affect banks, insurance companies, securities broker-dealers, record keepers, and other commercial enterprises that provide retirement-plan products and services to ERISA plans and plan sponsors.

DATES: This final regulation is effective on September 30, 2019.

FOR FURTHER INFORMATION CONTACT: Mara S. Blumenthal or Frances P. Steen,

Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**A. Background***1. Need To Expand Access to Workplace Retirement Plans*

Expanding access to workplace retirement plans is critical to helping more American workers financially prepare to retire. Approximately 38 million private-sector employees in the United States do not have access to a retirement plan through their employers.¹ According to the U.S. Bureau of Labor Statistics, 23 percent of all private-sector, full-time workers have no access to a workplace retirement plan.² The percentage of private-sector workers without access to a workplace retirement plan increases to 32 percent when part-time workers are included.³

Small businesses are less likely to offer retirement benefits. In 2018, approximately 85 percent of workers at private-sector establishments with 100 or more workers were offered a retirement plan. In contrast, only 53 percent of workers at private-sector establishments with fewer than 100 workers had access to such plans.⁴ Contingent or temporary workers are less likely to have access to a workplace retirement plan than those who are traditionally employed.⁵ Access to an

¹ This number was estimated by the U.S. Department of Labor’s Employee Benefits Security Administration using statistics from the U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States*, March 2018 (<https://www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf>). According to Table 2 (entitled Retirement Benefits: Access, Participation and Take-up rates, Private Industry Workers) of this survey, approximately 68% of private-sector industry workers have access to retirement benefits through their employers in 2018. According to Appendix Table 2, the survey represents approximately 118.1 million workers in 2018. Thus, the number of private industry workers without access to retirement plans through their employers is estimated to be approximately 38 million ((100% – 68%) × 118.1 million).

² U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States*, March 2018 at Table 2 (entitled Retirement Benefits: Access, Participation and Take-up rates, Private Industry Workers). The survey is available at (www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-unitedstates-march-2018.pdf).

³ *Id.*

⁴ *Id.*

⁵ See U.S. Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements—May 2017*. See also Copeland, *Employee Benefit Research Institute, Employment-Based Retirement Plan Participation: Geographic Differences and Trends*, 2013, (October 2014); U.S. Government Accountability Office, *Contingent Workforce: Size, Characteristics, Earnings, and Benefits*, April 20,

employment-based retirement plan is critical to the financial security of aging workers. Among workers who do not have access to a workplace retirement plan, only about 13 percent regularly contribute to individual retirement accounts, commonly called IRAs.⁶

Cost and regulatory complexity discourage employers—especially small businesses—from offering workplace retirement plans for their employees. Establishing and maintaining a plan can be expensive for small businesses. A survey by the Pew Charitable Trusts found that only 53 percent of small-to mid-sized businesses offer a retirement plan; 37 percent of those not offering a plan cited cost as a reason.⁷ Employers often cite annual reporting costs and exposure to potential fiduciary liability as major impediments to plan sponsorship.⁸

Although there are ways to save for retirement outside of the workplace, none are as advantageous to workers as employment-based plans. IRAs, for example, are not comparable to workplace retirement savings options. As compared to IRAs, ERISA-covered retirement plans offer private sector workers: (1) Higher contribution limits; (2) generally lower investment

2015; U.S. Gov’t Accountability Office, GAO–15–566, *RETIREMENT SECURITY—Federal Action Could Help State Efforts to Expand Private Sector Coverage* (Sept. 2015) (www.gao.gov/assets/680/672419.pdf).

⁶ The Department calculated this using *Survey of Income and Program Participation 2008 Panel Data Waves 10 and 11*.

⁷ The Pew Charitable Trusts, *Employer Barriers to and Motivations for Offering Retirement Benefits*, (June 2017) (<http://www.pewtrusts.org/-/media/assets/2017/09/employerbarrierstoandmotivations.pdf>) (“Most commonly, employers without plans said that starting a retirement plan is too expensive to set up (37 percent). Another 22 percent cited a lack of administrative resources. In focus groups, some business representatives said their mix of workers—especially if they included low-wage or short-term employees—translated into limited employee interest in or demand for retirement benefits. But in the survey, only 17 percent cited lack of employee interest as the main reason they did not offer a plan.”).

⁸ Two other types of pension arrangements share features of MEPs, but are not the focus of this rule. First, a “multiemployer plan” as defined in ERISA section 3(37) is a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. Second, Pre-Approved Retirement Plans, are plans that providers, such as financial institutions, make available for adoption by employers and that have been pre-approved by the IRS. See Rev. Proc. 2017–41, 2017–29 IRB 92. A plan that uses a Pre-Approved Plan document may either be a single-employer plan or a MEP. With respect to single-employer Pre-Approved Plans, providers often offer centralized administration services and pool the assets of different plans into a central investment fund, such as an IRS Rev. Rul. 81–100 group trust.

management fees as the size of plan assets increases; (3) a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections; (4) automatic enrollment; and (5) stronger protections from creditors. At the same time, workplace retirement plans enhance employers' ability to choose among a wide variety of plan features and the flexibility to tailor retirement plans to meet their business and employment needs.

Although many MEPs already exist, past sub-regulatory guidance issued by the Department and uncertainty about the ability of PEOs and associations to sponsor MEPs as "employers" may have hindered the creation of MEPs. As the Department also learned through its "association health plan" rulemaking process (AHP Rule), described in section 3 of this preamble, many employer groups and associations are interested in offering employee benefits to their members, but view the Department's prior interpretive guidance as too restrictive, creating an undue impediment to greater sponsorship of retirement plans. Likewise, we understand that an active PEO industry already exists⁹ and that its members, much like employer groups and associations, offer or would like to offer MEPs to their clients. At least some PEOs may be discouraged from doing so by a lack of clear standards, to the detriment of employers, especially small employers.

2. Legislative Activity

In recent years, members of Congress have also sought to promote MEPs through legislation, including recent legislative proposals that address so-called "open MEPs," which are plans that cover employees of employers with no relationship other than their joint participation in the MEP. Since the publication of the proposal and the beginning of the 116th Congress, seven bills dealing with this topic have been introduced, including H.R. 1994, the "Setting Every Community Up for Retirement and Enhancement Act of 2019," commonly known as the "SECURE Act," which was passed overwhelmingly by the House of Representatives on May 23, 2019 by a

vote of 417–3.¹⁰ The SECURE Act, in relevant part, makes comprehensive changes to ERISA and the Code to facilitate open MEPs. The final rule differs in significant ways from the legislative proposals introduced in Congress. In particular, this rule is significantly more limited in scope because it relies solely on the Department's authority to promulgate regulations administering title I of ERISA. Unlike the Department, Congress has authority to make statutory changes to ERISA and other areas of law that govern retirement savings, such as the Code.

3. Association Health Plan Rule

As mentioned above, the Department recently promulgated a similar rule to expand access to more affordable, quality healthcare by enhancing the ability of employers to band together to provide health benefits through a single ERISA-covered plan, called an "association health plan." That regulation, the AHP Rule, issued on June 21, 2018, explains how employers acting together to provide such health benefits may meet the definition of the term "employer" in ERISA section 3(5).¹¹ The AHP Rule sets forth several criteria under which groups or associations of employers may establish an ERISA-covered multiple employer group health plan. Several commenters on the AHP proposed rule encouraged the Department to bring MEPs within the scope of that rule or a new rule. In the AHP Rule, the Department said it

¹⁰ The SECURE Act had originally been introduced on March 22, 2019 on a bipartisan basis by House Ways and Means Chairman Richard Neal (D-MA), Ranking Member Kevin Brady (R-TX), Rep. Mike Kelly (R-PA) and Rep. Ron Kind (D-WI). The SECURE Act contains the MEP provisions found in S. 972/H.R. 1007, the "Retirement and Enhancement Savings Act of 2019" or "RESA," introduced by Senate Finance Committee Chair Charles Grassley (R-IA) and Ranking Member Sen. Ron Wyden (D-OR) on April 1, 2019 and Rep. Ron Kind (D-WI) and 38 cosponsors on February 6, 2019, respectively, and H.R. 1084, the "Family Savings Act," introduced in February 7, 2019 by Rep. Mike Kelly (R-PA) and 9 cosponsors. The other three MEP bills introduced in the 116th Congress are H.R. 198, the "Retirement Security for American Workers Act," introduced by Reps. Vern Buchanan (R-FL) and Ron Kind (D-WI) on March 27, 2019; S. 1101, the "Small Business Employees Retirement Enhancement Act," introduced by Sens. Tom Cotton (R-AR), Todd Young (R-IN), and Doug Jones (D-AL) on April 3, 2019; and S. 321, the "Retirement Security Act of 2019," introduced by Sens. Susan Collins (R-ME) and Maggie Hassan (D-NH) on February 4, 2019. In the 115th Congress, there were eight bills introduced containing MEP provisions.

¹¹ 83 FR 28912 (June 21, 2018). In *State of New York v. United States Department of Labor*, 363 F. Supp. 3d 109 (D.D.C. March 28, 2019), the District Court vacated portions of the Department's final rule on AHPs. The Department disagrees with the District Court's ruling and an appeal has been filed.

would consider those comments in the retirement plan context.¹²

4. Executive Order 13847

On August 31, 2018, President Trump issued Executive Order 13847, "Strengthening Retirement Security in America," (Executive Order), which states that "[i]t shall be the policy of the Federal Government to expand access to workplace retirement plans for American workers." The Executive Order directed the Secretary of Labor to examine policies that would: (1) Clarify and expand the circumstances under which U.S. employers, especially small and mid-sized businesses, may sponsor or adopt a MEP as a workplace retirement savings option for their employees, subject to appropriate safeguards; and (2) increase retirement security for part-time workers, sole proprietors, working owners, and other entrepreneurial workers with nontraditional employer-employee relationships by expanding their access to workplace retirement savings plans, including MEPs. The Executive Order further directed, to the extent consistent with applicable law and the policy of the Executive Order, that the Department consider within 180 days of the date of the Executive Order whether to issue a notice of proposed rulemaking, other guidance, or both, that would clarify when a group or association of employers or other appropriate business or organization could be an "employer" within the meaning of ERISA section 3(5).

The Department has authority to interpret the statutes it administers, and it believes that it is appropriate to clarify how the statutory definition of "employer," 29 U.S.C. 1002(5), should apply to certain MEPs under title I of ERISA. For several reasons, the Department has chosen to retain nearly the same criteria for these MEPs that it proposed. The Department is not opining, however, on whether other types of MEPs with different or less-stringent criteria, or different "employers," may also qualify under title I. The Department had previously issued subregulatory guidance interpreting this section 3(5) of ERISA that took a narrow view of the circumstances under which a group or association of employers could band together to act "in the interest of" employer members in relation to the offering of retirement savings plans. By clarifying its interpretation of the statutory language, the Department expects to improve access to employer-

⁹ The IRS has already recognized that a PEO may offer a MEP for its clients under the Code. See IRS Rev. Proc. 2002-21 (describing steps that may be taken to ensure the qualified status of defined contribution multiple employer plans maintained by PEOs).

¹² *Id.* at 28964, n.10.

sponsored retirement savings plans in America.

The Department, therefore, is publishing this final rule interpreting the term “employer” for purposes of ERISA section 3(5). This rule facilitates the adoption and administration of MEPs and thereby expands access to workplace retirement plans, especially for employees of small and mid-size employers and for certain self-employed individuals. This final rule supersedes any preexisting subregulatory interpretive rulings under ERISA section 3(5) pertaining to bona fide groups or associations of employers and, at the same time, establishes more flexible standards and criteria for sponsorship of MEPs than currently articulated in that prior guidance. The final rule does not affect existing auto-enrollment options and other features that make defined contribution plans attractive for employers. The final rule also has no superseding effect on Interpretive Bulletin 2015–02, as further explained below in the “Miscellaneous” section of this preamble.

5. Notice of Proposed Rulemaking

On October 23, 2018, the Department published a proposed regulation (“Proposed Rule”) to clarify certain circumstances under which an employer group or association or a PEO may sponsor a MEP. More specifically, the Proposed Rule clarified that employer groups or associations and PEOs can, when satisfying certain criteria, constitute “employers” within the meaning of section 3(5) of ERISA for purposes of establishing or maintaining an “employee pension benefit plan” within the meaning of ERISA section 3(2). Under the terms of the Proposed Rule, a group or association, as well as a PEO, could sponsor a MEP as an “employer.” The Proposed Rule permitted different businesses to join a MEP, either through a group or association or through a PEO. The Proposed Rule also permitted certain working owners without employees to participate in a MEP sponsored by a group or association.

The Proposed Rule identified the potential advantages of scale offered by MEPs. MEPs have the potential to broaden the availability of workplace retirement plans, especially among small employers, because they enable different businesses to band together and adopt a single retirement plan. Pooling resources in this way can reduce costs and encourage plan formation. For example, investment companies often charge lower fund fees for plans with greater asset accumulations. And because MEPs

facilitate the pooling of plan participants and assets in one large plan, rather than many small plans, they enable small businesses to give their employees access to the same low-cost funds as large employers offer.

The Proposed Rule also identified other potential advantages of MEPs. For a small business, in particular, a MEP may present an attractive alternative to taking on the responsibilities of sponsoring or administering its own plan. The MEP structure can reduce the employer’s cost of sponsoring a benefit plan and effectively transfer substantial legal risk to professional fiduciaries responsible for the management of the plan. Although employers retain fiduciary responsibility for choosing and monitoring the arrangement and forwarding required contributions to the MEP, the employer can keep more of its day-to-day focus on managing its business, rather than the MEP.

Under the Proposed Rule, participating employers were generally required to execute a participation agreement or similar instrument that lays out the rights and obligations of the MEP sponsor and the participating employer before participating. But these participating employers were not viewed as sponsoring their own separate, individual plans under ERISA. Rather, the MEP, if it met the conditions of the Proposed Rule, constituted a single employee benefit plan for purposes of title I of ERISA. Consequently, the MEP sponsor—and not the individual participating employers—generally was responsible, as plan administrator, for compliance with the requirements of title I of ERISA, including reporting, disclosure, and fiduciary obligations. This is so because the individual employers would not each have had to act as plan administrators under ERISA section 3(16) or as named fiduciaries under section 402 of ERISA.

The Proposed Rule provided that an employer group or association or PEO could act as the “employer” sponsoring the plan within the meaning of section 3(5) of ERISA. This means that, typically, the employer group or association or PEO would act as a plan administrator and named fiduciary and, thus, would assume most fiduciary responsibilities. A MEP under the Proposed Rule is subject to all of the ERISA provisions applicable to defined contribution retirement plans, including the fiduciary responsibility and prohibited transaction provisions in title I of ERISA. As a plan that is maintained by more than one employer, a MEP also has to satisfy the requirements of section 210(a) of ERISA.

6. Legal Background

a. Statutory Definitions

ERISA section 4 governs the reach of ERISA and, accordingly, of the Department’s authority over benefit plans. ERISA applies not to every benefit plan but, as relevant here, to an “employee benefit plan” sponsored “by any employer.” ERISA section 4(a)(1); 29 U.S.C. 1003(a)(1).¹³ The provision reads in relevant part: ERISA “shall apply to any employee benefit plan if it is established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce” ERISA defines “employee pension benefit plan” to include “any plan, fund, or program . . . established or maintained by an employer . . . to the extent that by its express terms or as a result of surrounding circumstances” it provides retirement income to employees or the deferral of income to the termination of employment or beyond. Thus, the term “employer” is essential to a benefit arrangement’s status as an “employee pension benefit plan” within the meaning of ERISA. A prerequisite for ERISA coverage is that the retirement plan must be established or maintained by an “employer.”

ERISA section 3(5) defines the term “employer.” ERISA section 3(5); 29 U.S.C. 1002(5). ERISA’s definitional provision, in relevant part, states that the term “employer” means “any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.” When Congress enacted ERISA in 1974, it carried forward this important definition from the 1958 Welfare and Pension Plans Disclosure Act. Public Law 85–836, section 3(a)(4), 72 Stat. 997, 998 (1958).

But ERISA does not explain what it means for an entity to act “directly as an employer” or “indirectly in the interest of an employer, in relation to an employee benefit plan.” Nor does the statute explain what is meant by a “group or association of employers.” In short, these ambiguous statutory terms are not themselves defined. As one court has recognized, the “problem lies, obviously enough, in determining what is meant by these oblique definitions of employer.” *Meredith v. Time Ins. Co.*, 980 F.2d 352, 356 (5th Cir. 1993). The statutory lacunae have proven

¹³ ERISA also covers benefit plans established or maintained by employee organizations and such plans established or maintained by both employers and employee organizations.

problematic for some courts. They “have found the phrase ‘act . . . indirectly in the interest of an employer’ difficult to interpret.” *See Mass. Laborers’ Health & Welfare Fund v. Starrett Paving Corp.*, 845 F.2d 23, 24 (1st Cir. 1988); *accord Greenblatt v. Delta Plumbing & Heating Corp.*, 68 F.3d 561, 575 (2d Cir. 1995) (collecting cases). Also ambiguous is the statutory term “group or association of employers.” Because ERISA “does not define th[at] term,” this “void injects ambiguity into the statute.” *MD Physicians & Assocs. v. State Bd. of Ind.*, 957 F.2d 178, 184 (5th Cir. 1992). Although ERISA contains a definition of “employer,” the important terms used within that definition are unexplained.

In light of all this, and consistent with longstanding principles of administrative law, the Department is well-positioned to address this statutory ambiguity by exercising its rulemaking authority, *see* 29 U.S.C. 1135, to explicate some of the terms used in section 3(5). In doing so, the Department is aided both by the common understanding of the broad terms used in ERISA section 3(5) and by the statutory context.

b. Bona Fide Groups or Associations

The Department has long taken the position in subregulatory guidance that, even in the absence of the involvement of an employee organization, a single “multiple employer plan” under ERISA may exist where a cognizable group or association of employers, acting in the interest of its employer members, establishes a benefit program for the employees of member employers. To satisfy these criteria, the group or association must exercise control over the amendment process, plan termination, and other similar functions of the plan on behalf of the participating-employer members with respect to the plan and any trust established under the program.¹⁴ DOL guidance generally refers to these entities—*i.e.*, entities that qualify as groups or associations, within the meaning of section 3(5)—as “bona fide” employer groups or associations.¹⁵ For each employer that adopts for its employees a program of pension or welfare benefits sponsored by an employer group or association that is not “bona fide,” such employer establishes its own separate employee benefit plan covered by ERISA.¹⁶

Largely, but not exclusively, in the context of welfare-benefit plans, the Department has previously distinguished employer groups or associations that can act as ERISA section 3(5) employers in sponsoring multiple employer plans from those that cannot. To do so, the Department has asked whether the group or association has a sufficiently close economic or representational nexus to the employers and employees that participate in the plan that is unrelated to the provision of benefits.¹⁷

DOL advisory opinions and court decisions have long applied a facts-and-circumstances approach to determine whether there is a sufficient common economic or representational interest or genuine organizational relationship for there to be a bona fide employer group or association capable of sponsoring an ERISA plan on behalf of its employer members. This analysis has focused on three broad sets of issues, in particular: (1) Whether the group or association is a bona fide organization with business/organizational purposes and functions unrelated to the provision of benefits; (2) whether the employers share some commonality and genuine organizational relationship unrelated to the provision of benefits; and (3) whether the employers that participate in a plan, either directly or indirectly, exercise control over the plan, both in form and substance. This approach has ensured that the Department’s regulation of employee benefit plans is focused on employment-based arrangements, as contemplated by ERISA’s text.

c. Professional Employer Organizations

According to the IRS, the term “PEO” generally refers to an organization that “enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client.”¹⁸ The provisions of a PEO arrangement typically state that the PEO assumes certain employment responsibilities that the client-employer would otherwise fulfill with respect to employees. Under the terms of a typical PEO client contract, the PEO assumes responsibility for paying the employees and for related employment tax compliance, and has attendant contractual responsibilities and obligations, without regard to payment from the client employer to the PEO. A

PEO also may manage human resources, employee benefits, workers-compensation claims, and unemployment-insurance claims for the client employer. The client employer typically pays the PEO a fee based on payroll costs plus an additional amount.¹⁹ According to a representative of the PEO industry, the PEO assumes specific employer rights, responsibilities, and risks through the establishment and maintenance of a relationship with the workers of the client, including in some cases to reserve a right of direction and control of the employees with respect to particular matters.

(i) Current Primary Legal Authority

Although many PEOs administer plans for their client employers today, there is little direct authority on precisely what it means for a PEO or other entity to act “indirectly in the interest” of its client employers in relation to an employee benefit plan for purposes of ERISA section 3(5). Whether a PEO is an “employer” under section 3(5) depends on the “indirectly in the interest of an employer” provision, not the “employer group or association” provision. And neither existing subregulatory guidance nor judicial authority has articulated a specific test to determine when a PEO is sufficiently tied to its client-employer to be said to be acting “indirectly in the interest of an employer, in relation to an employee benefit plan,” within the meaning of section 3(5).²⁰ The different statutory text and the differences in the nature of the employer relationships merit a different regulatory approach to PEOs than to employer groups or associations.

(ii) Current Secondary Legal Authority

Some federal statutes treat a PEO as an “employer” for certain limited purposes in other circumstances. For instance, regulations issued pursuant to the Family and Medical Leave Act of 1993 (FMLA) specifically recognize that a PEO may, under certain circumstances, enter into a relationship

¹⁴ See 83 FR at 28912, 28920.

¹⁵ See, e.g., Advisory Opinions 2008–07A, 2003–17A, and 2001–04A.

¹⁶ See 83 FR 28912, 13 (citing Advisory Opinion 96–25A).

¹⁷ See 83 FR 28912; see also Advisory Opinions 2012–04A, 1983–21A, 1983–15A, and 1981–44A.

¹⁸ Certified Professional Employer Organizations, 81 FR 27315 (May 6, 2016).

¹⁹ Foster, Michael D., *Certified Professional Employer Organizations* (July 7, 2016) <https://www.jacksonkelly.com/tax-monitor-blog/certified-professional-employer-organizations>.

²⁰ The lack of a specific and clear test leads to different outcomes. *Compare Yearous v. Pacificare of California*, 554 F. Supp. 2d 1132 (S.D. Cal. 2007) (applying factors in *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992), court concluded that PEO is direct employer of owner of company for purposes of sponsoring an ERISA covered healthcare plan covering the owner and his beneficiaries) with *Texas v. Alliance Employee Leasing Co.*, 797 F. Supp. 542 (N.D. Tex. 1992) (finding leasing company did not act directly or indirectly as employer under ERISA).

with the employees of its client companies such that it is considered a “joint employer” for purposes of determining FMLA coverage and eligibility, enforcing the FMLA’s anti-retaliation provisions, and in limited situations, providing job restoration.²¹ In the main, however, the FMLA regulations clarify that a “PEO does not enter into a joint employment relationship with the employees of its client companies when it merely performs . . . administrative functions,” such as “payroll benefits, regulatory paperwork, and updating employment policies.” 29 CFR 825.106(b)(2). The regulation makes clear that PEOs do not become joint employers simply by virtue of providing such services to client-employers.

Furthermore, the Tax Increase Prevention Act of 2014, Public Law 113–295 (Dec. 19, 2014) required the IRS to establish a voluntary certification program for such PEOs (CPEO Program) as discussed in more detail below. The CPEO Program certifies PEOs that meet certain requirements within the Code and provides a level of assurance to small-business owners that rely on such a Certified Professional Employer Organization (CPEO) to handle their employment-tax issues. CPEOs are treated as employers under the Code for employment tax purposes with regard to remuneration paid to their customers’ employees under CPEO service contracts. Pursuant to its certification as a CPEO, a CPEO is solely liable for the employment tax withholding, payment, and reporting obligations with respect to remuneration it pays to work site employees (as defined in IRC 7705(e)).²²

B. Overview of the Final Rule and Discussion of Public Comments

1. In General

The Department believes that providing additional opportunities for employers to join MEPs as a way to offer workplace retirement savings plans to their employees could, under the conditions in the final rule, offer many small businesses more affordable and less burdensome retirement savings plan alternatives than are currently available. MEPs provide another avenue for those employers that are reluctant to shoulder such burdens. In addition, the final rule will level the playing field for small-business employees by permitting them to have access to the lowest-cost funds, often reserved for employees in large-asset plans. Accordingly, the

Department is confident that the final rule will prompt some small businesses that do not currently offer workplace retirement benefits to offer such benefits. This will increase the number of employees enrolled in workplace retirement plans, thereby offering some of America’s workers better retirement savings opportunities and greater retirement security.

Paragraph (a) defines the scope of the final rule. This paragraph provides that bona fide employer groups or associations and bona fide PEOs may act as “employer[s]” under ERISA section 3(5) for purposes of sponsoring a MEP. This interpretation is based upon the Department’s conclusion that such bona fide employer groups, associations, or PEOs can act “in the interest of” their employer members in relation to a retirement savings plan.

Although the term “multiple employer plan” can refer to a variety of different kinds of employee-benefit arrangements, this final rule addresses only two kinds of arrangements: Sponsorship of a MEP by either a group or association of employers, or by a PEO. The final rule is also limited to defined contribution plans, as defined in section 3(34) of ERISA. The final rule does not cover welfare benefit plans or other types of pension plans.

Some commenters recommended expanding the scope of the Proposed Rule so that the final rule would cover other employee benefit plans. These commenters mentioned life, disability, and defined benefit pension plans in particular. At the same time, however, other commenters recommended that this rulemaking project remain limited to defined contribution plans. These commenters stated that different issues might arise under different employee benefit plan structures and different benefit options. These commenters preferred that the Department continue a discussion with interested parties on whether and how to implement a future regulatory expansion to cover these other employee benefit plans. After thoughtful review of these comments, however, the final rule is limited to defined contribution plans because the Department believes that consideration and development of any proposal covering other types of pension and welfare benefit plans or other persons or organizations as plan sponsors would benefit from public comments and additional consideration by the Department.

2. Open MEPs and Request for Information

The Proposed Rule solicited comments on so-called “open MEPs” or

“pooled employer plans,” which generally are defined contribution retirement arrangements that cover employees of employers with no relationship other than their joint participation in the MEP. The Proposed Rule specifically requested comments on whether, and under what circumstances, these arrangements should and could be operated as ERISA-covered plans. The solicitation asked commenters who believe that these arrangements should be addressed in this or a future rulemaking to include a discussion of why such an arrangement should be treated as one employee benefit plan within the meaning of title I of ERISA rather than as a collection of separate employer plans being serviced by a commercial enterprise that provides retirement plan products and services. Such commenters also were encouraged to provide suggestions regarding the regulatory conditions that should apply to these particular arrangements.

Nearly half of the comments received addressed this issue, and the majority were supportive of the Department promulgating a rule that would facilitate these arrangements. Nonetheless, commenters had very different ideas on how the Proposed Rule might best be amended to facilitate open MEPs. Some commenters, for example, recommended eliminating some or all of the substantial business purpose, control, and commonality requirements from the Proposed Rule’s bona fide group or association provisions, and the provision that prohibits financial services firms from being the group or association that establishes the MEP. Other commenters, however, recommended modifications to, and an expansion of, the Proposed Rule’s bona fide PEO provisions. These commenters argued that the bona fide PEO framework, with appropriate modifications, could be expanded beyond the narrow scope of PEOs to include commercial enterprises more generally. To these commenters, a commercial entity’s willingness to exert substantial control over the functions and activities of the MEP, as the plan sponsor, plan administrator, and as a named fiduciary provides a sufficient basis to conclude that such an entity is acting “indirectly in the interest of an employer . . . in relation to an employee benefit plan” for purposes of section 3(5) of ERISA, without regard to whether the entity is a PEO.

Not all commenters, however, supported the idea of open MEPs. A number of commenters believed commercial entities and financial services firms should be precluded from

²¹ 29 CFR 825.106(b)(2), (e).

²² See IRC section 3511(a)(1).

sponsoring MEPs as an “employer” under section 3(5) of ERISA. A few commenters viewed the matter as being better suited for legislation, given the wide range of issues presented under ERISA and the Code.

After reviewing the comments, the Department is persuaded that open MEPs deserve further consideration. The Department, however, does not believe that it has acquired a sufficient public record on, or a sufficiently thorough understanding of, the complete range of issues presented by the topic. In light of the conflict in the comments about whether and how to permit open MEPs, as well as legislation pending in the 116th Congress, the Department has decided to solicit comments on a broad range of issues relating to open MEPs in a Request for Information (RFI) published elsewhere today in the **Federal Register** for possible future rulemaking and to defer rulemaking on open MEPs until after a fuller public record is developed. Because of its interest, however, in expanding opportunities for small businesses and working owners to participate in MEPs as soon as possible, the Department is publishing this final rule today, which is limited to bona fide groups or associations and bona fide PEOs that may act as employers that establish and maintain MEPs.

3. Bona Fide Groups or Associations of Employers

Paragraph (b) of the final rule contains the provisions defining what is a bona fide group or association of employers capable of establishing a MEP.²³ These provisions replace and supersede criteria in prior subregulatory guidance dealing with retirement plans and bona fide groups or associations of employers. The criteria in paragraph (b) distinguish bona fide group or association MEPs from retirement products and services offered by purely commercial pension administrators, managers, and record keepers. In a broad colloquial sense, it is possible to say that commercial service providers, such as banks, trust companies, insurance companies, and brokers, act “indirectly in the interest of” their customers, but that does not convert every service provider into an ERISA-covered “employer” of their customer’s employees. ERISA section 3(5) and

ERISA title I’s overall structure contemplate *employment*-based benefit arrangements.²⁴ The Department’s authority to define “employer” and “group or association of employers” under ERISA section 3(5) does not broadly extend to arrangements established to provide benefits outside the employment context and without regard to the members’ status as employers.²⁵ Thus, the criteria in paragraph (b) identify certain groups and associations that act as employers within the meaning of ERISA section 3(5), and distinguish those groups and associations from others that may not act as an “employer.”

The provisions in paragraph (b) generally mirror those in the final AHP Rule that define what is a bona fide group or association capable of establishing an association health plan.²⁶ These provisions have the same meaning and effect here, as they have there. It makes sense to have consistent provisions for AHPs and MEPs, because the Department is interpreting the same definitional provisions in both contexts and because many of the same types of groups or associations of employers that sponsor AHPs for their members will also want to sponsor MEPs. Accordingly, and for the sake of regulatory uniformity and simplicity, if a group or association of employers can establish a bona fide AHP under the AHP Rule, the group or association should also be able to establish a MEP under this final rule.

Although commenters suggested changes to the provisions in paragraph (b) of the Proposed Rule, the final rule adopts the provisions essentially as proposed. In many instances, the rationale for declining a particular suggested change or amendment is the same or substantially similar to the reason the Department declined the same proposed provision in connection

with the AHP Rule. After thoughtful consideration, the Department has generally determined that the rationale for declining a particular suggested change or amendment in the AHP context is applicable in the MEP context, unless otherwise specified. Accordingly, the major comments on the proposal and provisions of the final rule are discussed below.²⁷

a. Purpose of the Association

Paragraph (b)(1)(i) of the Proposed Rule required that a group or association of employers have at least one substantial business purpose unrelated to offering and providing MEP coverage or other employee benefits to its employer members and their employees, even if the primary purpose of the group or association is to offer such coverage to its members. This provision helps ensure that the association is a bona fide association of employers, rather than merely a commercial arrangement or entity marketing retirement benefits and services to customers on a commercial basis. The “primary purpose” provision recognizes that it is perfectly legitimate for associations to form, in part, as a means of achieving the sorts of economies of scale, bargaining power, and administrative expertise that enable them to provide valuable benefits to their members, as long as they also serve another unrelated substantial business purpose. As an additional guidepost, the paragraph specifically provides that the “substantial business purpose” test is satisfied if the group or association would be a viable entity, even in the absence of sponsoring an employee benefit plan.

A number of commenters believe this standard is too lenient. One commenter, who believes this standard may be abused by profit seeking enterprises, recommended a stricter standard providing that the primary purpose of the group or association could not be offering or providing retirement benefits. Other commenters with similar concerns recommended that the final regulation limit eligible groups or associations of employers to groups or associations that are not-for-profit organizations. One individual believes the standard is undefined, lacks meaningful limitations, and is perfunctory, and that it would allow an

²⁴ The Department took the same position in the AHP Rule. 83 FR 28912, 28913 (June 21, 2018).

²⁵ *Id.* at 28916.

²⁶ The final rule does not contain provisions analogous to the healthcare nondiscrimination provisions of the AHP Rule because defined contribution retirement plans do not underwrite health risk and are not susceptible to the rating and segmentation pressures that characterize the healthcare marketplaces. Some defined contribution plans may offer lifetime income features, such as immediate or deferred annuities, which potentially implicate some degree of longevity risk. The Department, however, does not believe the potential presence of longevity risk in ancillary features of defined contribution MEPs warrants nondiscrimination provisions analogous to those of the AHP Rule. The Department also believes, and a few commenters expressly agreed with the Department, that any relevant nondiscrimination concerns are already addressed in the tax-qualification provisions of the Code or other federal laws.

²³ The term “bona fide” in the proposal refers to a group, association, or PEO that meets the conditions of the proposed regulation and, therefore, is able to be an “employer” for purposes of section 3(5) of ERISA. No inferences should be drawn from the use of this term regarding the actual bona fides of the group, association or organization outside of this context.

²⁷ Many commenters who support open MEPs made recommendations to substantially modify or eliminate some or all of the provisions in paragraph (b) of the final rule as a way of achieving an open MEP framework. Those comments are addressed in the aggregate above in section B 2 of this preamble, and in the related RFI published elsewhere in today’s **Federal Register**. They are not addressed in this section of the preamble.

association to exist for the sole purpose of plan sponsorship.

It remains the Department's view, however, that requiring a substantial business purpose unrelated to offering employee benefits strikes an appropriate balance. It appropriately separates out the sorts of bona fide associations of employers that Congress intended to cover from solely commercial operations; promotes expanded access to MEPs; and minimizes the danger of abuse. The "substantial purpose" test is not a lenient standard, as reflected by the safe harbor for associations that would be viable even if they did not provide employee benefits. Thus, an entity that exists solely to sponsor a MEP would never qualify under the safe harbor. The importance of this safeguard should not be underestimated. In the Department's experience under ERISA, many (if not most) regulated entities opt to meet the requirements of safe harbor provisions, even if more stringent than other legally defensible approaches, in exchange for the legal certainty that comes from safe harbor compliance.

More importantly, the commenters overlooked the important modifier—"substantial"—in the phrase "substantial business purpose." For an organization's business purpose other than offering employee benefits to be "substantial," it must be of *considerable importance* to the group or association.²⁸ Perfunctory or *insubstantial* purposes are clearly insufficient to meet the test. The viability safe harbor provides an indication of just how substantial the other purpose must be to meet the rule's terms.

The Department recognizes, however, that it may not always be easy to determine if an association would be viable if it did not offer employee benefits; that associations may serve multiple other purposes; and that the extent to which other purposes support the organization's viability may vary from year to year based on all sorts of internal and external factors. Accordingly, a purpose other than MEP sponsorship does not have to be the lifeline of the organization in order to be "substantial." It must, however, be of considerable importance to the existence of the organization—not merely "important," but of "considerable" importance. The Department expects that, in practice, organizations may have numerous other

purposes depending on the type and size of the organization.

Ultimately what is "substantial" or "of considerable importance" to a group or association of employers depends on the facts and circumstances of the particular situation, taking into account the particular organization and its stated mission as reflected in its formal organizational structure and by-laws. But in each instance, the "other" business purpose(s) or activity must be substantial enough that the association *could*, under different circumstances, be a viable entity even in the absence of sponsoring a MEP. This is true even if the viability of the association as currently structured depends on offering and providing MEP coverage to its members. For example, if the group or association operated with an active membership before sponsoring a MEP, that would be compelling evidence of such a substantial business purpose, even if its primary purpose in the future becomes offering and providing MEP coverage to its members. The organization's earlier operations demonstrate that the association *could* be viable in the absence of offering and providing MEP coverage, assuming the organization continues its pre-MEP activities.

Importantly, the final rule includes conditions which, when combined with the "substantial business purpose" standard, will protect participants and beneficiaries from the concerns identified by the commenters. These other conditions include the requirement that the functions and activities of the group or association must be controlled by its employer members. For all of the foregoing reasons, paragraph (b)(1)(i) of the Proposed Rule is adopted without change.

Commenters indicated that it may be a common practice for such groups or associations to form wholly owned non-profit corporations for the sole purpose of establishing and maintaining benefit programs for their members. In these circumstances, the group or association has a mechanism to appoint the board of directors of the affiliated corporation from among members of the group or association, according to the commenters. Commenters requested clarification as to whether the substantial business purpose test precludes a group or association of employers from using a wholly owned affiliate to administer a MEP in this manner. They also pointed out that there are prudent business reasons for adopting this type of delivery structure, including that the affiliated corporation can focus exclusively on administering

retirement benefits and catering to the specialized needs of plan participants and retirees, while the group or association focuses on promoting and advancing the related, but different business purposes of the group or association. It is not inconsistent with the substantial business purpose test, in the Department's view, if a group or association with a substantial business purpose unrelated to offering and providing MEP coverage or other employee benefits were to create a wholly owned subsidiary to administer a MEP, even if the subsidiary exists solely to administer the MEP. In this circumstance, the group or association's substantial business purpose unrelated to the provision of employee benefits is not affected by its decision to create a subsidiary under its control to administer the MEP. This analysis also assumes that the other requirements of the final rule are satisfied, including the requirement that the group's or association's employer members that participate in the plan control the plan, both in form and substance.

b. Groups or Associations of Individuals

Paragraph (b)(1)(ii) of the Proposed Rule required that each employer member of the group or association participating in the plan be a person acting directly as an employer of at least one employee who is a participant covered under the plan. At least two commenters requested that the final regulation be expanded to cover groups or associations whose members include, not just employers and working owners, but also individuals who are not working owners and whose employers do not participate in the group or association. These commenters assert that membership in associations often includes individuals who are common law employees of employers that are not also members of the association. These associations desire to permit these individuals to enroll in the MEP, according to the commenters. The commenters argued that otherwise, the Proposed Rule unduly limits the ability of these associations to offer MEPs to all of their members, including small employers, independent contractors, and sole proprietors who could otherwise benefit from the final rule's extended coverage of "working owners." Regardless of the policy merits of these arguments, the Department's authority to define "employer" and "group or association of employers" under ERISA section 3(5) does not broadly extend to arrangements established to provide benefits outside the employment context and without regard to the members' status as

²⁸ Compare, *substantial*, Oxford Dictionary (2019), <https://en.oxforddictionaries.com> (last visited Apr. 24, 2019) (of considerable importance) with, *substantial*, Merriam-Webster (2019) <https://www.merriam-webster.com> (last visited Apr. 24, 2019) (consisting of or relating to substance).

employers. Thus, the final rule, like ERISA section 3(5), is limited to employers, including working owners, because the Department cannot expand its definition beyond the statute's scope. Accordingly, paragraph (b)(1)(ii) of the Proposed Rule is adopted in the final rule without change.

c. Formal Organizational Structure

Paragraph (b)(1)(iii) of the Proposed Rule required a group or association to have "a formal organizational structure with a governing body" as well as "by-laws or other similar indications of formality" appropriate for the legal form in which the group or association operates in order to qualify as a bona fide group or association. The Department received no comment letters on this provision. Commenters on the mirror provision in the AHP Rule generally supported these provisions on the basis that having such formalities will not only serve to clarify the rights and obligations of members of the group or association, but to promote accountability by enabling regulators and others to readily identify those parties who are responsible for operations, including the establishment and maintenance of the group health plan. These commenters suggested that the existence of formalized and robust organizational structures could be an important form of protection against fraud and insolvency. The Department agrees with the commenters that the requirements of paragraph (b)(1)(iii) promote accountability and provide support against fraud and insolvency. The provision also ensures that the organization is a genuine organization with the organizational structure necessary to act "in the interest" of participating employers with respect to the MEP as the statute requires. For these reasons and to maintain consistency with the AHP Rule, the Department adopts these provisions in this final rule without modification.

d. Participating Employer Control Over the Group or Association

Paragraph (b)(1)(iv) of the Proposed Rule required that member employers control the functions and activities of the group or association, and that the employer members that participate in the plan control the plan. Control must be present both in form and in substance. One commenter recommended that the final rule state that the control test may be satisfied indirectly through the regular nomination and election of directors, officers, or other similar representatives that control such functions and activities. The implicit concern raised

by this commenter is that the control test, as proposed, could be construed as requiring that participating employers be responsible for management and day-to-day operations of the group or association and MEP in order for the group or association to qualify as bona fide.

The final rule does not require group or association members to manage the day-to-day affairs of the group or association or the plan in order for the group or association to qualify as bona fide. As has long been the case, the Department will consider all relevant facts and circumstances in determining whether the functions and activities of the group or association are sufficiently controlled by its employer members, and whether the employer members who participate in the group or association's pension plan sufficiently control the group plan. In the Department's view, the following factors, although not exclusive, are particularly relevant for this analysis: (1) Whether employer members regularly nominate and elect directors, officers, trustees, or other similar persons that constitute the governing body or authority of the employer group or association and plan; (2) whether employer members have authority to remove any such director, officer, trustees, or other similar person with or without cause; and (3) whether employer members that participate in the plan have the authority and opportunity to approve or veto decisions or activities which relate to the formation, design, amendment, and termination of the plan, for example, material amendments to the plan, including changes in coverage, benefits, and vesting. The Department ordinarily will consider there to be sufficient control if these three conditions are met.²⁹

The same commenter suggested that the final rule could contain a deeming provision under which the control test would be considered satisfied if, in the

absence of actual control, it could be demonstrated that the group or association otherwise acts in the interest of its employer-members in relation to such a plan, including but not limited to demonstrating the existence of a fiduciary or contractual duty to act in the plan's interest. Whether group or association members in fact have sufficient control of the functions and activities of the group or association for it to be considered bona fide, however, is entirely independent of and unrelated to whether the group or association's key officials or board members are fiduciaries of the MEP. For these reasons, the Department declines to adopt the suggestions of these commenters.

e. Commonality of Interest

Paragraph (b)(1)(v) of the Proposed Rule required that the employer members of the group or association of employers have commonality of interest. Paragraph (b)(2)(i)(A) of the Proposed Rule recognized commonality if the employers are in the same trade, industry, line of business or profession. Alternatively, paragraph (b)(2)(i)(B) of the Proposed Rule recognized commonality if each employer has a principal place of business in the same region that does not exceed the boundaries of a single State or a metropolitan area (even if the metropolitan area includes more than one State).

(i) Commonality Based on Size

Commenters suggested the final rule should contain a new provision that finds sufficient commonality based on the "small" size of the participating employers, regardless of the small firms' type of business or location. Some of these commenters would include in this category businesses with no employees other than the owner. According to the commenters, small employers often share unique bonds, interests, needs, and regulatory schemes, and may have significantly more commonality of interest than those in the same industry or region due solely to their size.

The Department does not agree that this characteristic should be included as additional commonality of interest criteria in the final rule. A test that would treat all small businesses—including sole proprietors/working owners—nationwide as satisfying the standard based on size alone—without regard to their products, services, lines of business, or location—would be too open-ended to establish the requisite commonality of interest. Moreover, to the extent this class of business is not part of a single trade, industry, line of

²⁹ A number of commenters requested clarification or confirmation that the control test would be satisfied in an array of fact patterns involving different control structures, membership classifications, and participation privileges, including subgroup structures and associations of groups or associations. As stated elsewhere in this preamble, control must be present both in form and in substance, and whether control exists is determined under a facts and circumstances test. The Department declines in this preamble to address the application of the final rule to specific fact patterns. As noted above, the Department has procedures to answer inquiries of individuals or organizations affected, directly or indirectly, by ERISA as to their status under ERISA and as to the effect of certain acts and transactions. See ERISA Advisory Opinion Procedure 76-1 (FR Doc. 76-25168).

business, or profession, the geography standard for establishing a commonality of interest at paragraph (b)(2)(i)(B) of the final rule already provides this class of business with the ability to form State-wide and metropolitan area groups and associations that qualify as an employer for purposes of sponsoring a MEP.

Accordingly, this suggestion was not adopted. Commenters on the RFI, however, are invited to include additional comments on this topic in the context of open MEPs.

(ii) Commonality Based on Industry

Paragraph (b)(2)(i)(A) of the Proposed Rule recognized commonality if the employers are in the same trade, industry, line of business, or profession. This reflects that employers in the same trade or industry, not only produce the same or similar products or services, but that they also tend to share, among other things, similar regulatory and market environments, economic trends, collective bargaining, and other similar business challenges that in turn may bear on the provision of benefits to their employees. Because of these shared traits, employers in the same trade or industry routinely associate in various industry or trade groups, and have done so historically. One commenter on the AHP Rule, for example, reported a membership of more than 7,000 trade associations. This commenter, which is an association of associations, stated that there is an organization or association for every industry and profession in the United States, and that over 60,000 are organized under Code section 501(c)(6) as trade associations and business leagues. As of 2017, the Internal Revenue Service recognized more than 63,000 Code section 501(c)(6) trade and professional associations.³⁰

Commenters requested that the Department clarify whether businesses that support a particular industry, or that are allied with a particular industry, are considered to be “in the same industry” as that term is used in paragraph (b)(2)(i)(A) of the Proposed Rule. For example, one commenter notes that an association of home builders that includes builders and developers might also include a wide variety of professionals, artisans, and tradespeople, such as plumbers, carpenters, and electricians, who support the home building and development industry. In addition, another commenter notes that an association of owners and operators of vending machine companies might also

include vending machine manufacturers and vending machine suppliers, who support and are allied with the owners and operators of the vending machine companies. These commenters request clarification so that persons interested in forming MEPs would have more certainty regarding the permissible scope and membership classifications that would satisfy the final rule.

Determinations of what is a “trade,” “industry,” “line of business,” or “profession,” as well as whether an employer fits into one or more these categories, are based on all the relevant facts and circumstances. In general, the Department intends for these terms to be construed broadly to expand employer and employee access to MEPs. Absent future guidance to the contrary, the Department ordinarily will not challenge any reasonable and good faith industry classification or categorization adopted by the group or association of employers. Nor will the Department challenge the inclusion of “support” or “allied” businesses as members of the group or association if they share a genuine economic or representational interest with the other members. The Department declines in the preamble to address the application of the final rule to specific fact patterns. The Department has procedures to answer inquiries of individuals or organizations affected, directly or indirectly, by ERISA as to their status under ERISA and as to the effect of certain acts and transactions. See ERISA Advisory Opinion Procedure 76–1 (FR Doc. 76–25168).

(iii) Commonality Based on Geography

Paragraph (b)(2)(i)(B) of the Proposed Rule contained a geography test. It recognized commonality if each employer has a principal place of business in the same region that does not exceed the boundaries of a single State or a metropolitan area (even if the metropolitan area includes more than one State).

Commenters recommended broadening the geography test in two different ways. Some commenters recommended expanding the geography test to allow regional commonality, rather than the state-based approach taken in the Proposed Rule. For this purpose, these commenters recommended using the regional divisions used by the U.S. Census Bureau, the districts used by the Federal Reserve, or the regions used by the Bureau of Economic Analysis.

Alternatively, some commenters recommended expanding the geography test so that a MEP for employers in a metropolitan area that crosses two or more states would not need to exclude

employers in those states that are located outside the metropolitan area. The first recommendation would foster large regional MEPs, potentially increasing economies of scale compared to state-based MEPs. The second recommendation would help employers in suburban and rural areas of states that may not have access to a statewide MEP. Because of the similarities between these recommendations and other ideas being explored in the RFI on open MEPs published elsewhere in today’s **Federal Register**, the Department defers action on these recommendations. These recommendations provide a wide variety of other ways the Department could draw these lines, and the Department believes these issues would benefit from an additional opportunity for public comment. Accordingly, the Department includes a comment solicitation in the RFI on group or association MEPs covering larger geographic regions to ensure a fully developed public record before considering or taking any further action.

Some commenters opposed the geography test due to its breadth. These commenters argued that this test in effect establishes fictional commonality among employers, because it is based on the simple fact that their businesses reside in the same state, regardless of the state’s size or population. To these commenters, shared geography alone is not an indicator of commonality of business or economic interests among a state’s inhabitants and should not be considered a sufficient nexus to establish commonality. These commenters fear that geography-based commonality will lead to the establishment of large MEPs by state or even regional associations with large numbers of participating members that have virtually nothing in common other than location and no meaningful industry, professional, or business ties. The commenters expressed concern that the geography test will enable and result in the establishment of purely commercial arrangements by promoters with only pecuniary interests in participating members and participating members with only tenuous and remote connections and ties among themselves, all of which ultimately could result in an increase in arrangements that are susceptible to financial mismanagement, insolvency, and lack of fiduciary oversight. These commenters, therefore, recommended eliminating the geography test.

The Department does not agree with these commenters that geography alone has no binding or cohesive impact on businesses. It seems plain that employers in the same geography share

³⁰ Internal Revenue Service Data Book, 2017, p. 57, Publication 55B Washington, DC (March 2018) (<https://www.irs.gov/pub/irs-soi/17databk.pdf>).

common interests concerning employees' education and workforce development, taxation, transportation and commuting networks, the legal and regulatory environment, human capital pool, physical environment, local and state economic development partnerships, collective bargaining, and myriad other regional business trends and issues. That geography is a natural basis around which businesses organize themselves is evident in the number of state and local chambers of commerce in the United States, and their enrollment. There are roughly 4,000 chambers of commerce in the United States.³¹ The territorial nature of these organizations speaks directly to the correlation between geography and common interests.

Nor does the Department agree that it makes sense to eliminate the geography test. A primary purpose of the geography test is to make it easier for employers to band together and collectively benefit from the economies of scale that come from aggregation. Eliminating the geography test would undermine this intended benefit. Moreover, the geography test in the final rule also aligns with the geography test in the AHP Rule, thus making it possible for statewide groups and associations to better serve their members by offering access to both health and retirement benefits. Consequently, eliminating the geography test would undermine that member service opportunity as well.

Nor does the Department agree that narrowing the geography test is necessary to guard against fraud and abuse. The final regulation contains numerous safeguards to prevent large aggregations of completely unrelated employers in MEPs and potential mismanagement and fraud. The final rule, for example, prohibits financial services firms from being the group or association that establishes the MEP, requires that functions of the group or association be controlled by employer members, requires the group or association to have a substantial business purpose other than providing benefits, and makes clear that the parties administering the MEP must fully adhere to ERISA's fiduciary standards. These provisions adequately guard against the concerns raised by the commenters, and ensure that the group or association will represent the common interests of its employer members.

One commenter noted that the Seventh Circuit invalidated a geography-based condition for "voluntary employees' beneficiary associations" (VEBAs) described in section 501(c)(9) of the Code.³² While the commenter described that decision as applying in an analogous context, section 3(5) of ERISA and section 501(c)(9) of the Code have different language and purposes. In addition, the Department of Treasury and the IRS, rather than the Department of Labor, have jurisdiction over section 501(c)(9) of the Code.³³

(iv) Commonality Provisions In General

Other commenters generally opposed the commonality provisions (whether based on geography or industry) because they are not expressly set forth in the statute. These commenters recommended eliminating the commonality provisions entirely, and focusing instead only on whether the group or association acts "indirectly in the interest" of an employer in relation to the MEP, without regard to any requirement of a common economic or representational nexus. While these commenters' arguments are not without force, the Department has decided for policy reasons not to simply eliminate these provisions.

Even assuming that criteria other than commonality could satisfy section 3(5), the commonality provisions serve important policy goals in this context. First, keeping them in this final rule for MEPs establishes uniformity with the AHP Rule, thereby promoting consistent outcomes for employer-groups interested in sponsoring both health and retirement plans for their employees. Second, since employer groups often form on geographic and industry lines, the commonality provisions should be simple and natural to implement. Third, replacing the commonality provisions with looser or tighter criteria would likely require recalibration of the other conditions in paragraph (b) the final rule, all of which are designed to work in tandem with the commonality provisions. The more lenient test recommended by these commenters, for example, would require the Department to reevaluate and potentially expand the regulatory safeguards for MEPs, possibly to include new and potentially sophisticated and extensive compliance and enforcement mechanisms. This

would be especially true in the case of open MEPs sponsored by financial institutions. Before proceeding with a less restrictive test (e.g., open MEPs), which is a much larger step, the Department intends to evaluate the responses to the RFI on open MEPs published elsewhere in today's **Federal Register**.

These policy objectives more than adequately justify the commonality provisions in this final rule. Similar—albeit more restrictive—commonality provisions were present in decades of subregulatory guidance preceding and effectively superseded by this final rule. The prior subregulatory guidance, which was issued to address the ambiguity in section 3(5) of ERISA, used the commonality provisions essentially to help draw a line between commercial arrangements and associations that serve employers' interests. But commonality provisions—whether in the narrower form as they existed in the subregulatory guidance or in the expanded form as they exist in this final rule—are not directly in or necessarily compelled by the statute. And their long-term use in the prior subregulatory guidance in no way restricts the Department's ability now to modify them or even replace them altogether with different criteria. As a case in point, no commonality provisions in any form are present in the portion of this final rule governing bona fide PEOs because there the Department chose other criteria that adequately demonstrate when a "person" is able to adequately act in the employers' interests in relation to a MEP. And, furthermore, unlike the prior subregulatory guidance, the final rule's more expansive commonality provisions are the product of extensive notice and comment rulemaking, in which the Department considered many factors and provides herein ample justification for its decisions. In the end, the regulatory process of addressing the ambiguity in section 3(5) of ERISA invariably required some measure of policy-making and line drawing, and the lines in this final rule reflect the reasoned policy judgment of the Department.

f. Provision Relating to Financial Services Firms

Paragraph (b)(1)(vii) of the Proposal Rule generally prohibited an employer group or association from being a bank, trust company, insurance issuer, broker-dealer, or other similar financial services firm (including a pension record keeper or a third-party administrator) and from being owned or controlled by such a financial services

³² *Water Quality Association Employees' Benefit Corporation v. United States*, 795 F.2d 1303 (7th Cir. 1986).

³³ In response to the *Water Quality* decision, the Internal Revenue Service issued a proposed regulation at 26 CFR 1.501(c)(9)-2, which sets forth a modified geographic limitation.

³¹ According to the Association of Chamber of Commerce Executives (<https://secure.acce.org/about/chambers-of-commerce/>).

firm. Nearly every commenter in favor of open MEPs opposed this prohibition. Their recommendation to remove this prohibition, when combined with their recommendations on other provisions, would achieve their favored outcome. Other commenters, however, supported this provision. Their support is based on the premise that, unlike traditional groups or associations of employers such as chambers of commerce or business leagues, which exist to serve and advance the needs of their participating members, financial services firms exist primarily to serve and advance the business interests of the company or concern, including its shareholders or other owners. Several of these commenters argued that financial services firms should not be in the business of providing MEPs because of conflicts of interest.

This provision is consistent with the AHP Rule, which in relevant part, prohibits health-insurance companies from being treated as a bona fide group or association. In that context, the Department concluded that a construction of “employer” encompassing insurance companies that are merely selling commercial insurance products and services to employers would effectively read the definition’s employment-based limitation out of the statute. Applying a similar understanding of “group or association” of employers in the pension context as in the AHP context promotes simplicity and uniformity in regulatory structure. The final rule therefore applies a similar approach to employer groups or associations sponsoring MEPs in the final rule. The Department may revisit this issue depending on future action, if any, taken in response to the RFI on open MEPs published elsewhere in today’s **Federal Register**.

4. Bona Fide PEOs

Although a number of commenters discussed the bona fide PEO provisions in the Proposed Rule, only a few comment letters actually addressed the substance of these provisions. Many commenters favoring open MEPs, for instance, raised the general concern that PEOs appeared to be given preferential treatment under the Proposed Rule. This observation came mainly from representatives of financial services firms, such as banks, insurance companies, and brokerage firms, who favor an open MEP structure. The Department does not agree that PEOs have been singled out for preferential treatment under the final rule. Rather, to the extent that PEOs stand in the shoes of their client employers for certain purposes and perform substantial

employment functions on their client’s behalf, the final rule merely recognizes that such PEOs are acting “indirectly in the interest of [their client] employers” under ERISA section 3(5) for purposes of sponsoring a MEP. Nevertheless, in response to these comments, as announced earlier in this document, elsewhere in today’s **Federal Register** the Department published a RFI soliciting comments on a broad range of issues relating to open MEPs for possible future rulemaking. The RFI will give these commenters an opportunity to provide additional comments on possible extensions of the final rule. The substantive comments received in response to the Proposed Rule are addressed below in relation to the relevant provisions of the final rule.

a. The Four General Requirements

Paragraph (c) of the Proposed Regulation included four requirements for a PEO to qualify as a “bona fide” PEO that may act “indirectly in the interest of [its client] employers” and, consequently, as an “employer” under ERISA section 3(5) for purposes of sponsoring a MEP covering the employees of client employers. The final rule adopts these four requirements essentially as proposed. Paragraph (c)(1)(i) requires the PEO to perform substantial employment functions on behalf of the client employers. Paragraph (c)(1)(ii) requires the PEO to have substantial control over the functions and activities of the MEP, as the plan sponsor, the plan administrator, and a named fiduciary. Paragraph (c)(1)(iii) requires the PEO to ensure that each client-employer participating in the MEP has at least one employee who is a participant covered under the MEP. Paragraph (c)(1)(iv) requires the PEO to ensure that participation in the MEP is limited to current and former employees of the PEO and of client-employers, as well as their beneficiaries.

Regarding paragraph (c)(1)(i), a PEO’s assumption and performance of substantial employment functions on behalf of its client-employers is one of the lynchpins of the final rule. Just as commonality and control help to establish the appropriate nexus for groups or associations of employers under paragraph (b) of the final rule, the PEO’s performance of substantial employment functions for its client employers contributes significantly to the establishment of the requisite nexus for PEOs. Requiring the PEO to stand in the shoes of the participating client employers—by assuming and performing substantial employment functions that the client-employers

otherwise would fulfill with respect to their employees—is what distinguishes bona fide PEOs under the final rule from service providers or other entrepreneurial ventures that in substance merely market or offer client-employers access to retirement plan services and products. This requirement applies a clear limiting principle to entities that can be said to be acting “indirectly in the interest of” another employer within the meaning of ERISA section 3(5).

Importantly, a PEO’s status under the final rule does not make the PEO more or less likely to have an employment relationship (whether referred to as joint employment or otherwise) with the client-employer, for purposes of other laws or liabilities. What constitutes joint employment for purposes of other laws and liabilities is an independent inquiry wholly unaffected by a PEO’s potential status as an “employer” within the meaning of ERISA section 3(5). Whether a PEO qualifies as an ERISA section 3(5) “employer” under the “indirectly” provision has no effect on the rights or responsibilities of any party under any other law, including the Code or Fair Labor Standards Act, and neither supports nor prohibits a finding of an employment relationship in other contexts. The Department received a number of responses to its solicitation for comments on this issue. A number of commenters requested that the Department reiterate that participation in a MEP does not necessarily create a joint employment relationship by including language regarding joint employment in the operative text of the final rule. Another commenter asked that the Department state that MEP participation cannot be used as evidence of employee status for purposes of evaluating in any proceeding whether an individual is providing services as an independent contractor or employee. Although the Department recognizes the concern of commenters that participation in a MEP might create an inference under other laws, the Department’s authority in issuing this final rule is limited to its interpretation of ERISA. Consequently, the operative text of the final rule, like the NPRM, does not contain a specific reference to the existence of a joint employment relationship under other laws.

Regarding paragraph (c)(1)(ii), a second important limiting principle in construing section 3(5)’s “indirectly in the interest of” clause is that the PEO must have substantial control of the functions and activities of the employee benefit plan at issue. This construction comports with the reference in ERISA

section 3(5) to a person acting as the employer “in relation to the plan.” Paragraph (c)(1)(ii) of the final rule requires the PEO to have substantial control over the functions and activities of the MEP, as the plan sponsor (within the meaning of section 3(16)(B) of ERISA), the plan administrator (within the meaning of section 3(16)(A) of ERISA), and a named fiduciary (within the meaning of section 402 of ERISA). Looking to the PEO’s substantial control of the MEP, as the sponsor, administrator, and fiduciary, is sensible given the “in relation to the plan” language of section 3(5) of ERISA. In response to comments, the final rule clarifies that because the PEO assumes these important statutory roles under ERISA, the PEO continues to have employee-benefit plan obligations to the employees of a client employer, as plan participants, even after that client employer no longer contracts with the PEO. The obligations of the PEO as the plan administrator and as a named fiduciary to the MEP’s participants and beneficiaries does not terminate with the conclusion of a client contract between the PEO and the client employer; instead, these obligations continue until participants are no longer covered by the plan and beneficiaries are no longer receiving benefits (*e.g.*, the individuals have received a lump-sum distribution or a series of distributions of cash or other property which represents the balance of his or her credit under the plan, or a plan-to-plan transfer has occurred). As with pension plans in general, distributions are governed by the terms of the MEP as are plan-to-plan transfers.

b. Substantial Employment Functions Safe Harbor

Whether a PEO satisfies the requirement, in paragraph (c)(1)(i), to perform substantial employment functions on behalf of its client employers is generally determined based on the facts and circumstances of the particular situation. This approach gives PEOs maximum flexibility to structure their affairs and recognizes that all PEOs do not necessarily follow the same business model or provide the exact same services to client employers. It also provides PEOs room for innovations in their business models and service packages in the future. At the same time, however, the Department understands that some entities may prefer more regulatory certainty in ordering their business affairs than comes from a facts-and-circumstances test. For this reason, the final rule contains a regulatory safe harbor

separate from this facts-and-circumstances test.

The safe harbor is contained in paragraph (c)(2) of the final rule and differs from the safe harbor structure in the Proposed Rule. The Proposed Rule contained two safe harbors, one for CPEOs within the meaning of Code section 7705, and another for PEOs that are not CPEOs (non-CPEOs). The change in structure stems from commenters who raised concerns regarding both the number and type of criteria required under the Proposed Rule. The commenters stated that the Proposed Rule’s list of nine criteria for non-CPEOs were, depending on the particular criterion, unnecessary, unrealistic, not entirely consistent with industry practice, not exactly reflective of how PEOs and their clients share employer functions, misaligned with many state licensing requirements, or out of step with the advisory role of PEOs. Without significant adjustments to this safe harbor, including eliminating at least two of the Proposed Rule’s nine criteria, the commenters asserted that many non-CPEOs would not qualify for the safe harbor. The commenters recommended adding a criterion that the PEO be licensed and registered in accordance with state law. With respect to the Proposed Rule’s CPEO safe harbor, the commenters essentially argued that the Proposed Rule required PEOs to satisfy too many employment-function criteria and that CPEO status alone should be sufficient, assuming the service contract between the client and the CPEO meets the requirements in the Code. One person asked for clarification on what would happen under the safe harbor if a CPEO temporarily lost its certification, and therefore its CPEO status, under the Code for minor infractions, procedural missteps, or reasons having nothing to do with substantive performance of employment functions on behalf of client employers. One commenter argued that the standards should be the same for both CPEOs and non-CPEOs, and not more or less favorable to one business model over the other. This commenter viewed the Proposed Rule as favoring CPEOs.

In response to these comments, the Department streamlined the Proposed Rule’s safe harbor structure in the final rule. Unlike the Proposed Rule, which contained one safe harbor for PEOs that are CPEOs and a second safe harbor for PEOs that are non-CPEOs, the final rule contains only one safe harbor for all PEOs regardless of their status under the Code’s CPEO provisions. There may be sound business reasons behind a PEO’s decision to be a CPEO or not, and there may be equally sound business reasons

behind a client employer’s decision to choose or not choose a CPEO. Nevertheless, the status of a PEO under the Code’s CPEO provisions is irrelevant to satisfying the safe harbor in the final rule; the relevant focus is the extent to which the PEO actually performs substantial employment functions on behalf of its client employers. The Department determined that the complexity of the Proposed Rule’s safe harbor could be reduced by reducing and combining the essential elements of the Proposed Rule’s two separate safe harbors into a single safe harbor that both CPEOs and non-CPEOs may rely on in connection with ERISA section 3(5). The Department reiterates that this is a safe harbor, intended to provide regulatory certainty. It is possible that a PEO could satisfy the statute’s general facts and circumstances test, even if it does not satisfy the safe harbor.

Instead of nine criteria, the new safe harbor contains only four criteria, and instead of allowing the PEO the choice of selecting five from among the nine criteria, the new safe harbor requires that the PEO satisfy all four criteria. The four criteria selected were drawn from the types of services and functions PEOs routinely provide to clients, and with reference to, but not dependent on, the CPEO statutory standards. After carefully reviewing the public comments, the Department selected the four criteria that the commenters indicated are central to all PEO client contracts and that, in the Department’s view, clearly show the PEO acts indirectly in the interest of the client-employer under ERISA section 3(5), in such a way and to such an extent that it sets the PEO apart from a mere service provider.

The new safe harbor provides that a PEO will be considered to perform substantial employment functions on behalf of its client employers under the following circumstances: First, the PEO assumes responsibility for and pays wages to employees of its client-employers that adopt the MEP, without regard to the receipt or adequacy of payment from those client employers. Second, the PEO assumes responsibility to pay and perform reporting and withholding for all applicable federal employment taxes for its client employers that adopt the MEP, without regard to the receipt or adequacy of payment from those client employers. Third, the PEO plays a definite and contractually specified role in recruiting, hiring, and firing workers of its client-employers that adopt the MEP, in addition to the client-employer’s responsibility for recruiting, hiring, and firing workers. As explained below, a

PEO is considered to satisfy this standard if it recruits, hires, and fires, assumes responsibility for recruiting, hiring, and firing, or retains the right to recruit, hire, and fire workers of its client-employers that adopt the MEP, in addition to the client-employer's responsibility for recruiting, hiring, and firing workers. Fourth, the PEO assumes responsibility for and has substantial control over the functions and activities of any employee benefits which the client contract with a client employer may require the PEO to provide, without regard to the receipt or adequacy of payment from those client employers for such benefits. All four of these criteria must be satisfied to meet the safe harbor.

The Proposed Rule contained language providing that, depending on the facts and circumstances of the particular situation, even one of the safe harbor criteria alone may be sufficient to satisfy the general requirement that a PEO perform substantial employment functions on behalf of its client employers. The final rule does not include that language. The Department's view is that it is not appropriate to state that any single safe harbor criterion alone can be relied upon to satisfy the general requirement that a PEO perform substantial employment functions on behalf of its client employers—all four safe harbor criteria are necessary given the broad scope of activity encompassed by the new safe harbor test and the nature of the four remaining safe harbor criteria.

With respect to the third criteria, the first sentence of paragraph (c)(2)(iii) of the final rule requires that the PEO have a definite and contractually specified role in recruiting, hiring, and firing workers of its client-employers that adopt the MEP, in addition to the client-employer's responsibility for recruiting, hiring, and firing workers. This sentence recognizes that PEOs and their client-employers share responsibilities and can also individually retain responsibilities. For example, a PEO client contract may provide that the client-employer shall recruit, hire, and fire based on the needs of the business, but allocate certain termination responsibilities to the PEO, such as in the event a worksite employee engages in employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act of 1990. This sentence also recognizes that PEOs commonly have a role, for payroll and other human resource purposes, in hiring and firing workers of client-employers, but client-employers

determine who works at their worksites and under what conditions, as necessary to conduct their business.

The second sentence of paragraph (c)(2)(iii) of the final rule goes on to explain that the requirement to have a “definite and contractually specified role” in the first sentence would be satisfied if, pursuant to the contract, the PEO recruits, hires, and fires; assumes the responsibility for recruiting, hiring, and firing; or retains the right to recruit, hire, or fire workers of its client-employers that adopt the MEP. This text does not necessarily require that PEOs actually interview and select the employees of client employers in the traditional common-law sense, in which a business hires employee based on the skillset and needs of the particular business, but it does require that PEOs, at a minimum, retain a right or obligation under contract to recruit, hire, and fire as necessary to fulfill the PEO's responsibilities under the contract and applicable state law. For example, a PEO client contract may provide that following the client-employer's initial decision to hire an employee, that hiring decision does not become official until the PEO approves or ratifies the selection and finishes the administrative on-boarding process. Similarly, a PEO client contract may provide that client employer may not terminate a worksite employee until the PEO validates or approves the termination. The intent of paragraph (c)(2)(iii) is to accommodate the broad range of human resource services provided by and across the various PEO models, but at the same time to require a definite and contractually specified role for the PEO in the shared recruiting, hiring, and firing processes.

c. PEOs and Working Owners

As discussed below in section 5 (d) of this preamble, the final rule—like the Proposed Rule—does not extend the working-owner provisions to bona fide PEOs.

d. PEOs and Health Plans

Some stakeholders inquired whether a “bona fide professional employer organization” that is authorized under the final rule to sponsor a MEP for the employees of its client employers also would be able to establish and maintain a single plan, fund, or program of healthcare benefits for these same individuals. These stakeholders observed that the definition in section 3(5) of ERISA does not differentiate as to the type of benefit plan that an employer who meets the 3(5) definition may establish or maintain. Consequently, these stakeholders

maintain, if a PEO meets the conditions to be an employer for purposes of sponsoring a single pension plan, the PEO also should be able to rely on that status to sponsor a single group health plan. The stakeholders also argued that the same or similar policy reasons that support expanded access to retirement plan options for small employers also support expanded access to healthcare options for these same employers. Section 3(5) of ERISA, in relevant part, provides that the term “employer” means any “person” acting indirectly in the interests of an employer, in relation to “an employee benefit plan.” Although the statute is neutral on its face as to the type of employee benefit plan being established or maintained by the “person,” the final rule does not address when a PEO may be able to act as an employer for establishing or maintaining a single group health plan to cover the employees of the PEO's client employers. Evidence suggests that some PEOs already offer health plans to the employees of their client employers and that this number could increase.³⁴ But, as many commenters noted, health plan sponsorship may raise different issues and require different regulatory conditions than retirement plans.³⁵ The topic of health plans is beyond the scope of this rulemaking project. The Proposed Rule did not address the topic of health plans in a meaningful way, or provide the opportunity for the public to provide comments. Accordingly, the PEO provisions in the final rule remain limited to defined contribution retirement plans. Until the Department takes additional regulatory or other action, a PEO interested in sponsoring a health arrangement for its client

³⁴ See “2015 Employer Health Benefits Survey,” Section Fourteen: Employer Opinions and Health Plan Practices, Kaiser Family Foundation, September 2015, available at <https://www.kff.org/report-section/ehbs-2015-section-one-cost-of-health-insurance/>. (Five percent of firms with 3 to 499 workers offering health benefits through a PEO (Exhibit 14.8). Six percent of covered workers enrolled in health benefits at firms with 3 to 499 workers are enrolled in a plan offered through a PEO. The uptake was greatest for firms that had 10–49 workers, with 8% of those firms offering health benefits through a PEO.

³⁵ As described above, the Department recognizes the importance of expanding access to affordable group health care coverage to small employers and accordingly, published a final rule on Association Health Plans that permits a bona fide group or association of employers to establish a single group health plan for the employer members' employees; and sets out specific requirements that such group or association must meet in order to be a 3(5) employer. 83 FR 28912 (June 21, 2018). One such requirement that is unique in the health plan context is that group health plan must not discriminate against employees in premiums, eligibility or benefits based on a health factor.

employers must look to the terms of the statute.

5. Working Owner Provision

a. In General

Paragraph (d) of the Proposed Rule expressly provided that working owners, such as sole proprietors and other self-employed individuals, may elect to act as employers for purposes of participating in a bona fide employer group or association as described in (b)(1) of the proposed regulation and also be treated as employees of their businesses for purposes of being able to participate in the MEP. To qualify as a working owner, a person would be required to work at least 20 hours per week or 80 hours per month, on average, or have wages or self-employment income above a certain level. This provision in the Proposed Rule is the same as the working-owner provision in the AHP Rule.³⁶ Paragraph (d) of the Proposed Rule was limited to MEPs established and maintained by bona fide groups or associations of employers, and did not extend to MEPs established and maintained by PEOs. The public commenters supported this provision, which is adopted as proposed.³⁷

b. Hours-Worked Provision

Paragraph (d)(2) of the Proposed Rule included an “hours worked” provision that contained three essential requirements. First, the term “working owner” means any person who a responsible plan fiduciary reasonably determines is an individual who has an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including a partner or other self-employed individual. Second, this person also must earn wages or self-employment income from the trade or business for providing personal services to the trade or business. Third, this person must work “on average at least 20 hours per week or at least 80 hours per month providing personal services to the working owner’s trade or business.”

At least one commenter requested clarification on how to apply the hours-

worked provision to workers that do not have a defined work schedule that results in a steady and predictable 20-hour work week or 80-hour month. The precise issue in need of clarification for this commenter is whether plan fiduciaries are permitted to use two-year averages when determining if working owners meet the minimum-hours-worked requirement. According to this commenter, many workers in the construction industry have variable employment, which is dependent on the economy, weather, and other business and market factors. Working owners facing these predicaments may encounter periods of high demand for their services, during which they work greatly in excess of 80 hours per month, followed by periods of sustained low demand, during which they work significantly less than 20 hours per week.

While the Department in this document does not render an opinion on the categorical appropriateness of using two-year averages, the final rule expressly permits the use of averaging by plan fiduciaries to determine whether working owners satisfy the hours-worked provision in the final rule. The Department adopted averaging language in the AHP Rule in order to accommodate these “variable workers” in that context, and today imports that same language into this final rule. Thus, this final rule too allows flexibility in making an hours-worked determination to address situations in which a working owner’s time performing services for his business varies due to various industry, seasonal, and other business and market factors. A working owner could demonstrate this by evidence of a work history or a reasonable projection of expected self-employment hours worked in a trade or business. While the final rule contains minimum weekly or monthly hours-worked requirements, it does not contain a maximum reference period over which averaging of hours is permitted or required. Since many of ERISA’s and the Code’s pension benefit provisions require annual recordkeeping and attention, many MEPs may decide to adopt annual or 12-month periods for averaging purposes out of administrative efficiency, although others may not. Ultimately, whether any particular maximum reference period is appropriate, however, is a matter within the discretion of the plan fiduciary taking into account the plan document and facts and circumstances of the particular situation. The exercise of this discretion by the plan is subject to the general fiduciary requirements of section 404(a) of ERISA. Accordingly,

the final rule adopts paragraph (d)(2)(iii) of the Proposed Rule without change.

c. Wages or Self-Employment Income

Paragraph (d)(2) of the Proposed Rule included an “earned income” alternative to the “hours worked” provision. Under the earned-income alternative, the working-owner must have “wages or self-employment income from such trade or business that at least equals the working owner’s cost of coverage for participation by the working owner and any covered beneficiaries in any group health plan sponsored by the group or association in which the individual is participating or is eligible to participate.” For this purpose, the definitions of “wages” and “self-employment income in Code sections 3121(a) and 1402(b) (but without regard to the exclusion in section 1402(b)(2)), respectively, would apply.

Several commenters were confused by the earned-income provision. Some thought it was unnecessary in light of the hours-worked provision. These commenters apparently understood the earned-income provision to be a requirement in addition to the hours-worked condition, and not an alternative. Other commenters did not understand the connection between health care premiums or cost of coverage and participation in a MEP. The commenters recommended eliminating this provision because they either thought the provision was a mistake or saw no need for it.

The earned-income provision is an alternative to the hours-worked provision. These two separate provisions are disjunctive conditions, not conjunctive requirements. Thus, working owners may choose whichever test is more appropriate for their circumstances. Further, this provision offers administrative ease and convenience to the administrator of the MEP. This is because the Department expects many groups or associations of employers to offer to their members both AHPs and MEPs and, if the working owner makes enough money to be considered both an employer and employee under the AHP Rule, the working owner may also be considered both an employer and an employee for participating in a MEP. In finalizing the AHP Rule, the Department concluded that using the cost of coverage of benefits under the AHP was a meaningful metric to ensure that the working owner has a legitimate trade or business, keeping in mind that ERISA governs benefits provided in the context of a work relationship as opposed to the mere marketing of insurance to

³⁶ 83 FR at 28964. In *State of New York v. United States Department of Labor*, 363 F. Supp. 3d 109 (D.D.C. March 28, 2019), the District Court vacated portions of the Department’s final rule on AHPs, including the working-owner provisions at 29 CFR 2510.3–5(e). The Department disagrees with the District Court’s ruling and an appeal has been filed.

³⁷ Nothing in the final rule should be read to indicate that a business that contracts with individuals as independent contractors becomes the employer of the independent contractors merely by participating in the MEP with those independent contractors who participate as working owners, or by promoting participation in a MEP by those independent contractors, as working owners.

individuals unrelated to their status as employees in a trade or business and any benefits they obtain through that status. Unlike healthcare coverage, participation in a MEP does not have a specific dollar amount associated with the benefits; thus, there is no minimum cost of participation, making reference to the cost of healthcare coverage a proxy in those cases where the group or association has such a plan. For these reasons, the earned-income provision was not eliminated.

Section 401(c) of the Code provides rules for when a self-employed individual may participate in a qualified retirement plan. The Department solicited comments on whether there might be circumstances under which a “working owner” as defined in paragraph (d)(2) of the Proposed Rule might nonetheless fail to be described in section 401(c) of the Code, and if so whether the two provisions could and should be directly aligned. Comments were specifically requested on whether the final rule should limit the definition in paragraph (d)(2) to self-employed individuals described in section 401(c) of the Code to avoid such failures. The Department received no comments indicating a need for or in support of such a limitation. One commenter opposed such a change. This commenter was concerned about the complexity associated with making determinations under section 401(c) of the Code and imposing such an obligation on plan fiduciaries of MEPs. In light of this comment, no changes in this regard were made to the final rule. However, the Department of the Treasury has advised that the inclusion of an individual who is not a common law employee or treated as an employee under section 401(c) would affect the qualified status of the plan. Also, they advised that a plan covering an owner-employee is qualified only if it limits contributions with respect to the owner-employee in accordance with section 401(d) of the Code.

d. Extending Working Owner Provision to PEOs

The final rule does not extend the working-owner provision to MEPs sponsored by PEOs under paragraph (c). Thus, a working owner's trade or business must have at least one common law employee to participate in a PEO's MEP under paragraph (c) of the final regulation. The Department understands that working owners without employees generally would not have a need for the employment services of PEOs, such as payroll, compliance with federal and state workplace laws, and human resources support. Thus, a trade or

business without employees would not seem to have a genuine business need for a relationship with a PEO.

Accordingly, the working-owner provision of the final rule only applies for purposes of participation in MEPs sponsored by a bona fide group or association.

One commenter, however, indicated there may be circumstances in which a working owner without common law employees has a genuine need to be in a PEO's MEP. This occurs if the working owner has had common law employees and used a PEO, including joining the PEO's MEP, but was later unable to afford to continue to employ others and did not want to stop participating in the PEO plan, according to the commenter. The Department declines to expand the working-owner provision in paragraph (d) for this situation. In this situation, the working owner is still a participant covered under the plan with respect to his individual account balance because he is or may be eligible to receive a benefit, without regard to whether the working-owner continues his contract with the PEO. This status continues until the working-owner-participant is no longer covered by the plan (*e.g.*, receives a lump-sum distribution or a series of distributions of cash or other property which represents the balance of his or her credit under the plan, or a plan-to-plan transfer has occurred).³⁸ Thus, the working owner in this situation is treated the same as a former employee of a client employer that has an ongoing contract. The clause “employees and former employees of former client employers who became participants during the contract period between the PEO and former client employers” was added to paragraph (c)(1)(iv) of the final rule to make this point clear.

6. Miscellaneous Topics

a. ERISA Fiduciary Status and Responsibilities of Sponsor and Participating Employers

The Department received multiple comments on the application of ERISA's fiduciary rules to bona fide groups and associations, PEOs, and participating employers. Several commenters, for instance, asked the Department to provide guidance on fiduciary liabilities and responsibilities of a bona fide group or association or PEO that sponsors a MEP and clarify that any individual charged with the operation or management of a MEP is considered a fiduciary under ERISA. These commenters stressed that it is important

for groups and associations and PEOs that sponsor a MEP to understand that they are obligated to protect the interests of the participants of the plan, and may be held individually liable if they fail to do so. Other commenters, by contrast, focused on participating or client employers; these commenters requested clarification of a participating or client employer's duty to prudently select and monitor the MEP in which the employer's employees participate.

A MEP offered by a bona fide group or association, or by a PEO, under the final rule is subject to all of the provisions under title I of ERISA applicable to employee pension benefit plans, including the fiduciary responsibility and prohibited transaction provisions in part 4 of ERISA. Bona fide groups or associations and PEOs that sponsor a MEP assume and retain responsibility for operating and administering the MEP, including ensuring compliance with these requirements.³⁹ As an operational matter, the MEP's sponsor—and not the participating employers—would generally be designated as the plan administrator responsible for compliance with the requirements of title I of ERISA, including reporting, disclosure, and fiduciary obligations. Under this structure, the individual employers would not each have to act as plan administrators under ERISA section 3(16) or as named fiduciaries under section 402 of ERISA. Although participating employers would retain fiduciary responsibility for choosing and monitoring the arrangement and forwarding required contributions to the MEP, a participating employer could keep more of its day-to-day focus on managing its business, rather than on its plan.⁴⁰ In the MEP context, although a participating employer would no longer have the day-to-day responsibilities of plan administration, the business owner would still need to prudently select and monitor the MEP sponsor and get periodic reports on the fiduciaries' management and administration of the MEP, consistent with prior Department guidance on MEPs.⁴¹

³⁹ Association Health Plan Final Rule, 83 FR 28912, 28937 (June 21, 2018).

⁴⁰ Association Retirement Plans and Other Multiple-Employer Plans Proposed Rule, 83 FR 53534, 53535 (October 23, 2018).

⁴¹ 29 CFR 2509.2015-02, Interpretive Bulletin Relating to State Savings Programs that Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974 (“As a state-sponsored multiple employer plan (“state MEP”), this type of arrangement could also reduce overall administrative costs for participating employers in large part because the Department would consider this arrangement as a single ERISA plan. Under a state MEP, each employer that chose

³⁸ 29 CFR 2510.3-3(d)(2)(ii).

One commenter suggested that the Department should establish a “fiduciary checklist” to assist small employers in discharging their selection and monitoring duties. According to this commenter, the checklist could encourage or require employers to: (1) Consider at least three plans; (2) examine how long the plan has been in existence; (3) review how many other employers and employees are actively enrolled; (4) consider the investment options and all employer and participant fees; and (5) receive and review a report on plan operations and periodically assess employee satisfaction and complaints at least annually. The Department recognizes that small employers often benefit from compliance guides of the type identified by the commenter. To assist business owners in carrying out their responsibilities under ERISA to prudently select and monitor plan service providers generally, the Department’s EBSA, several years ago, published a compliance guide entitled “Tips for Selecting and Monitoring Service Providers for your Employee Benefit Plan.” The Department’s EBSA maintains this document on its website and updates it periodically. The Department agrees with this commenter that small businesses may benefit from a checklist or similar guidance on how to discharge their duties to prudently select and monitor the MEP sponsor. Accordingly, the Department will review and possibly update the Tips document taking into consideration the five factors identified by the commenter.

One commenter requested that the Department clarify that the duties of selection and monitoring are essentially the same for employers that decide to participate in a particular MEP as they are for employers that sponsor their own plans and delegate various plan investment and administrative functions to other plan fiduciaries. Otherwise, according to this commenter, any deviation from the existing framework for allocating fiduciary responsibility in the MEP context may create an incentive for employers with existing plans to transition to a MEP for the sole purpose of limiting their liability. One

to participate would not be considered to have established its own ERISA plan, and the state could design its defined contribution MEP so that the participating employers could have limited fiduciary responsibilities (the duty to prudently select the arrangement and to monitor its operation would continue to apply). The continuing involvement by participating employers in the ongoing operation and administration of a 401(k)-type individual account MEP, however, generally could be limited to enrolling employees in the state plan and forwarding voluntary employee and employer contributions to the plan.”).

commenter additionally requested that the Department make it clear that, apart from a duty to select and monitor the operations of the MEP, if the employer selects any investment options, the employer must act and be liable in a fiduciary capacity for this act. Generally speaking, the process of selecting and maintaining service providers will vary depending on the plan and services to be provided. Thus, the commenters’ questions are too generic to be answered in a vacuum. Nonetheless, the following principles are clear. The bona fide group or association typically, or the PEO always, is responsible for prudently selecting and monitoring the service providers of the MEP they hire, including any fiduciary service providers. In comparison, the business owner must prudently select and monitor the MEP sponsor and get periodic reports on the fiduciaries’ management and administration of the MEP. Finally, the decision to include or delete funds from a plan’s investment lineup, or to invest plan assets on the participant’s behalf in a particular fund on that lineup, is a fiduciary decision, subject to the fiduciary provisions in Title I of ERISA.

b. Need for Reporting and Disclosure Changes

(i) In General

The Proposed Rule solicited comments on whether any reporting or disclosure requirements are needed to ensure that participating employers, participants, and beneficiaries of MEPs are adequately informed of their rights and responsibilities with respect to MEP coverage and that the public has adequate information regarding the existence and operations of MEPs. Most responsive comments stated either that no new substantive requirements are needed, or that the Department should delay rulemaking on this subject until there is more experience with the types of MEPs described in this final rule.⁴² The Department agrees with this position and, therefore, the final rule does not contain modifications to the Department’s reporting and disclosure requirements.

Several commenters asked the Department to confirm that the group or association or PEO sponsoring the MEP,

⁴² The Department received several comments regarding electronic disclosures. Although electronic disclosures, like MEPs, were the subject of Executive Order 13847, they are part of a separate rulemaking process. The Department also received a comment regarding recommended disclosure requirements in an “open MEP” or “pooled employer plan” context. As noted earlier in this preamble, open MEPs are the subject of a separate RFI and are not part of this final rule.

and not the participating employers, are generally responsible for the participant disclosures required by part 1 of ERISA. The Department confirms that the administrator of the MEP—and not the participating employers—is responsible for discharging the reporting and disclosure requirements under part 1 of ERISA. In most cases, the group or association sponsoring the MEP, and in all cases the PEO, will be the ERISA 3(16) plan administrator.

(ii) PEOs and Lists of Participating Employers

Several commenters focused on the public’s ability to obtain access to a MEP’s annual report, including information regarding the identity of individual participating employers or the employer of a single participant. One commenter, for instance, requested that the administrator of a MEP, such as a PEO, be permitted to file the portions of the Form 5500 annual report that relate to participating employers on a confidential or redacted basis. In this commenter’s view, PEOs will be less likely to sponsor a MEP (and participants will suffer) if competitors in the PEO marketplace are able to use publicly available information from the Form 5500 for targeted marketing aimed towards the PEO’s client employers identified in the annual report.

Conversely, other commenters favored public access to reported information and recommended that the Department make it even easier to locate and retrieve information about specific participating employers. For example, some commenters requested that the Department’s website be modified to enable searches based on the name or EIN of a participating employer, rather than the name or EIN of the sponsor. One commenter, representing a state’s department of child support services, stated that such agencies frequently need improved search methods to locate assets of non-custodial parents in order to pursue state domestic relations orders. This commenter believed that reporting should be strengthened to permit searches based not only on the name or EIN of the participating employer, but also based on the name of the plan participant.

After reviewing the comments, the Department concluded that the subject matter is outside the scope of this rulemaking project. The Department may address some or all of this topic in a different rulemaking project in the future, or through subregulatory guidance, but does not otherwise address the comments in this final rule.

(iii) Fee and Conflict of Information Disclosures

Commenters asked whether each participating employer must receive the disclosures required by section 408(b)(2) of ERISA and the regulations thereunder. ERISA section 408(b)(2) and 29 CFR 2550.408b-2(c) require that certain service providers to pension plans disclose to a “responsible plan fiduciary” information about service providers’ compensation and potential conflicts of interest. The regulation defines responsible plan fiduciary as “a fiduciary with authority to cause the covered plan to enter into . . . the contract or arrangement.” Typically, the responsible plan fiduciary is the plan administrator (within the meaning of section 3(16) of ERISA) or named fiduciary (within the meaning of section 402 of ERISA) of the MEP, and not the participating or client employer. Thus, to the extent participating or client employers in a MEP do not have such authority, the Department is of the view that section 408(b)(2) and the regulations thereunder do not require the disclosure of this information to them. At the same time, however, if the bona fide group or association or PEO itself is a covered service provider (within the meaning of 29 CFR 2550.408b-2(c)) with respect to the MEP, the group or association or PEO must furnish the specified information about its compensation and potential conflicts of interest to the participating or client employer at the time the participating employer or client employer is considering adopting or subscribing to the MEP and thereafter at intervals specified in the regulation. This information must be disclosed because when the participating or client employer adopts the MEP by executing the participation agreement or subscription document, the participating or client employer effectively is acting as a responsible plan fiduciary with respect to the group or association or PEO.

In addition, participating or client employers have a duty under section 404 of ERISA to periodically monitor ongoing management and administration of the MEP to ensure the prudence of continued participation. Carrying out this duty may be aided by the periodic receipt from the administrator or named fiduciary of the MEP of information similar to that described in 29 CFR 2550.408b-2(c), with respect to other of the MEP’s service providers.⁴³ If the administrator

or named fiduciary were to refuse to provide such information to a participating employer, either periodically or on request, such failure must be taken into account by the participating employer when deciding whether to continue participating in the MEP and, in and of itself, may justify or require a decision to cease participation.

c. Termination or Severance Situations

Several commenters asked for guidance on severance or termination situations. Specifically, these commenters asked about situations where the participating employer or client employer severs or terminates its relationship with the bona fide group or association or the bona fide PEO, respectively, after having adopted or joined the MEP. The commenters stated that in these situations, while the relationship between the participating employer or client employer and the bona fide group or association or the bona fide PEO is severed, the MEP itself does not necessarily terminate and, consequently, there may be no distributable event on which to authorize distributions of benefits to the employees of the employer. These commenters asked for guidance on whether these benefits may or must remain in the MEP, or whether they may or must be distributed or transferred to another plan, and for clarification of the status of the MEP as a single plan following the severance or termination.

The commenters gave a few examples of likely severance or termination situations. In one example, an employer is a member of a local chamber of commerce, which meets the requirements to be a bona fide group or association, and the employees of this employer participate in the MEP sponsored by the chamber of commerce. The employer terminates its membership with the local chamber of commerce in favor of a statewide chamber of commerce. The employer ceases to have any control over the local chamber of commerce on cancellation of membership, despite the fact that such control is required under paragraph (b)(1)(iv) of the final rule. In another example, a different employer enters into a contract with a PEO that meets the requirements to be a bona fide PEO. This employer had 10 common law employees when it entered the contract with the PEO and enrolled the employees in the MEP sponsored by the

PEO. Years later, after a business downturn, the employer must terminate the 10 employees and the only remaining worker is the owner. As a sole proprietor, the business no longer needs the services of the PEO and terminates the contract with the PEO. After termination of the contract, the PEO no longer performs substantial employment functions on behalf of this employer, despite the fact that the performance of substantial employment functions is required under paragraph (c)(1)(i) of the final rule.

Whether the benefits of the employees of a severing or terminating employer may or must remain in the MEP, or whether they may or must be distributed or transferred to another plan should be memorialized in the plan document.⁴⁴ Nevertheless, when a participating employer or client employer severs or terminates its relationship with a bona fide group or association or PEO, the severance or termination ordinarily extinguishes the nexus that supports the conclusion that the group or association or PEO is acting as the “employer” under section 3(5) of ERISA for purposes of sponsoring a plan for the employees of the participating employer or client employer. In this situation, therefore, the group or association or PEO and the participating employer or client employer will commonly want to implement a spin-off of the assets and liabilities of the employees of the severing or terminating employer, or a plan-to-plan transfer of those assets and liabilities to a separate plan meeting the requirements of the Code, if applicable, as soon as is reasonably practicable.

Importantly, when a participating employer or client employer severs or terminates its relationship with a bona fide group or association or PEO, the severance or termination does not extinguish any fiduciary obligations that the group or association or PEO owes to these participants as the plan administrator and named fiduciary of the MEP; rather, these obligations persist until the participants are no longer covered by the MEP. Pending a

⁴⁴ Information Letter to John N. Erlenborn from Dennis M. Kass, Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor (March 13, 1986) (“we believe that the decision of whether to establish a successor plan, and if so, the type of such a plan, are clearly business decisions not subject to Title I of ERISA. As in the case of the decision to terminate, the decision to establish a successor plan involves the exercise of wholly voluntary settlor functions. Similarly, decisions about the design and provisions of any successor plan are not subject to Title I.”). Decisions on whether benefits may or must remain in the MEP, or whether they may or must be distributed are subject to applicable Code provisions.

⁴³ For example, GAO has emphasized the need for small businesses “to understand plan fees in order to help participants secure adequate retirement

savings. See GAO Testimony before the Senate Comm. on Health, Education, Labor and Pensions, Statement of Charles A. Jeszek, GAO Director of Education, Workforce and Income Security, GAO-13-748T (July 16, 2013) at 16, <https://www.gao.gov/assets/660/655889.pdf>.

spin-off or transfer, the MEP generally continues to constitute a single plan for purposes of title I of ERISA. But if the arrangement continues to operate in virtually the same manner as before the severance or termination (including the making of contributions by the participating employer or client employer that severs or terminates its relationship) and no party (the group or association, the PEO, or the participating employer or client employer, as applicable) takes action toward a spin-off or transfer within a reasonable timeframe following the severance or termination, the MEP will no longer constitute a single plan for purposes of ERISA. In this situation, the participating employer or client employer (*i.e.*, the entity that severed or terminated its relationship with the group or association or PEO, failed to promptly implement a spin-off or transfer, and nevertheless continued the arrangement in virtually the same manner as before the severance or termination) will be considered to have established and maintained its own separate employee benefit plan. The group or association or PEO will be considered to be acting as a service provider to the plan of the former participating employer or client employer. The MEP—exclusive of the severed employer but inclusive of all remaining non-severed participating employers or client employers—will continue to constitute a single plan for purposes of title I of ERISA.

d. Plan Governance Issues

Commenters suggested that the Department consider the establishment of various new regulatory provisions governing certain aspects of MEP governance and administration. For example, one commenter recommended that the Department establish minimum standards in order for a person to sponsor and administer a MEP, including a minimum number of years of experience in providing retirement benefits, minimum staff qualifications, and minimum capital reserves. The Department believes it has appropriately addressed issues of MEP governance and administration to the extent such issues fall within the scope and subject of this rulemaking, the definition of “employer” in section 3(5) of ERISA. The Department, however, will give further consideration to these recommendations in connection with the comments received in response to the RFI on open MEPs and any further rulemaking in this area.

One commenter argued that MEPs should be required to have fair rules that apply to all employers, participants

and beneficiaries. That commenter suggested that permitting MEPs to maintain multiple different rules for different employers or classes of employers will increase complexity and costs for all. As indicated, a MEP would be a single plan under title I of ERISA. As such, ERISA would apply to the MEP in the same way that ERISA applies to any employee benefit plan, but the MEP sponsor, typically acting as the plan’s administrator and named fiduciary, would administer the MEP.⁴⁵ This person will have considerable discretion in determining, as a matter of plan design or a matter of plan administration, how to treat the different interests of the multiple participating employers and their employees. Accordingly, this person, in distributing, investing, and managing the MEP’s assets, must be neutral and fair, dealing impartially with the participating employers and their employees, taking into account any differing interests.⁴⁶ For example, when the fiduciary of a large MEP uses its size to negotiate and secure discounted prices on investments and other services from plan services providers, as is generally required by ERISA, the fiduciary is bargaining on behalf of all participants regardless of the size of their employer, and should take care to see that these advantages are allocated among participants in an evenhanded manner. Treating participating employers and their employees differently without a reasonable and equitable basis would raise serious concerns for the Department under sections 404(a)(1)(A) and (B) of ERISA.

One commenter recommended that the final rule govern the number of designated investment alternatives under the MEP. One commenter recommended that the final rule should provide that if an employer fails to pay employee or employer required contributions, the MEP (or the Federal or State licensed investment provider)

⁴⁵ As noted elsewhere, in the case of a PEO MEP under paragraph (c) of the proposal, the PEO, as the plan sponsor, must always act as the plan’s administrator (within the meaning of section 3(16)(A)) and a named fiduciary (within the meaning of section 402 of ERISA) of the MEP.

⁴⁶ See Field Assistance Bulletin No. 2003–03 (addressing what rules apply to how expenses are allocated among plan participants in a defined contribution pension plan). See also *Varity Corp. v. Howe*, 516 U.S. 489, 514 (1996) (“The common law of trusts recognizes the need to preserve assets to satisfy future, as well as present, claims and requires a trustee to take impartial account of the interests of all beneficiaries.”); *Restatement (Second) of Trusts* section 183 (“If a trust has two or more beneficiaries, the trustee, in distributing, investing, and managing the trust property, shall deal impartially with them, taking into account any differing interests.”)

should be required to freeze the account and notify the employer, employee and the Department. Limiting investment options and remedying delinquent contributions are unrelated to the definition of “employer” in section 3(5) of ERISA. Accordingly, the Department considers these recommendations to be beyond the scope of this rulemaking.

Finally, many commenters recommended that the final rule expressly permit MEPs to use electronic media as the default method of furnishing disclosures to participating employers, plan participants, and beneficiaries receiving benefits. Although improving the effectiveness of retirement plan disclosures, including possibly through the broader use of electronic delivery, is the subject of a different section of the MEP Executive Order (E.O. 13847), the Department intends to address this topic as part of a separate rulemaking process.

e. Corporate MEPs

The Proposed Rule solicited comments on whether the final rule should address the status of so-called “corporate MEPs,” a term not defined in ERISA. The Proposed Rule considered “corporate MEPs” to be defined contribution plans that cover employees of employers related by some level of common ownership, but that are not in the same controlled group or affiliated service group within the meaning of 414(b), (c), and (m) of the Code.

In response, one commenter provided an example of what it described as a very common fact pattern that should be addressed by rulemaking or other guidance. The example involves two companies, A and B, in different industries and different parts of the country, where, as a result of an acquisition, A now owns 60% of B but the remaining 40% of B is owned by unrelated parties. If A and B jointly maintain a retirement plan for the benefit of their employees, the commenter stated that it does not appear that A and B would meet the commonality of interest conditions in the Proposed Rule to qualify as a MEP and, consequently, this “corporate MEP” would not be a single plan under the Proposed Rule, but instead would be two plans for purposes of ERISA.

The Department recognizes that meaningful levels of common ownership may serve as an indicator that the members of the ownership group have among themselves a sufficient relationship, unrelated to the provision of benefits, such that one or more of these members can be said to be acting “indirectly in the interest of” the others within the meaning of ERISA

section 3(5) to sponsor a MEP for the group's participation. In DOL Advisory Opinion 89-06A, for example, the Department opined that, a member of a controlled group of corporations that establishes a benefit plan for its employees and the employees of other members of the controlled group, is considered to be an employer within the meaning of ERISA section 3(5), such that only one plan exists for all members of the group.⁴⁷

On the record established thus far, however, the Department lacks a meaningful basis on which to determine the precise level of ownership, below the ownership thresholds of the aggregation rules in sections 414(b) and (c) of the Code, that conclusively distinguishes bona fide ownership groups from commercial enterprises in which members have nominal ownership levels and which exist primarily or solely to market, distribute, underwrite or otherwise provide employee benefits to the nominal owners. The Department, therefore, has decided to explore this topic further in the RFI, published elsewhere in today's **Federal Register**.

f. Interpretive Bulletin 2015-02

This final rule clarifies, through regulation, when an employer group or association, or a PEO that meets certain conditions, may sponsor a single MEP under title I of ERISA (as opposed to providing an arrangement that constitutes multiple retirement plans). Based on its comprehensive review, the Department, therefore, is finalizing this regulation interpreting the term "employer" for purposes of ERISA section 3(5). A number of commenters expressed concern regarding the effect the rule, as proposed, could have on other guidance. Commenters specifically indicated that they were concerned with the effect of the proposed rule on State-sponsored MEPs subject to Interpretive Bulletin 2015-02. (29 CFR 2509.2015-02). Nothing in this final rule affects prior guidance regarding how a State may act as an employer in relation to an employee benefit plan. Instead, this final rule provides additional regulatory certainty regarding when a group or association, or a PEO, acts "indirectly in the interest of an employer" in relation to a defined contribution multiple employer plan for purposes of ERISA section 3(5).

Whether a person acts "indirectly in the interest of an employer . . . in relation to an employee benefit plan" for purposes of ERISA section 3(5) depends on the facts and circumstances, including the type of employee benefit plan the entity is acting in relation to, and the type of entity that is acting indirectly in the interest of an employer. Based on its review, the Department believes that this final rule will facilitate the adoption and administration of MEPs and will expand access to workplace retirement plans.

g. Plans Without Employees

The final rule contains an amendment to a different regulation, at 29 CFR 2510.3-3, to support the new working owner provision in paragraph (d) of the final rule. That regulation states the general principle that the term "employee benefit plan" shall not include any plan, fund, or program under which no employees are participants covered under the plan. The amendment makes it clear that this general principle does not stand in the way of working owners who want to participate in MEPs. The Proposed Rule sought comments on whether this fix would be sufficient or whether additional or different regulatory amendments should be made to confirm or clarify the long-established exclusion from ERISA of plans covering only individual owners (such as solo 401(k) plans), given the proposal to permit working owners to participate in ERISA-covered MEPs and ARPs. No commenter suggested the Proposed Rule was insufficient. One commenter, however, requested that the Department make it clear that plans without employees continue not to be covered by ERISA. In response to this comment, the Department confirms that the final rule permits working owners to participate in ERISA-covered MEPs without altering its position that a "plan under which . . . only a sole proprietor" participates "will not be covered under title I." 29 CFR 2510.3-3(b). Thus, under the final rule, working owners without employees can join an ERISA-covered MEP or they can sponsor a defined contribution plans covering only themselves, which are (and historically have been) outside the coverage of title 1 of ERISA.

h. Coordination With Other Federal Agencies

Several commenters raised issues involving the Code and other federal laws beyond the Department's jurisdiction, and requested that the Department coordinate and work with the relevant agencies to provide

guidance to facilitate and promote MEPs. For example, several commenters requested that the Department work and coordinate with the Department of the Treasury and the Internal Revenue Service (IRS) on guidance regarding the circumstances under which a MEP may satisfy the tax-qualification requirements in the Code, including the consequences if one or more employers that sponsored or adopted the plan fails to take one or more actions necessary to meet those requirements as directed by Executive Order 13847. On July 3, 2019, after consultation with the Department of Labor, the Department of the Treasury issued a notice of proposed rulemaking addressing these tax qualification issues in the **Federal Register** (84 FR 31777). Specifically, the proposed regulations would provide an exception, if certain requirements are met, to the application of the "unified plan rule" for a defined contribution MEP in the event of a failure by an employer participating in the plan to satisfy a qualification requirement or to provide information needed to determine compliance with a qualification requirement. These proposed regulations would affect MEPs, participants in MEPs (and their beneficiaries), employers participating in MEPs, and MEP plan administrators. The Department of Labor will continue to consult with the Department of the Treasury and the IRS in connection with their development of those regulations.

Other commenters focused on the need for guidance or special rules on the Code's non-discrimination provisions more generally. One commenter requested the Department to coordinate with the IRS to clarify that MEPs are permitted to establish arrangements under section 403(b) of the Code (programs for the purchase of an annuity contract or the establishment of a custodial account). One commenter requested that the Department coordinate and work with the IRS and the Securities and Exchange Commission to remove restrictions on the ability of 403(b) plans to invest in certain investment vehicles. These comments are beyond the scope of this final rule.

i. Severability

Finally, paragraph (e)(1) of the final rule includes a severability provision that provides that if any of the provisions in the final rule are found to be invalid or stayed pending further agency action, the remaining portions of the rule would remain operative and available for qualifying employer groups or associations or PEOs. Paragraph (e)(2) of the final rule illustrates how the Department intends the severability

⁴⁷ With respect to a plan maintained by one or more members of a controlled group of corporations (within the meaning of section 1563(a) of the Code, determined without regard to sections 1563(a)(4) and (e)(3)(C)), all employees of such corporations shall be treated as employed by a single employer. 29 U.S.C. 1060(c).

provision to apply in one specific situation. The example illustrates that if a federal court were to find the substantial business purpose test to be legally insufficient, then the substantial-business-purpose safe harbor (viability) becomes the whole of that part of the rule without the need for any further notice-and-comment rulemaking by the Department. Although the example is detailed and specific, the severability provision itself is not limited to the facts of the example. For instance, a ruling by a federal court that the “working owners” provision in section 2510.3–55(d) is void will not impact the ability of an employer group or association to meet the “commonality of interest” requirement in section 2510.3–55(b)(2) by being located in the same geographic locale. This example has been added to paragraph (e)(2) of the final rule to clarify the Department’s intention that the severability provision is one of general applicability and, consequently, applies to the whole of the section and is not limited to any specific provision.

C. Regulatory Impact Analysis

1. Summary

As discussed earlier in the preamble, this final rule is intended to facilitate the creation and maintenance of MEPs by clarifying the circumstances under which a person may act as an “employer” within the meaning of ERISA section 3(5) in sponsoring a MEP. Workplace retirement plans provide an effective way for employees to save for retirement. Unfortunately, however, many hardworking Americans, especially those employed by small businesses and those who are self-employed, do not have access to a retirement plan at work. This has become a more significant issue as employees are living longer and facing the difficult prospect of outliving their retirement savings. Expanding access to private sector MEPs could encourage the formation of workplace retirement plans and broaden access to such plans among small employers and among individuals who are “working owners” without employees, referred to herein as the “self-employed”.

Many employer groups and associations have a thorough knowledge of the economic challenges their members face. Using this knowledge and the regulatory flexibility provided by this final rule, employer groups and associations can sponsor MEPs tailored to the retirement plan needs of their members at lower costs than currently available options. Thus, the final rule provides employers with an important option to increase access of workers,

particularly those employed at small businesses and the self-employed, to high-quality workplace retirement plans.

Small employers should benefit from economies of scale by participating in MEPs, which could reduce their administrative costs and plan fees. Like other large retirement plans, large MEPs created by sponsors meeting the conditions set forth in this rule would enjoy scale discounts and might exercise bargaining power with financial services companies. Large MEPs could pass some of these savings through to participating small employers. In particular, investment funds with tiered pricing have decreasing expense ratios based on the aggregate amount of money invested by a single plan.⁴⁸ As a single plan, MEPs should lower the expense ratio for investment management through the pooling of investments from member employers, because the fee thresholds would apply at the MEP level rather than at the member employer level.⁴⁹

Many well-established, geographically based organizations, such as local chambers of commerce, are strong candidates to sponsor MEPs. Currently, these geographically based organizations are restricted from doing so as a sponsor of a single plan under title I of ERISA unless their MEP meets the requirements of the Department’s 2012 subregulatory guidance for determining whether groups or associations of employers, or PEOs were able to act as employers under section 3(5) of ERISA.⁵⁰ Such previous guidance requires groups or associations to have a particularly close economic or representational nexus to employers and employees participating in the plan. Many groups or associations and PEOs have identified these criteria, along with the absence of a clear pathway for PEOs to sponsor MEPs, as major impediments to the expansion of MEPs that are treated as single plans. By providing greater flexibility governing the sponsorship of MEPs, the Department

expects this rule to reduce costs and increase access to workplace retirement plans for many employees of small businesses and the self-employed.

Other potential benefits of the expansion of MEPs include: (1) Increased economic efficiency as small firms can more easily compete with larger firms in recruiting and retaining workers, (2) increased acceptance of rollovers from other qualified plans, (3) enhanced portability for employees that leave employment with an employer to work for another employer participating in the same MEP, and (4) higher quality data (more accurate and complete) reported to the Department on the Form 5500.

The Department is aware that MEPs could be the target of fraud or abuse. By their nature, MEPs have the potential to build up a substantial amount of assets quickly and the effect of any abusive schemes on future retirement distributions may be hidden or difficult to detect for a long period. The Department, however, is not aware of direct information indicating that the risk for fraud and abuse is greater for MEPs than for other defined contribution pension plans. Nor was such information received among the comments responding to the proposal. Furthermore, the Department has compliance assistance and enforcement systems in place to safeguard plan assets from fraud and abuse.

The Department believes that participation in workplace retirement plans will increase because of this rule; however, there is some uncertainty regarding the extent of the increase. Participation levels in workplace retirement plans depend on both how many employers decide to offer plans and how many employees choose to participate in those plans. An employer’s decision to offer a retirement plan relies on many factors, only some of which this final rule affects. If more employers adopt MEPs, it is unclear how many of their employees will choose to enroll and by how much aggregate retirement savings will increase. Nevertheless, given the significant potential for MEPs to expand access to affordable retirement plans, the Department has concluded that this rule will deliver social benefits that justify their costs. The Department’s analysis is explained more fully below.

As discussed earlier in the preamble, some commenters argued that to achieve an actual substantial increase in access to retirement plans, the Department must expand the rule to allow (1) “open MEPs” or “pooled employer plans,” which generally are arrangements that cover employees of employers with no

⁴⁸ According to Morningstar, nearly half of all investment funds have management fee breakpoints at which fees are automatically reduced upon reaching an investment threshold. See Michael Rawson and Ben Johnson, “2015 Fee Study: Investors Are Driving Expense Ratios Down,” Morningstar, 2015, available at https://news.morningstar.com/pdfs/2015_fee_study.pdf.

⁴⁹ MEPs create a pool of assets for investment that, at the investment management level, are no different from pools of assets from other employee benefit plans. Consistent with the Department’s view that the pool of assets is a single plan, the Department expects that breakpoints for expense ratios would be applied at the MEP level rather than at the member employer level.

⁵⁰ EBSA Advisory Opinion 2012–04A (May 25, 2012).

relationship other than their joint participation in the MEP, and (2) so-called “corporate MEPs,” which are plans that cover employees of related employers that are not in the same controlled group or affiliated service group.⁵¹ Although the Department did not include such arrangements in the final rule, it is simultaneously publishing elsewhere in today’s **Federal Register** a related RFI regarding whether commercial service providers and corporate groups, other than employer groups or associations and PEOs, should be able to sponsor MEPs to develop a more robust record and obtain additional data regarding this issue.

2. Executive Orders

Executive Orders 12866⁵² and 13563⁵³ direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866, “significant” regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local or tribal governments or communities (also referred to as “economically significant”), (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency, (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. It has been determined that this rule is economically significant within the meaning of section 3(f)(1) of the Executive Order. Therefore, OMB has reviewed the rule pursuant to the Executive Order.

The background to the rule is discussed earlier in the preamble. This section assesses the expected economic effects of the rule.

3. Introduction and Need for Regulation

While many Americans have accumulated significant retirement savings, many others have little, if any, assets saved for retirement. For example, the Employee Benefit Research Institute projects that 24 percent of the population aged 35 to 64 will experience a retirement savings shortfall, meaning resources in retirement will not be sufficient to meet their average retirement expenditures.⁵⁴ If uncovered long-term care expenses from nursing homes and home health care are included in the retirement readiness calculation, 43 percent of that population will experience a shortfall, and the projected retirement savings deficit is \$4.13 trillion.⁵⁵

Among all workers aged 26 to 64 in 2013, 63 percent participated in a

retirement plan either directly or through a working spouse. That percentage ranged, however, from 52 percent of those aged 26 to 34 to 68 percent of those aged 55 to 64; and from 25 percent for those with adjusted gross income (AGI) less than \$20,000 per person to 85 percent for those with AGI of \$100,000 per person or more.⁵⁶

Workplace retirement plans often provide a more effective way for employees to save for retirement than saving in their own IRAs. Compared with saving on their own in IRAs, workplace retirement plans provide employees with: (1) Higher contribution limits, (2) generally lower investment management fees as the size of plan assets increases, (3) a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections, (4) automatic enrollment, and (5) stronger protections from creditors.⁵⁷ At the same time, workplace retirement plans provide employers with choice among plan features and the flexibility to tailor retirement plans that meet their business and employment needs.

In spite of these advantages, many workers, particularly those employed by small employers and the self-employed, lack access to workplace retirement plans. Table 1 below shows that at business establishments with fewer than 50 workers, 49 percent of the workers have access to retirement benefits.⁵⁸ In contrast, at business establishments with more than 500 workers, 88 percent of workers have access to retirement benefits. Table 1 also shows that many small employers do not offer a retirement plan to their workers.⁵⁹

TABLE 1—RETIREMENT PLAN COVERAGE BY EMPLOYER SIZE

Establishment size: number of workers	Workers		Establishments
	Share with access to a retirement plan %	Share participating in a retirement plan %	Share offering a retirement plan %
1—49	49	34	45
50—99	65	46	75
100—499	79	58	88
500+	89	76	94

⁵¹ In Advisory Opinion 89–06A, the Department stated that it would consider a member of a controlled group of corporations that establishes a benefit plan for its employees and/or the employees of other members of the controlled group to be an employer within the meaning of ERISA section 3(5).

⁵² 58 FR 51735 (Oct. 4, 1993).

⁵³ 76 FR 3821 (Jan. 21, 2011).

⁵⁴ Jack VanDerhei, “EBRI Retirement Security Projection Model®(RSPM)—Analyzing Policy and

Design Proposals,” *Employee Benefit Research Institute Issue Brief*, no. 451 (May 31, 2018).

⁵⁵ *Id.*

⁵⁶ Peter J. Brady, “Who Participates in Retirement Plans,” *ICI Research Perspective*, vol. 23, no. 05, (July 2017).

⁵⁷ Section 522 of the Bankruptcy Code (11 U.S.C. 522), provides an unlimited exemption for SEP and Simple IRAs, and pension, profit sharing, and qualified plans, such as 401(k)s, as well as plan

assets that are rolled over to an IRA. However, other traditional IRAs and Roth IRAs are protected up to a value of \$1,283,025 per person for 2018 (inflation adjusted).

⁵⁸ These statistics apply to private industry. U.S. Bureau of Labor Statistics, National Compensation Survey, *Employee Benefits in the United States* (March 2018).

⁵⁹ *Id.*

TABLE 1—RETIREMENT PLAN COVERAGE BY EMPLOYER SIZE—Continued

Establishment size: number of workers	Workers		Establishments
	Share with access to a retirement plan %	Share participating in a retirement plan %	Share offering a retirement plan %
All	66	50	48

Source: These statistics apply to private industry. U.S. Bureau of Labor Statistics, National Compensation Survey, Employee Benefits in the United States (March 2018).

Surveys of employers have suggested several reasons employers—especially small businesses—do not offer a workplace retirement plan to their employees. Regulatory burdens and complexity add costs and can be significant disincentives. A survey by the Pew Charitable Trusts found that only 53 percent of small- to mid-sized businesses offer a retirement plan, and 37 percent of those not offering a plan cited cost as the main reason.⁶⁰ Employers often also cite annual reporting costs and exposure to potential fiduciary liability as major impediments to plan sponsorship.⁶¹

Some employers may not offer retirement benefits because they do not perceive such benefits as necessary to recruit and retain good employees.⁶² In focus groups, many employers not offering retirement benefits reported believing that their employees would prefer to receive higher salaries, more paid time off, or health insurance benefits than retirement benefits.⁶³ Small employers themselves may not have much incentive to offer retirement benefits because they are not sure how long their businesses are going to survive. This may lead them to focus on short-term concerns rather than their employees' long-term well-being. In analyzing new establishments, researchers found that 56 percent did not survive for four years.⁶⁴

⁶⁰ The Pew Charitable Trusts, "Employer Barriers to and Motivations for Offering Retirement Benefits," *Issue Brief* (June 21, 2017), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/employer-barriers-to-and-motivations-for-offering-retirement-benefits#0-overview>.

⁶¹ See U.S. Government Accountability Office, GAO-12-326: "Private Pensions: Better Agency Coordination Could Help Small Employers Address Challenges to Plan Sponsorship" (March 2012) at 18–19. (<https://www.gao.gov/products/GAO-12-326>).

⁶² Employee Benefit Research Institute, "Low Worker Take Up of Workplace Benefits May Impact Financial Wellbeing" (April 10, 2018).

⁶³ The Pew Charitable Trusts, "Employer Barriers to and Motivations for Offering Retirement Benefits," 2017.

⁶⁴ Amy E. Knaup and Merissa C. Piazza, "Business Employment Dynamics data: survival

Many small businesses may have not taken advantage of the existing opportunities to establish workplace retirement savings plans because they lack awareness. As found in a Pew survey, two-thirds of small- and mid-sized employers that were not offering a retirement plan said they were not at all familiar with currently available options such as Simplified Employee Pension (SEP) and Savings Incentive Match Plan for Employees (SIMPLE) plans.⁶⁵

MEPs may address several of these issues. Specifically, to the extent that MEPs reduce the total cost of providing various types of plans to small employers, market forces may lead MEPs to offer and promote such plans to small employers that would otherwise have been overlooked because of high costs. Moreover, groups or associations and PEOs sponsoring MEPs sometimes may have more success raising awareness among small employers of the retirement savings plan options that exist and the benefits of establishing such plans as a tool for recruiting or retaining qualified workers. MEP sponsors may be particularly effective at raising awareness among small employers that are already members of the group or association or clients of the PEO.

Small businesses typically have fewer administrative efficiencies and less bargaining power than large employers do. The final rule provides a way for small employers and the self-employed to band together in MEPs that, as single, large plans, have some of the same economic advantages as other large plans. As discussed above, the Department's prior subregulatory guidance limits the ability of small employers and self-employed individuals to join MEPs and thereby to realize attendant potential administrative cost savings. With certain exceptions, each employer

and longevity, II," *Monthly Labor Review* (Sept. 2007).

⁶⁵ The Pew Charitable Trusts, "Employer Barriers to and Motivations for Offering Retirement Benefits," 2017.

operating a separate plan must file its own Form 5500 annual report; and generally, if the plan has 100 or more participants, an accountant's audit of the plan's financial position instead of relying on the audit of a combined plan.⁶⁶ Each small employer also would have to obtain a separate fidelity bond satisfying the requirements of ERISA.⁶⁷

As stated earlier in the preamble, on August 31, 2018, President Trump issued Executive Order 13847, "Strengthening Retirement Security in America," stating that "[i]t shall be the policy of the Federal Government to promote programs that enhance retirement security and expand access to workplace retirement savings plans for American workers." The Executive Order directed the Secretary of Labor to examine policies that would: (1) Clarify and expand the circumstances under which United States employers, especially small and mid-sized businesses, may sponsor or participate in a MEP as a workplace retirement savings option offered to their employees, subject to appropriate safeguards, and (2) increase retirement security for part-time workers, sole proprietors, working owners, and other entrepreneurial workers with

⁶⁶ Note that ERISA regulations exempt small plans, generally those with under 100 participants, from the audit requirement if they meet certain conditions. 29 CFR 2520.104–46. In 2015, more than 99 percent of small defined contribution pension plans that filed the Form 5500 or the Form 5500-SF did not attach an audit report.

⁶⁷ ERISA section 412 and related regulations (29 CFR 2550.412–1 and 29 CFR part 2580) generally require every fiduciary of an employee benefit plan and every person who handles funds or other property of such plan to be bonded. ERISA's bonding requirements are intended to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons who handle plan funds or other property. ERISA refers to persons who handle funds or other property of an employee benefit plan as plan officials. A plan official must be bonded for at least 10 percent of the amount of funds he or she handles, subject to a minimum bond amount of \$1,000 per plan with respect to which the plan official has handling functions. In most instances, the maximum bond amount that can be required under ERISA with respect to any one plan official is \$500,000 per plan; however, the maximum required bond amount is \$1,000,000 for plan officials of plans that hold employer securities.

nontraditional employer–employee relationships by expanding their access to workplace retirement savings plans, including MEPs. The Executive Order further directed, to the extent permitted by law and supported by sound policy, the Department to consider within 180 days of the date of the Executive Order whether to issue a notice of proposed rulemaking, other guidance, or both, that would clarify when a group or association of employers, or other appropriate business or organization could be an “employer” within the meaning of ERISA section 3(5).

In response to the Executive Order, the Department has conducted a thorough review of its current policies regarding MEPs and of comments received in response to the proposal, and has determined that its existing interpretive position is unnecessarily narrow. The Department has concluded that regulatory action is appropriate to establish greater flexibility in the regulatory standards governing the criteria that must exist in order for an employer group or association or PEO to sponsor a MEP.

The final rule generally provides this flexibility by making five important changes to the Department’s prior subregulatory guidance. First, it clarifies the existing requirement in prior subregulatory guidance that bona fide groups or associations must have at least one substantial business purpose unrelated to the provision of benefits. Second, it relaxes the requirement that group or association members share a

common interest, as long as they operate in a common geographic area. Third, it makes clear that groups or associations whose members operate in the same trade, industry, line of business, or profession could sponsor MEPs, regardless of geographic distribution. Fourth, it clarifies that working owners without employees are eligible to participate in MEPs sponsored by bona fide employer groups or associations that meet the requirements of the rule. Fifth, it establishes criteria under which “bona fide” PEOs may sponsor MEPs covering the employees of their client employers.

These criteria also result in more MEPs being treated consistently under the Code and title I of ERISA, and such consistency removes another barrier inhibiting the broader establishment of MEPs. As discussed earlier in the preamble, a retirement plan covering employees of multiple employers that satisfies the requirements of IRC section 413(c) is considered a single plan under IRC section 413(c), which addresses the tax-qualified status of MEPs. Moreover, in Revenue Procedure 2002–21, 2002–1 C.B. 911, the IRS issued guidance that provided an avenue for PEOs to administer a MEP for the benefit of worksite employees of client organizations and not violate the exclusive benefit rule.⁶⁸

By establishing greater flexibility in the standards and criteria for sponsoring MEPs than previously articulated in subregulatory interpretive rulings under ERISA section 3(5), the final regulation

facilitates the adoption and administration of MEPs and should expand access to, and lower the cost of, workplace retirement savings plans, especially for employees of small employers and certain self-employed individuals. At the same time, reflecting the position taken in its subregulatory guidance, the Department intends that the conditions included in the final rule will continue to distinguish plans sponsored by entities that satisfy ERISA’s definition of “employer” from arrangements or services offered by other entities.

4. Affected Entities

The final rule has the potential to encourage both the creation of new MEPs and the expansion of existing MEPs. As background for estimating the number of entities that would be affected by this rule and its impact, the Department has reviewed the characteristics of existing MEPs that file Forms 5500.⁶⁹ Since this rule is limited to defined contribution pension plans, referred to in this document as “MEPs” or “DC MEPs,” Table 2 presents statistics for DC MEPs only. Currently DC MEPs comprise only a small share of the private sector retirement system, as shown in Table 2.⁷⁰ Based on the latest available data, about 4,630 DC MEPs exist with approximately 4.4 million total participants, 3.7 million of whom are active participants. DC MEPs hold about \$181 billion in assets.⁷¹

TABLE 2—CURRENT STATISTICS ON MEPs

	Number of MEPs	Total participants	Active participants	Total assets
MEP DC Plans	4,630	4.4 million	3.7 million	\$181 billion.
As a share of all ERISA DC plans	0.7%	4.4%	4.6%	3.2%.
MEP DC Plans	4,630	4.4 million	3.7 million	\$181 billion.
401(k) Plans	4,391	4.1 million	3.4 million	\$166 billion.
Other DC Plans	239	0.4 million	0.3 million	\$15 billion.

Source: EBSA performed these calculations using the 2016 Research File of Form 5500 filings. For these purposes, EBSA classified a plan as a MEP if it indicated “multiple employer plan” status on the Form 5500 Part I Line A and if it did not report collective bargaining. The estimates are weighted and rounded, which means they may not sum precisely.

Some DC MEPs are very large; 56 percent of total participants are in MEPs with 10,000 or more participants.⁷²

Furthermore, 98 percent of total participants are in MEPs with 100 or more participants. There are 40 MEPs

holding over \$1 billion in assets each.⁷³ In existing DC MEPs, 89 percent of participants direct all of the

⁶⁸ See Internal Revenue Code (IRC) section 413(c)(2) and 26 CFR 1.413–2(c) of the Income Tax Regulations, which provide that, in determining whether a MEP is for the exclusive benefit of its employees (and their beneficiaries), all employees participating in the plan are treated as employees of each such employer. IRC sections 413(c)(1) and (3) provide that IRC sections 410(a) (participation) and 411 (minimum vesting standards) also are applied as if all employees of each of the employers who maintain the plan were employed by a single employer. Under Treas. Reg. 26 CFR 1.413–2(a)(2), a plan is subject to the requirements of IRC section

413(c) if it is a single plan and the plan is maintained by more than one employer. See generally Treas. Reg. 26 CFR 1.413–1(a)(2), 1.413–2(a)(2), and 1.414(l)–1(b)(1). However, the minimum coverage requirements of IRC section 410(b) and related nondiscrimination requirements are generally applied to a MEP on an employer-by-employer basis.
⁶⁹ “Forms 5500” refers collectively to the Form 5500 (Annual Return/Report of Employee Benefit Plan) and the Form 5500–SF (Annual Return/Report of Small Employee Benefit Plan).

⁷⁰ EBSA performed these calculations using the 2016 Research File of Form 5500 filings. For these purposes, EBSA classified a plan as a MEP if it indicated “multiple employer plan” status on the Form 5500 Part I Line A and if it did not report collective bargaining. The estimates are weighted and rounded, which means they may not sum precisely.
⁷¹ *Id.*
⁷² *Id.*
⁷³ *Id.*

investments, another 8 percent direct the investment of a portion of the assets, and the remainder did not direct the investment of any of the assets.⁷⁴

There are caveats to keep in mind when interpreting the data presented in Table 2 above. For example, under the Department's prior subregulatory guidance, some plans established and maintained by groups of employers that might meet the conditions of the final rule, would have been deemed to be individual plans sponsored by each of the employers in the group. In these circumstances, each participating employer is required to file a Form 5500 just as it would if it established its own plan. These filings are indistinguishable from typical single-employer plans and do not appear in the data set as identifiable multiple employer plans.⁷⁵

As stated earlier in the preamble, PEOs generally are entities that enter into agreements with client employers to perform certain employment responsibilities, such as tax withholding, to the individuals who perform services for the client employers. At the end of 2017, there were 907 PEOs operating in the United States, providing services to 175,000 client employers with 3.7 million employees.⁷⁶ The final rule would allow certain PEOs meeting the requirements of paragraph (c) to sponsor MEPs and offer coverage to their client employers' employees.

This final rule should benefit many workers that might otherwise tend to lack access to high-quality, affordable, on-the-job retirement savings opportunities. These workers include self-employed individuals without paid employees. Although there are other retirement savings vehicles available to these self-employed workers, they are less likely to access and participate in retirement plans. For example, only six percent of self-employed individuals participated in retirement plans in 2013.⁷⁷ The final rule is expected to

provide many of these self-employed workers without employees with a new opportunity to access a retirement plan by joining a MEP. Approximately 8 million self-employed workers between ages 21 and 70, representing 6 percent of all similarly aged workers, have no employees and usually work at least 20 hours per week, and under this rule will become eligible to join MEPs.⁷⁸ These workers are involved in a wide range of occupations: lawyers, doctors, real estate agents, childcare providers, as well as workers who provide on-demand services, often through online intermediaries, such as ride-sharing online platforms. In many respects, the self-employed are quite different from employees in a traditional employer-employee arrangement. For example, self-employed persons often have complex work arrangements—they are more likely to work part-time or hold multiple jobs.⁷⁹ Similarly, some provide on-demand services part-time, or as a second or third job.⁸⁰

On-demand workers, in particular, may face obstacles to saving for retirement. While a number of tax-preferred retirement savings vehicles are already available to them, many might find it difficult and expensive to navigate these options on their own.⁸¹ Relatively few of those workers have access to employer-sponsored retirement plans, one survey found.⁸² According to another survey, many traditional workers who pursue on-demand work on the side do so at least

partly to help them save more for retirement. On the other hand, most of those for whom on-demand work is their main job have less than \$1,000 set aside for retirement.⁸³ MEPs should help raise awareness and ease entry to retirement coverage for broad classes of these workers, such as on-demand drivers.

Electronically mediated workers obtain short jobs or tasks through websites or mobile apps that both connect them with customers and facilitate payment for the tasks. In May 2017, there were approximately 1.6 million electronically mediated workers (1 percent of total employment) including all who performed electronically mediated work for their main job, a second job, or for additional work for pay.⁸⁴ Compared to the overall workforce, electronically mediated workers are more likely to work part-time, more likely to have a bachelor's degree or higher, and more likely to be self-employed, particularly unincorporated self-employed.⁸⁵ Independent contractors were more likely to perform electronically mediated work (6 percent) than workers in traditional employer-employee arrangements (less than 1 percent) in 2017.

Policymakers have expressed concern about how many workers providing on-demand services, and self-employed workers more generally, do not have access to retirement plans and appear to be ill-prepared for retirement. By allowing self-employed individuals who meet the requirements of the final rule to participate in MEPs, the rule will increase their access to retirement plans.

5. Benefits

a. Expanded Access to Coverage

Generally, employees rarely choose to save for retirement outside of the workplace, despite having options to save in tax-favored savings vehicles, such as investing either in traditional IRAs or Roth IRAs. Thus, the availability of workplace retirement plans is a significant factor affecting whether workers save for their retirement. Yet, despite the advantages of workplace retirement plans, access to

Differences and Trends, 2013," *EBRI Issue Brief*, no. 405, October 2014. In this report, the self-employed are mostly unincorporated.

⁷⁸ DOL tabulations of the February 2019 Current Population Survey basic monthly data.

⁷⁹ For tax administrative data, see Emilie Jackson, Adam Looney, and Shanthi Ramnath, "The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage," U.S. Department of Treasury, Office of Tax Analysis, Working Paper 114 (January 2017). For survey data, see the Survey of Business Owners and Self-Employed Persons, 2012 from the Census Bureau at https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=SBO_2012_00CSCBO04&prodType=table.

⁸⁰ "Gig Economy and the Future of Retirement," Betterment, 2018, available at https://www.betterment.com/wp-content/uploads/2018/05/The-Gig-Economy-Freelancing-and-Retirement-Betterment-Survey-2018_edited.pdf.

⁸¹ For related information see, for example, Jonathan Kahler, "Retirement planning in a 'gig economy'," *Vanguard*, June 13, 2018, available at <https://vanguardblog.com/2018/06/13/retirement-planning-in-a-gig-economy/>, which explains that working on demand is "running your own HR department and you're the benefits manager, which means taking sole responsibility for your retirement."

⁸² "Gig Workers in America: Profiles, Mindsets, and Financial Wellness," Prudential, 2017, available at http://research.prudential.com/documents/rp/Gig_Economy_Whitepaper.pdf.

⁸³ "Gig Economy and the Future of Retirement," Betterment, 2018, available at https://www.betterment.com/wp-content/uploads/2018/05/The-Gig-Economy-Freelancing-and-Retirement-Betterment-Survey-2018_edited.pdf. This same survey found, however, that most on-demand workers are paying off debt.

⁸⁴ "Electronically mediated work: New questions in the Contingent Worker Supplement" Monthly Labor Review, September 2018, Bureau of Labor Statistics.

⁸⁵ *Id.*

⁷⁴ *Id.*

⁷⁵ In addition, there are some plans that are erroneously indicating that they are "multiple employer plans" rather than "single-employer plans" under title I of ERISA. These plans may in fact be group or association or PEO-type MEPs that do not meet the conditions of the prior DOL subregulatory guidance. This distorts the database and leads to inaccurate estimates. In particular, the high number of plans erroneously reporting that they are MEPs likely overestimates the number of existing MEPs for purposes of title I of ERISA and underestimates the average size of MEPs.

⁷⁶ Laurie Bassi and Dan McMurrer, "An Economic Analysis: The PEO Industry Footprint in 2018," National Association of Professional Employer Organizations, September 2018, available at <https://www.napeo.org/docs/default-source/white-papers/2018-white-paper-final.pdf?sfvrsn=6>.

⁷⁷ Craig Copeland, "Employment-Based Retirement Plan Participation: Geographic

such plans for employees of small businesses is relatively low. The final rule's expansion of access to certain MEPs enables groups of private-sector employers to participate in a collective retirement plan and provide employers with another efficient way to reduce some costs of offering workplace retirement plans. Thereby, more plan formation and broader availability of such plans should occur, especially among small employers.

The MEP structure addresses significant concerns from employers about the costs of setting up and administering retirement benefit plans. In order to participate in a MEP, employers generally are required to execute a participation agreement or similar instrument setting forth the rights and obligations of the MEP and participating employers. These employers will then participate in a single plan, rather than sponsoring a separate ERISA-covered plan. Therefore the employer group or association or PEO will act as the "employer" sponsoring the MEP within the meaning of section 3(5) of ERISA. That employer group or association or PEO typically will assume the roles of plan administrator and named fiduciary. The individual employers would not be directly responsible for the MEP's overall compliance with ERISA's reporting and disclosure obligations. Accordingly, the MEP structure should address small employers' concerns regarding the cost associated with fiduciary liability of sponsoring a retirement plan by effectively transferring much of the legal risks and responsibilities to professional fiduciaries who would be responsible for managing plan assets and selecting investment menu options, among other things. Moreover, there is potential that more of the fiduciary responsibility will reside where it will be discharged more efficiently by qualified professionals with more skill than otherwise would be expected, which could ultimately lead to greater protection for plan participants and beneficiaries. MEPs as large plans will generally be likely to work with service providers with a high level of specialized expertise. Participating employers' continuing involvement in the day-to-day operations and administration of their MEP generally could be limited to enrolling employees and forwarding voluntary employee and employer contributions to the plan. Thus, participating employers could keep more of their day-to-day focus on managing their businesses, rather than their pension plans.

Congress has repeatedly enacted legislation intended to lower costs, simplify requirements, and ease administrative burdens for small employers to sponsor retirement plans. For example, the Revenue Act of 1978⁸⁶ and the Small Business Job Protection Act of 1996⁸⁷ established the SEP IRA plan and the SIMPLE IRA plan, respectively, featuring fewer compliance requirements than other plan types. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)⁸⁸ included provisions intended to increase access to retirement plans for small businesses by: (1) Eliminating top-heavy testing requirements for safe harbor 401(k) plans, (2) increasing contribution limits for employer-sponsored IRA plans and 401(k) plans, and (3) creating tax credits for small employers to offset new plan startup costs and for individuals within certain income limits who make eligible contributions to retirement plans. Despite these legislative efforts to increase access to retirement savings plans for small employers, as shown in Table 1, above, the percentage of the U.S. workforce participating in a workplace retirement plan remains around 50 percent. Therefore, a critical question is whether MEPs meeting the requirements of the final rule will increase access to workplace retirement plans when other initiatives have had limited effect. Several factors indicate to the Department that they should.

First, the Department believes that employers may be more likely to participate in a MEP sponsored by a PEO, or a group or association of employers, with whom they have a pre-existing relationship based on trust and familiarity. For example, a PEO that performs payroll or human resources services for an employer would have connected information technology infrastructures that would facilitate efficient transfers of employee and employer contributions. Similarly, small employers obtaining health insurance coverage through an AHP sponsored by a group or association may find it convenient and cost effective to establish retirement plans offered by the same group or association. In many cases, the group or association and small employers may link their information technology systems to collect healthcare premiums from participating employers,⁸⁹ and that

infrastructure could also be used to collect retirement contributions, resulting in IT-related start-up costs savings. In addition, small employers and self-employed individuals may encounter fewer administrative burdens if the same group or association administers both their health and retirement plans.

Second, employers may be incentivized to sponsor these plans based on cost savings that may occur when payroll services are integrated with retirement plan record-keeping systems. Several firms in the market already provide payroll services and plan record-keeping services particularly tailored to small employers.⁹⁰ These firms can afford to provide these integrated services at a competitive price, suggesting that integrating these services could lead to some efficiency gains. Since PEOs already provide payroll services to client employers, a MEP sponsored by a PEO can reap the benefits of integrating these services, which can in turn benefit participating employers through lower fees and ease of administration.

As further discussed in the uncertainty section below, the Department does not have sufficient data to determine precisely the likely extent of participation by small employers and the self-employed in MEPs due to the final rule. Nor did the comments submitted in response to the proposed rule offer data on this topic. However, overall, the Department believes that the rule will provide a new valuable option for small employers and the self-employed to adopt retirement savings plans for their employees, which should increase access to retirement plans for many American workers.

b. Reduced Fees and Administration Savings

Many MEPs would benefit from scale advantages that small businesses do not currently enjoy, and the Department expects that MEPs will pass some of the attendant savings onto participating

enhances the ability of unrelated employers to band together to provide health benefits through a single ERISA-covered plan called an AHP. The AHP Rule, which was issued on June 21, 2018, expands access to more affordable, quality health care by amending the definition of "employer" under section 3(5) of ERISA for AHPs. Similar to this rule, the AHP Rule established alternative criteria under ERISA's section 3(5) definition of employer to permit more groups or associations of employers to establish a multiple employer group health plan that is a single employee welfare benefit plan within the meaning of ERISA section 3(1) of ERISA.

⁹⁰ Cerulli Associates, *U.S. Retirement Markets 2016* (available at <https://www.cerulli.com/vapi/public/getcerullifile?fileid=Cerulli-US-Retirement-Markets-2016-Information-Packet>).

⁸⁶ Public Law 95–600, 152, 92 Stat. 2763, 2791.

⁸⁷ Public Law 104–188, 1421, 110 Stat. 1755, 1792.

⁸⁸ Public Law 107–16, 115 Stat. 38.

⁸⁹ In the analogous context of health plans, the Department recently issued a final regulation that

employers and participants.⁹¹ Grouping small employers together into a MEP could facilitate savings through administrative efficiencies (economies of scale) and sometimes through price negotiation (market power). The degree of potential savings may be different for different types of administrative functions. For example, scale efficiencies can be very large with respect to asset management, and may be smaller, but still meaningful, with respect to recordkeeping.

Large scale may create two distinct economic advantages for MEPs. First, as scale increases, marginal costs for MEPs would diminish and MEPs would spread fixed costs over a larger pool of member employers and employee participants, creating direct economic efficiencies. Second, larger scale may increase the negotiating power of MEPs. Negotiating power matters when competition among financial services providers is less than perfect and they can command greater profits than in an environment with perfect competition. Very large plans may sometimes exercise their own market power to negotiate lower prices, translating what would have been higher revenue for financial services providers into savings for member employers and employee participants.

There may be times when scale efficiencies would not translate into savings for small employer members and their employee participants because regulatory requirements applicable to large MEPs may be more stringent than those applicable to most separate small plans. For example, some small plans are exempt from annual reporting requirements, and many others are subject to more streamlined reporting requirements than larger plans. More often, however, the legal status of MEPs as a single large plan will streamline certain regulatory burdens. For example, a MEP can file a single annual return/report and obtain a single bond in lieu of the multiple reports and bonds necessary when other providers of bundled financial services administer many separate plans.

As a result of these two types of scale efficiencies, MEPs operating as a large single plan likely will secure substantially lower prices from financial services companies than such firms would charge separate small employer plans. Asset managers commonly offer proportionately lower prices, relative to assets invested, to larger investors, under so-called tiered pricing practices.

For example, investment companies often offer lower-priced mutual fund share classes to customers whose investments in a fund surpass specified break points.⁹² These lower prices may reflect scale economies in any or all aspects of administering larger accounts, such as marketing, distribution, asset management, recordkeeping, and transaction processing. Large MEPs likely will qualify for lower pricing compared with separate plans of small employers. MEP participants that benefit from lower asset-based fees would enjoy superior investment returns net of fees.

The availability and magnitude of scale efficiencies may be different with respect to different retirement plan services. For example, asset management generally enjoys very substantial large-scale efficiencies. Investors of all kinds generally benefit by investing in large comingled pools. Even within large pools, however, small investors often pay higher prices than larger ones. Mutual funds often charge lower “asset management” fees for larger investors, in both retail and institutional markets. The Department invited but did not receive comments in response to the proposal regarding the degree to which large MEPs would provide small employers with scale advantages in asset management larger than those provided by other large pooled asset management vehicles, such as mutual funds, available to separate small plans.

As with asset management, scale efficiencies often are available with respect to other plan services. For example, the marginal costs for services such as marketing and distribution, account administration, and transaction processing often decrease as customer size increases. MEPs, as large customers, may enjoy scale efficiencies in the acquisition of such services. It is also possible, however, that the cost to MEPs of servicing their small employer-

members may diminish or even offset such efficiencies. Stated differently, MEPs scale efficiencies may not always exceed the scale efficiencies from other providers of bundled financial services used by small employers that sponsor separate plans. For example, small pension plans sometimes incur high distribution costs, reflecting commissions paid to agents and brokers who sell investment products to plans. MEPs, unlike large single-employer plans, must themselves incur some cost to distribute retirement plans to large numbers of small businesses. But relative to traditional agents and brokers, MEPs should reduce costs if they are able to take economic advantage of members’ existing ties to a sponsoring group or association of employers or PEO. This can be a more efficient business model than sending out brokers and investment advisers to reach out to small businesses one-by-one, which could result in lower administrative fees for plan sponsors and participants.

For much the same reason, MEPs sponsored by groups or associations of employers that perform other functions for their members in addition to offering retirement benefits (such as chambers of commerce or trade associations) and PEOs have the potential to realize administrative savings. These existing organizations may already have extensive memberships and relationships with small employers; thus, they may have low marginal costs for recruitment, setup, marketing, and administration. These organizations may have been limited in their ability to offer MEPs to some or all of their existing members and clients (for example, to working owners, workers outside of a common industry, or employers contracting with PEOs) by the Department’s prior subregulatory guidance. Under the requirements of this final rule, however, they can newly provide such members and clients with access to MEPs.

All of this suggests that many MEPs will enjoy scale efficiencies greater than the scale efficiencies available from other providers of bundled financial services. The scale efficiencies of MEPs, however, will still likely be smaller than the scale efficiencies enjoyed by very large single-employer plans. The Department invited but did not receive comments in response to the proposal on the nature, magnitude, and determinants of MEPs’ potential scale advantages, and on the conditions under which MEPs will pass more or less of the attendant savings to different participating employers.

⁹¹ See, e.g., BlackRock, “Expanding Access to Retirement Savings for Small Business,” *Viewpoint* (Nov. 2015).

⁹² Sarah Holden, James Duvall, and Elena Barone Chism, “The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2017,” *ICI Research Perspective* 24: no. 4 (June 2018) (concluding that 401(k) mutual fund investors pay lower expense ratios for a number of reasons, including “market discipline” imposed by performance- and cost-conscious plan sponsors). See also Russel Kinnel, “Mutual Fund Expense Ratio Trends,” Morningstar, (June 2014), at https://corporate.morningstar.com/us/documents/researchpapers/fee_trend.pdf (accessed Aug. 21, 2018) (stating that breakpoints are built into mutual fund management fees so that a fund charges less for each additional dollar managed); Vanguard, “What You Should Know About Mutual Fund Share Classes and Breakpoints,” at <http://www.vanguard.com/pdf/v415.pdf> (stating that investors in certain class shares may be eligible for volume discounts if their purchases meet certain investment levels, or breakpoints).

By enabling MEPs to comprise otherwise unrelated small employers and self-employed individuals (1) who are in the same trade, industry, line of business, or profession, or (2) have a principal place of business with a region that does not exceed the boundaries of the same State or metropolitan area (even if the area includes more than one State), this rule will allow more MEPs to be established and to claim a significant market presence and thereby pursue scale advantages. Consequently,

this rule should extend scale advantages to some MEPs that otherwise might have been too small to achieve them and to small employers and working owners that absent the rule would have offered separate plans (or no plans) but that under this final rule may join large MEPs.

While MEPs' scale advantages may be smaller than the scale advantages enjoyed by very large single-employer plans, it nonetheless is illuminating to consider the deep savings historically enjoyed by the latter. Table 3 shows

how much investment fees vary based on the amount of assets in a 401(k) plan.⁹³ The table focuses on mutual funds, which are the most common investment vehicle in 401(k) plans, and shows that the average expense ratio for several dominant types of mutual funds is much lower for large plans than for smaller plans. And these data show the fees actually paid, rather than the lowest fees available to a plan. It is unclear what features and quality aspects accompanied the fees.

TABLE 3—AVERAGE EXPENSE RATIOS OF MUTUAL FUNDS IN 401(k) PLANS IN BASIS POINTS, 2015

Plan assets	Domestic equity mutual funds	International equity mutual funds	Domestic bond mutual funds	International bond mutual funds	Target date mutual funds	Balanced mutual funds (non-target date)
\$1M–\$10M	81	101	72	85	79	80
\$10M–\$50M	68	85	59	77	68	64
\$50M–\$100M	55	72	44	66	54	50
\$100M–\$250M	52	68	40	64	55	45
\$250M–\$500M	49	63	36	67	50	42
\$500M–\$1B	45	60	33	65	50	39
More than \$1B	36	52	26	65	48	32

Source: Average expense ratios are expressed in basis points and asset-weighted. The sample includes plans with audited 401(k) filings in the BrightScope database for 2015 and comprises 15,110 plans with \$1.4 trillion in mutual fund assets. Plans were included if they had at least \$1 million in assets and between 4 and 100 investment options. BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2015" (March 2018).

There are some important caveats to interpreting Table 3. The first is that it does not include data for most of the smallest plans because, generally, plans with fewer than 100 participants generally are not required to submit audited financial statements because they file a Form 5500–SF. The second is that there is variation across plans in whether and to what extent recordkeeping costs are included in the mutual fund expense ratios paid by participants. In plans where recordkeeping is not entirely included in the expense ratios, it may be paid by employers, as a per-participant fee, or as some combination of these. These caveats mean that the link between fees

and size could be either stronger or weaker than Table 3 suggests, creating some uncertainty about how large an advantage MEPs will offer.

An alternative method of comparing potential size advantages is a broader measure called "total plan cost" calculated by BrightScope.⁹⁴ Total plan cost likely provides a better way to compare costs because, in addition to costs paid in the form of expense ratios, it includes fees reported on the audited Form 5500. It comprises all costs regardless of whether they are paid by the plan, the employer, or the participants. Total plan cost includes recordkeeping services for all plans, for example, which is one reason that it is

a more comparable measure than the data presented above in Table 3. When plans invest in mutual funds and similar products, BrightScope uses expense data from Lipper, a financial services firm. When plans invest in collective investment trusts and pooled separate accounts, BrightScope generates an estimate of the investment fees.

Using total plan cost yields generally very similar results about the cost differences facing small and large plans. Table 4 shows that very few of the smaller plans are enjoying the low fees that are commonplace among larger plans.⁹⁵

TABLE 4—LARGER PLANS TEND TO HAVE LOWER FEES OVERALL

Plan assets	Total plan cost (in basis points)		
	10th percentile	Median	90th percentile
\$1M–\$10M	75	111	162
\$10M–\$50M	61	91	129
\$50M–\$100M	37	65	93
\$100M–\$250M	22	54	74
\$250M–\$500M	21	48	66

⁹³ Average expense ratios are expressed in basis points and asset-weighted. The sample includes plans with audited 401(k) filings in the BrightScope database for 2015 and comprises 15,110 plans with \$1.4 trillion in mutual fund assets. Plans were included if they had at least \$1 million in assets and

between 4 and 100 investment options. BrightScope/ICI, "The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2015" (March 2018).

⁹⁴ *Id.*

⁹⁵ *Id.* Data is plan-weighted. The sample is plans with audited 401(k) filings in the BrightScope database for 2015, which comprises 18,853 plans with \$3.2 trillion in assets. Plans were included if they had at least \$1 million in assets and between 4 and 100 investment options.

TABLE 4—LARGER PLANS TEND TO HAVE LOWER FEES OVERALL—Continued

Plan assets	Total plan cost (in basis points)		
	10th percentile	Median	90th percentile
\$500M–\$1B	21	43	59
More than \$1B	14	27	51

Source: Data is plan-weighted. The sample is plans with audited 401(k) filings in the BrightScope database for 2015, which comprises 18,853 plans with \$3.2 trillion in assets. Plans were included if they had at least \$1 million in assets and between 4 and 100 investment options. BrightScope/ICI, “The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2015” (March 2018).

Deloitte Consulting LLP conducted a survey of 361 defined contribution plans for the Investment Company Institute. The study calculates an “all-in” fee that is comparable across plans including both administrative and investment fees paid by the plan and the participant. Generally, small plans with 10 participants are paying approximately 50 basis points more than plans with 1,000 participants.⁹⁶ Small plans with 10 participants are paying about 90 basis points more than large plans with 50,000 participants. Deloitte predicted these estimates by analyzing the survey results using a regression approach calculating basis points as a share of assets.

These research findings have shown that small plans and their participants generally pay higher fees than large plans and their participants. Because this rule will give many small employers the opportunity to join a MEP, some of which are very large plans, many of these employers will likely incur lower fees. Many employers that are not currently offering any retirement plan may join a MEP, leading their employees to save for retirement. Many employers already sponsoring a retirement plan might decide to join a MEP instead, seeking lower fees and reduced fiduciary liability exposure. If there indeed are lower fees in the MEPs than in their previous plans, those lower fees could translate into higher savings.

c. Reporting and Audit Cost Savings

The potential for MEPs to enjoy reporting cost savings merits separate attention because it is shaped not only by economic forces but also by the reporting requirements applicable to different plans. On the one hand, a MEP that is a large, single plan can file a single report and conduct a single audit, while separate plans may be required to file separate reports and conduct separate audits. On the other hand, a MEP that is a large plan is generally

subject to more stringent reporting and audit requirements than a small plan, which likely files no or streamlined reports and undergoes no audits. Therefore with respect to reporting and audits, MEPs generally can offer substantial savings to employers that would otherwise be subject to stringent reporting and audit requirements in their own plan and modest savings to small employers that would not be subject to such requirements. In fact, under some circumstances small employers might actually incur slightly higher reporting and audit costs by joining a MEP. This cost increase may still be offset by benefits described in other sections. From a broader point of view, if auditing becomes more prevalent because small employers join MEPs, that would lead to more and better quality data that would improve security for employers, participants and beneficiaries.

Sponsors of ERISA-covered retirement plans generally must file a Form 5500 annually, including all required schedules and attachments. The cost burden incurred to satisfy the Form 5500 related reporting requirements varies by plan type, size, and complexity. Analyzing the 2016 Form 5500 filings, the Department estimates that the average cost to file the Form 5500 is as follows: \$276 Per filer for small (generally fewer than 100 plan participants) single-employer DC plans eligible for Form 5500–SF, \$435 per filer for small single-employer DC plans *not* eligible to file Form 5500–SF, and \$1,686 per filer for large (generally 100 participants or more) single-employer DC plans.

Additional schedules and reporting may be required for large and complex plans. For example, large retirement plans are required to attach auditor’s reports with Form 5500. Most small plans are not required to attach such reports.⁹⁷ Hiring an auditor and

obtaining an audit report can be costly for plans, and audit fees may increase as plans get larger or more complex. A recent report states that the fee to audit a 401(k) plan ranges between \$6,500 and \$13,000.⁹⁸ One comment letter responding to the proposal reported that their audit cost \$24,000.⁹⁹ Incorporating the comment, the Department adjusted the estimated audit cost range.¹⁰⁰ The Department uses the intermediate value of \$13,000 as the estimated audit cost in order to calculate cost savings estimates.

If an employer joins a MEP, it can save some costs associated with filing Form 5500 and fulfilling audit requirements because a MEP is a single plan. Thus, one Form 5500 and audit report will satisfy the reporting requirements. This means each participating employer would not need to file its own, separate Form 5500 and, for large plans or those few small plans that do not meet the small plan audit waiver, an audit report. According to a GAO report, most of the association MEPs that they interviewed had over 100 participating employers.¹⁰¹ PEOs also tend to have a large number of client employers, at least 400 participating employers in their PEO-sponsored DC plans.¹⁰² Assuming reporting costs are equally shared by participating employers within a MEP, an employer joining a MEP can save virtually all the reporting costs discussed above. As PEOs seem to have, on average, more participating employers than associations, an employer might save slightly more by joining a PEO MEP compared to joining

small plans that filed the Form 5500 and not the Form 5500–SF submitted audit reports as part of their Form 5500 filing.

⁹⁸ See <https://www.thayerpartnersllc.com/blog/the-hidden-costs-of-a-401k-audit>.

⁹⁹ See comment letter #6 Employers Association of New Jersey, EAJN.

¹⁰⁰ In estimating the range of the audit cost, \$6,500 is assumed to be a lower end, \$24,000 is assumed to be a higher end, and \$13,000 is assumed to be a good intermediate estimate.

¹⁰¹ U.S. Government Accountability Office, GAO–12–665, “Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans,” (Sept. 2012) (<https://www.gao.gov/products/GAO-12-665>).

¹⁰² *Id.*

⁹⁶ Deloitte Consulting and Investment Company Institute, “Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the ‘All-in’ Fee” (Aug. 2014).

⁹⁷ Under certain circumstances, some small plans may still need to attach auditor’s reports. For more details, see <https://www.dol.gov/sites/default/files/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2017-instructions.pdf>. In 2015, approximately 3,600

a group or association MEP, but the additional savings are minimal.¹⁰³ Large plans could enjoy even higher cost savings if audit costs are taken into account. The Department estimates that reporting cost savings associated with Form 5500 and an audit report would be approximately \$14,539 per year for a large plan joining an association MEP and \$14,649 per year for a large plan joining a PEO MEP.¹⁰⁴

The extent to which small plans experience costs savings from joining a MEP may not be as large as discussed above.¹⁰⁵ This is because small plans eligible for Form 5500-SF bear relatively less burden and generally are not required to conduct audits. By joining a MEP, however, those small plans would share the MEP's cost of audits and more complicated Form 5500 filings. For lower audit costs or for small plans not eligible to file Form 5500-SF, joining a MEP could yield higher savings.

Similarly, it is less clear whether the self-employed will experience large reporting cost savings by joining a MEP. The Department estimates these potential cost savings by comparing the reporting costs of an employer that participates in a MEP rather than sponsoring its own plan. Several retirement savings options are already available for self-employed persons and most have minimal or no reporting requirements. For example, both SEP

IRA and SIMPLE IRA plans are available for small employers and the self-employed, and neither option requires Form 5500 filings.¹⁰⁶ Solo 401(k) plans are also available for self-employed persons, and they may be exempt from Form 5500-EZ reporting requirement if the plans assets are less than \$250,000.¹⁰⁷ Thus, if self-employed individuals join a MEP, they will be unlikely to realize reporting costs savings. In fact, it is possible that their reporting costs will slightly increase, because the self-employed would share reporting costs with other MEP participating employers that they otherwise would not incur.

Compared to the alternative of sponsoring single-employer plans, joining a MEP may not save small employers and the self-employed as much as larger employers. Reporting and audit costs, however, are only a part of the costs associated with providing retirement plans. As discussed in other sections, MEPs provides participating employers with other benefits and cost savings. Employers will decide whether to join MEPs based on a broad array of factors.

The Department's estimated reporting and audit cost savings is based on the assumption that all participating employers share costs equally regardless of their size. Thus, these estimated cost savings imply how much, on average, participating employers would save in reporting and audit costs. If a MEP adopts a fee arrangement where costs are distributed among participating employers according to their size, smaller employers could experience higher reporting cost savings than those estimated above. One commenter supported a tiered pricing arrangement over a level fee arrangement, making the assertion that tiered pricing leads to a more equitable distribution among participating employers.¹⁰⁸

¹⁰⁶ SEPs that conform to the alternative method of compliance in 29 CFR 2520.104-48 or 2520.104-49 do not have to file a Form 5500; SIMPLEs do not have to file. For more detailed reporting requirements for SEPs and SIMPLE IRAs, see https://www.irs.gov/pub/irs-tege/forum15_sep_simple_avoiding_pitfalls.pdf; see also <https://www.irs.gov/retirement-plans/retirement-plans-for-self-employed-people>.

¹⁰⁷ Sometimes solo 401(k) is called as "individual 401(k)," or "one-participant 401(k)" or "uni-401(k)." For more information about solo-401(k) plans, including reporting requirements, see <https://www.irs.gov/retirement-plans/one-participant-401k-plans>. Because solo 401(k) plans do not cover any common law employees, they are not required to file an annual report under title I of ERISA, but must file a return under the Code. Such plans may be able to file a Form 5500-SF electronically to satisfy the requirement to file a Form 5500-EZ with the IRS.

¹⁰⁸ See comment letter #47 Slavic 401K.

d. Reduced Bonding Costs

The potential for bonding cost savings in MEPs merits separate attention. As noted above, ERISA section 412 and related regulations¹⁰⁹ generally require every fiduciary of an employee benefit plan and every person who handles funds or other property of such plan to be bonded. ERISA's bonding requirements are intended to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons who handle plan funds or other property, generally referred to as plan officials. A plan official must be bonded for at least 10 percent of the amount of funds he or she handles, subject to a minimum bond amount of \$1,000 per plan with respect to which the plan official has handling functions. In most instances, the maximum bond amount that can be required under ERISA with respect to any one plan official is \$500,000 per plan; however, the maximum required bond amount is \$1,000,000 for plan officials of plans that hold employer securities.¹¹⁰

Under the final rule, MEPs generally should enjoy lower bonding costs than would an otherwise equivalent collection of smaller, separate plans, for two reasons. First, it might be less expensive to buy one bond covering a large number of individuals who handle plan funds than a large number of bonds covering the same individuals separately or in smaller more numerous groups. Second, the number of people handling plan funds and therefore subject to ERISA's bonding requirement in the context of a MEP may be smaller than in the context of an otherwise equivalent collection of smaller, separate plans.

e. Increased Retirement Savings

The various effects of this final rule should lead in aggregate to increased retirement savings. As discussed above, many workers likely will go from not having any access to a retirement plan to having access through a MEP. This has the potential to result in an increase in retirement savings, on average, for this group of workers. While some workers may choose not to participate, surveys indicate that a large number could. For a defined contribution pension plan, about 73 percent of all workers with access take up the plan.¹¹¹

¹⁰⁹ 29 CFR 2550.412-1 and 29 CFR part 2580.

¹¹⁰ See DOL Field Assistance Bulletin 2008-04, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2008-04>.

¹¹¹ These statistics apply to private industry. U.S. Bureau of Labor Statistics, National Compensation Survey, Employee Benefits in the United States (March 2018).

¹⁰³ In terms of cost savings associated with Form 5500 filings without accounting for audit costs, cost savings for small single-employer DC plans filing Form 5500-SF would be \$259.50 per filer if it joins an association-sponsored MEP or \$272.15 per filer if it joins a PEO-sponsored MEP; for small single employer DC plans not eligible for Form 5500-SF cost savings would be \$417.76 per filer if it joins an association-sponsored MEP as opposed to \$430.40 per filer if it joins a PEO-sponsored MEP; for large single employer DC plans cost savings would be \$1,668.91 per filer if it joins an association-sponsored MEP as opposed to \$1,681.55 per filer if it joins a PEO-sponsored MEP.

¹⁰⁴ These are estimated using an estimated audit cost of \$13,000. If the lower end of the audit cost, \$6,500 is assumed, then the estimated annual cost savings are \$8,104 per filer (for an association MEP) or \$8,165 per filer (for a PEO MEP). If the information provided by the commenter, \$24,000, is assumed as the audit cost, then the estimated annual cost savings significantly increase to \$25,429 per filer (for an association MEP) or \$25,622 per filer (for a PEO MEP).

¹⁰⁵ For example, assuming audit costs of \$13,000, then a small plan eligible for Form 5500-SF would save \$130 by joining an association MEP or \$240 by joining a PEO MEP. If the lower-end audit cost of \$6,500 is assumed, a small plan eligible for Form 5500-SF would save \$195 by joining an association MEP or \$256 by joining a PEO MEP. If the higher-end audit costs, \$24,000 is assumed, a small plan eligible for Form 5500-SF would save \$20 by joining an association MEP or \$212 by joining a PEO MEP. In general, a small plan not eligible to file Form 5500-SF would experience higher cost savings than a small plan eligible to file Form 5500-SF.

Among workers whose salary tends to be in the lowest 10 percent of the salary range, this figure is about 40 percent.¹¹² One reason that these take-up rates are relatively high is that many plans use automatic enrollment to enroll newly hired workers, as well as, sometimes, existing workers. Automatic enrollment is particularly prevalent among large plans; in 2017 about 74 percent of plans with 1,000–4,999 participants use automatic enrollment, while only about 27 percent of plans with 1–49 participants do.¹¹³ MEPs often allow participating employers to decide whether they want to use automatic enrollment and to select their other plan design features. It is unclear, however, whether employers participating in MEPs formed under this final rule will be more likely than employers sponsoring single-employer DC plans to use automatic enrollment.

Some workers may be saving in an IRA, either in an employer-sponsored IRA, payroll deduction IRA, or on their own. If they begin participating in a MEP 401(k), they would have the opportunity to take advantage of higher contribution limits, and some might begin receiving employer contributions.

In general, MEPs could offer participants a way to save for retirement with lower fees. In particular, the fees are likely to be lower than in most small plans and in retail IRAs. The savings in fees could result in higher investment returns and thus higher retirement savings.

f. Improved Portability

In an economy where workers may change jobs many times over their career, portability of retirement savings is an important feature that can help workers keep track of their savings, retain tax-qualified status, and gain access to the investment options and fees that they desire. Some plan sponsors are not willing to accept rollovers from other qualified plans, which impedes portability. This is seen more often among small plan sponsors that do not want to confront the administrative burden and complexity associated with processing rollovers.¹¹⁴

While some MEPs may allow participating employers to choose whether to accept rollovers from other qualified plans, it is likely that more participating employers will be willing to do so since the MEP sponsor will handle the administration. It is also possible that some MEPs will be designed such that all participating employers accept rollovers. Moreover, MEPs could facilitate increased portability for employees that leave employment to work for another employer that adopted the same MEP.¹¹⁵ This might occur when the employers that adopted the MEP are in the same industry or are located in the same geographic area.

g. Increased Labor Market Efficiency

The increased prevalence of MEPs would allow small employers the opportunity to offer retirement benefits that are comparable to those provided by large employers. Since employees value retirement benefits, this development would tend to shift talented employees toward small businesses. Such a shift would make small businesses more competitive. The reallocation of talent across different sectors of the economy would increase efficiency.¹¹⁶

h. Improved Data Collection

This final rule also has the potential to improve the Department's data collection for purposes of ERISA enforcement. As noted above, the expansion of MEPs is likely to lead some employers who currently file their own Forms 5500¹¹⁷ as participating employers in a MEP to belong to a MEP that files a single Form 5500. Since MEPs are usually large plans, they likely will have a much more detailed filing with the associated schedules including an audit report. This filing will tend to contain higher quality, more accurate data than the Department currently receives when a collection of participating employers files as single-employer plans. That is because (1) the required filing for plans with more than 100 participants requires more detail and (2) participating employers will be

included in an audit when they were not previously. The same situation occurs when a small employer who is currently sponsoring a single-employer plan joins a large MEP in the future. When auditing becomes more prevalent, the increased oversight should help to prevent fraud and abuse. On the whole, the final rule will lead to more robust data collection for the Department to use in conducting its research, oversight, and enforcement responsibilities under ERISA.

The Department also believes that this final rule will substantially improve the quality of information the Department collects. For example, the Department has encountered instances of participating employers in a MEP filing separate Forms 5500 that fail to account properly for each employer's financial and demographic information on a granular enough level to accurately report its proportion of the whole MEP. The Department has at times received identical filings for each participating employer within a MEP. This duplication can lead to an overstatement or understatement of participant counts, amount of assets, amount of fees, and other important financial and demographic data for the participating employers in some MEPs.

6. Costs

The final rule does not impose any direct costs because it merely clarifies which persons may act as an "employer" within the meaning of section 3(5) of ERISA in sponsoring a MEP. The rule imposes no mandates but rather is permissive relative to baseline conditions. Concerns have been expressed, however, that MEPs could be vulnerable to abuse, such as fraud, mishandling of plan assets or charging excessive fees. Abuses might result from the fact that employers are not directly overseeing the plan. For example, employers acting as plan sponsors of single-employer plans can be effective fiduciaries as they have incentives to protect their plans. In the case of a MEP, however, an adopting employer will have limited fiduciary duties and may assume other participating employers are more thoroughly policing the plan. In fact, GAO found that some MEPs' marketing materials, and even MEP representatives, mislead employers about fiduciary responsibilities with claims that joining a MEP removes their fiduciary responsibility entirely.¹¹⁸ Less

¹¹² *Id.*

¹¹³ Plan Sponsor Council of America, "61st Annual Survey of Profit Sharing and 401(k) Plans, Reflecting 2017 Plan Experience" (2018), Table 111.

¹¹⁴ A survey of plan sponsors indicates that in 2017, about 86 percent of 401(k) plans with 1–49 participants accepted rollovers from other plans. Among larger plans, the figure is higher; for example, approximately 97 percent of plans with 1,000–4,999 participants accept rollovers. The full details are more complex because many 401(k) plans responding yes accept rollover from some sources, such as another 401(k) plan, but not others, such as a defined benefit pension or an IRA. *Id.*, Table 37.

¹¹⁵ Paul M. Secunda, "Uber Retirement," Marquette Law School Legal Studies Paper No. 17–1, (Jan. 2017).

¹¹⁶ John J. Kalamarides, Robert J. Doyle, and Bennett Kleinberg, "Multiple Employer Plans: Expanding Retirement Savings Opportunities," Prudential (Feb. 2017).

¹¹⁷ Although the participating employers are filing their own Forms 5500 (or Forms 5500-SF), the MEP may be providing Form 5500 preparation and filing services for all the participating employers and be acting as a "batch submitter" and otherwise taking advantage of certain economies of scale.

¹¹⁸ U.S. Government Accountability Office, GAO, "12–665, 'Private Sector Pensions—Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans,'" (Sept. 2012) (<https://www.gao.gov/products/GAO-12-665>).

monitoring provides an environment where abuses can occur. On the other hand, having multiple participating employers monitoring a MEP plan sponsor may actually lead to heightened protections for the collective.

MEPs have the potential to build up a substantial amount of assets quickly, particularly where employers that already offer plans join MEPs and transfer existing retirement assets to the MEP, thus making them a target for fraud and abuse. Because the assets are used to fund future retirement distributions, such fraudulent schemes could be hidden or difficult to detect for a long period. A 2012 GAO report regarding federal oversight of data and coordination of MEPs discusses potential abuses by MEPs, such as charging excessive fees or mishandling plan assets.¹¹⁹ If MEPs are at greater risk for fraud and abuse than single-employer plans, and some employers who are currently sponsoring single-employer retirement plans decide to join a MEP more participants and their assets could be at greater risk of fraud and abuse. But single-employer DC plans are also vulnerable to these abuses and to mismanagement, and some MEPs may be more secure than some single-employer plans. The Department is not aware of any direct information indicating whether the risk for fraud and abuse is greater for MEPs than other plans, nor did it receive information on this topic in the comments submitted in response to the proposal. Many small employers have relationships based on trust with trade associations that the Department expects to sponsor MEPs under the final rule, and those associations have an interest in maintaining these trust relationships by ensuring that fraud does not occur in MEPs they sponsor. Nevertheless, employers exercise a fiduciary duty in choosing to begin and continue participating in a MEP and should exercise appropriate care, prudence, and loyalty to ensure that the MEP is sponsored and operated by high quality, reputable providers.

The Department does not have a basis to believe that there will be increased risk of fraud and abuse due to the final rule's PEO provisions. As stated earlier in the preamble, the final rule requires PEOs to have substantial control over the functions and activities of the MEP, as the plan sponsor (within the meaning of section 3(16)(B) of ERISA), the plan administrator (within the meaning of section 3(16)(A) of ERISA), and a named fiduciary (within the meaning of section 402 of ERISA). Requiring PEOs to act as

MEP fiduciaries mitigates fraud concerns related to the expansion of PEO-sponsored plans, because the final rule ensures that PEOs will assume ERISA fiduciary status and bear all associated responsibilities.

7. Transfers

Several transfers are possible as a result of this final rule. To the extent the expansion of MEPs leads employers that previously sponsored other types of retirement plans to terminate or freeze these plans and adopt a MEP, there may be a transfer between the employer and the employees, although the direction of the transfer is unclear. Additionally, if employers terminate or freeze other plans to enroll in a MEP, and if that MEP utilizes different service providers and asset types than the terminated plan, those different service providers would experience gains or losses of income or market share. Service providers that specialize in providing services to MEPs might benefit at the expense of other providers who specialize in providing services to small plans.

The rule could also result in asset transfers if MEPs invest in different types of assets than small plans. For example, small plans tend to rely more on mutual funds, while larger plans have greater access to other types of investment vehicles such as bank common collective trusts and insurance company pooled separate accounts, which allow for specialization and plan specific fees. This movement of assets could see profits move from mutual funds to other types of investment managers.

Finally, the Code generally gives tax advantages to certain retirement savings over most other forms of savings.¹²⁰ Consequently, all else being equal, a worker who is saving money in tax qualified retirement savings vehicles generally can enjoy higher lifetime consumption and wealth than one who does not. The magnitude of the relative advantage generally depends on the worker's tax bracket, the amount contributed to the plan, the timing of contributions and withdrawals, and the investment performance of the assets in the account. Workers that do not contribute to a qualified retirement

savings vehicle due to lack of access to a workplace retirement plan do not reap this relative advantage. This rule would likely increase the number of American workers with access to a tax-qualified workplace retirement plan, which would spread this financial advantage to some people who are not currently receiving it. If access to retirement plans and savings increase as a result of this final rule, a transfer will occur flowing from all taxpayers to those individuals receiving tax preferences as a result of new and increased retirement savings.

8. Impact on the Federal Budget

The effects of the rule on the federal budget are uncertain. Because the rule increases access to retirement plans, retirement savings likely also will increase. Given the tax deferral associated with retirement savings, tax revenues would likely decrease in the short run. The vast majority of dollars being contributed to defined contribution plans are pre-tax rather than Roth contributions. Pre-tax contributions include approximately 95 percent of participant contributions¹²¹ and all employer contributions. To the degree that Roth contributions may become more common in the future, there would be less short-term reduction in federal revenue.

If people begin saving more for retirement, it is unclear if that would be accompanied by people consuming less, taking on more debt, saving less in nonretirement accounts, or saving less for retirement during future working years. Consequently, the long run net changes in consumption and investment, and the effect on the federal budget, are uncertain.

9. Uncertainty

As discussed above, the Department expects this rule to expand workers' access to employment-based retirement plans by easing the burden of offering retirement benefits for employers—particularly small employers. However, the exact extent to which access to employment-based retirement plans will increase under this final rule is uncertain.

Several reports suggest that, although important, employers may not consider offering retirement plans a priority as compared to other types of benefits. The most commonly offered benefit is paid leave, followed by health insurance; retirement plans rank third.¹²² This

¹²⁰ Employer contributions to qualified pension plans and, generally, employee contributions made at the election of the employee through salary reduction are not taxed until distributed to the employee, and income earned on those amounts is not taxed until distributed. The tax expenditure for "net exclusion of pension contributions and earnings" is computed as the income taxes forgone on current tax-excluded pension contributions and earnings less the income taxes paid on current pension distributions.

¹²¹ This estimate refers to 2014, the most recent year available. IRS, Statistics of Income Division, Form W-2 study, February 2018, Table 7.A.

¹²² Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2017" (May 2018).

¹¹⁹ *Id.*

order holds true for small employers, as well.¹²³ Another survey of employers confirms that small employers offer health insurance more often than retirement plans.¹²⁴ That study also suggests that company earnings and the number of employees affect the decision of whether or not to offer retirement plans. Employers that experience increases in earnings or the number of employees are more likely to offer retirement plans.¹²⁵ The top reason provided for employers to start offering a retirement plan is an increase in business profits.¹²⁶ Similarly, in another survey, employers not offering retirement plans cited “the company is not big enough” most frequently as the reason.¹²⁷ Although this rule will make it easier and less costly for employers to offer a workplace retirement savings vehicle, these surveys suggest that small employers are not likely to adopt a MEP unless their business is in a strong financial position and generating sufficient revenue streams. Also, it can be quite challenging for a small employer or self-employed individual to determine which plan is most appropriate. Business owners must understand the characteristics and features of the available options in order to choose the most suitable plan. A discussion of some of these options and their features follows.

SEP: Simplified Employee Pensions can be established by sole proprietors, partnerships, and corporations to provide retirement plan coverage to employees. SEPs must be offered to all employees who are at least 21 years old, were employed by the employer in three out of the last five years, and received compensation for the year (\$600 for 2019¹²⁸).

SEPs are completely employer funded and they cannot accept employee contributions.¹²⁹ Each year the employer can set the level of contributions it wants to make, if any. The employer usually makes a contribution to each eligible employee's

IRA (referred to as a SEP-IRA) that is equal to the same percentage of salary for each employee. The annual per-participant contribution cannot exceed the lesser of 25 percent of compensation or \$56,000 in 2019.¹³⁰

Participants can withdraw funds from their SEP-IRA at any time subject to federal income taxes. A 10 percent additional tax may apply if the employee is under age 59½. Participants cannot take loans from their SEP-IRAs.

Generally, these plans are easy to set up; the business owner may use IRS Form 5305-SEP to establish the plan, and in some circumstances there are no set-up fees or annual maintenance charges. SEPs normally do not have to file a Form 5500.

SIMPLE IRA Plan: The Savings Incentive Match Plan for Employees of Small Employers allows businesses with fewer than 100 employees to establish an IRA (referred to as a SIMPLE IRA) for each employee. The employer must make the plan available to all employees who received compensation of at least \$5,000 in any prior two years and are reasonably expected to earn at least \$5,000 in the current year. In 2019, employees are allowed to make salary deferral contributions up to the lesser of 100 percent of compensation or \$13,000.¹³¹ Employees 50 or older may also make additional (“catch-up”) contributions of up to \$3,000.¹³² The employer also must generally make a matching contribution dollar-for-dollar for employee contributions up to three percent of compensation (or a nonelective contribution set at two percent of compensation up to no more than \$280,000 of compensation in 2019).¹³³

Participants can withdraw funds from their SIMPLE IRAs at any time subject to federal income taxes. A 25 percent additional tax may apply to withdrawals occurring within two years of commencing participation, if the participant is under age 59½. A 10 percent additional tax may apply after the two-year period, if the participant is under age 59½. Participants cannot take loans from their SIMPLE IRAs.

Similar to SEPs, SIMPLE IRA plans are easy to set up and have few administrative burdens. The employer may use IRS Form 5304-SIMPLE or 5305-SIMPLE to set up the plan, and there is no annual filing requirement for the employer. Banks or other financial

institutions handle most of the paperwork. Similar to SEPs, some companies offer to set up SIMPLE IRA plans with no set-up fees or annual maintenance charges.

Payroll Deduction IRAs: An easy way for small employers to provide their employees with an opportunity to save for retirement is by establishing payroll deduction IRAs. Many people not covered by a workplace retirement plan could save through an IRA, but do not do so on their own. A payroll deduction IRA at work can simplify the process and encourage employees to get started. The employer sets up the payroll deduction IRA program with a bank, insurance company or other financial institution. Then each employee chooses whether to participate and if so, the amount of payroll deduction for contribution to the IRA. Employees are always 100 percent vested in (have ownership in) all the funds in their IRAs. Participant loans are not permitted. Withdrawals are permitted anytime, but they are subject to income tax (except for certain distributions from Roth IRAs and the portion of a distribution that constitutes the distribution of after-tax contributions from nondeductible IRAs). A 10 percent additional tax may apply if the employee is under age 59½.

Employees' contributions are limited to \$6,000 for 2019.¹³⁴ Additional “catch-up” contributions of \$1,000 per year are permitted for employees age 50 or over.¹³⁵ Employees control where their money is invested and also bear the investment risk.

Payroll deduction IRAs are not covered by ERISA if:

- No contributions are made by the employer;
- Participation is completely voluntary for employees;
- The employer's sole involvement in the program is to permit the IRA provider to publicize the program to employees without endorsement, to collect contributions through payroll deductions, and to remit them to the IRA provider; and
- The employer receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions.¹³⁶

Solo 401(k): Self-employed individuals with no employees other than themselves and their spouses may establish a 401(k) plan, colloquially referred to as a solo 401(k). As an

¹²³ The Pew Charitable Trusts, “Employer Barriers to and Motivations for Offering Retirement Benefits,” 2017.

¹²⁴ Transamerica Center for Retirement Studies, “All About Retirement: An Employer Survey, 17th Annual Transamerica Retirement Survey” (Aug. 2017).

¹²⁵ The Pew Charitable Trusts, “Employer Barriers to and Motivations for Offering Retirement Benefits,” 2017.

¹²⁶ *Id.*

¹²⁷ Transamerica Center for Retirement Studies, “All About Retirement,” 2017.

¹²⁸ IRS Notice 2018-83, 2018-47 I.R.B. 774 (11/19/2018).

¹²⁹ This rule does not apply to a SEP in effect on December 31, 1996, if the SEP provided for pre-tax employee contributions (commonly referred to as a SARSEP) as of that date.

¹³⁰ IRS Notice 2018-83, 2018-47 I.R.B. 774 (11/19/2018).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ IRC section 219(b)(5)(B).

¹³⁶ 29 CFR 2510.3-2(d).

employee, a self-employed individual may make salary deferrals up to the lesser of 100 percent of compensation or \$19,000 in 2019.¹³⁷ They also can make nonelective contributions up to 25 percent of compensation provided that, when added to any salary deferrals, the total contribution does not exceed the lesser of 100 percent of a participant's compensation or \$56,000¹³⁸ (for 2019). In addition, those aged 50 or older can make additional ("catch-up") contributions of up to \$6,000.

Withdrawals are permitted only upon the occurrence of a specified event (retirement, plan termination, etc.), and they are subject to federal income taxes. A 10 percent additional tax may apply if the participant is under age 59½. The plan may permit loans and hardship withdrawals.

Solo 401(k) plans are more administratively burdensome than other types of plans available to small employers. A model form is not available to establish the plan. A Form 5500 must be filed when plan assets exceed \$250,000.

Credit for Pension Start-Up Costs: A tax credit is available for small employers to claim part of the ordinary and necessary costs to start a SEP, SIMPLE IRA, or 401(k) plan. To be eligible for the credit, an employer must have had no more than 100 employees who received at least \$5,000 of compensation from the employer during the tax year preceding the first credit year. The credit is limited to 50 percent of the qualified cost to set up and administer the plan, up to a maximum of \$500 per year for each of the first three years of the plan.¹³⁹

Saver's Credit: A nonrefundable tax credit for certain low- and moderate-income individuals, including self-employed individuals, who contribute to their plans is also available. The amount of the Saver's Credit is 50 percent, 20 percent, or 10 percent of the participant's contribution to an IRA, or an employer-sponsored retirement plan such as a 401(k), depending on the individual's adjusted gross income (reported on Form 1040 series return). The maximum annual contribution eligible for the credit is \$2,000 (\$4,000 if married filing jointly).¹⁴⁰

Discussion: The options discussed above may better serve an employer's needs than a MEP would in some circumstances. Some companies offer to

set up solo 401(k) plans with no set-up fees.¹⁴¹ Despite these currently available options for self-employed workers, about 94 percent of self-employed workers did not participate in retirement plans in 2013.¹⁴² Although these low levels of take-up with these other options create some uncertainty that this rule will persuade many self-employed individuals to join a MEP, this uncertainty alone is no basis to ignore MEPs' potential to improve the retirement preparedness of America's workers.

SEP and SIMPLE IRA plans, for example, could meet the needs of many small employers. As discussed above, they are easy to set up and have low start-up and administrative costs. Furthermore, small employers can claim tax credits for part of the costs of starting up SEP or SIMPLE IRA plans, and certain employees may take advantage of the Saver's Credit. Despite these advantageous features, these plans did not gain much traction in the market. It is possible that, similar to existing options, MEPs will only be modestly attractive to small employers, resulting in only a small increase in retirement coverage.

In addition to these plan options, there are other ways that existing small employers can offer retirement plans at low costs. For micro plans with assets less than \$5 million, employers can use providers of bundled financial services that include both payroll and recordkeeping services on their 401(k) products. In 2016, about 69 percent of plans with less than \$1 million in assets used these bundled providers.¹⁴³ Given that multiple low-cost options already exist for small employers, the Department is uncertain to what degree small employers and their workers would benefit from also having the option to join various MEPs, but it expects that the increased availability of plans will provide these employers and their workers with greater access to retirement plans.

Although this rule would ease the burden on employers, particularly small employers, in offering retirement plans for their workers, it is uncertain how many more employers would offer retirement plans to their workers and how many more employees would chose to participate in those retirement plans. To begin, workers employed by

small employers not offering retirement plans tend to be younger workers, lower-paid workers, part-time workers, or immigrants,¹⁴⁴ characteristics that at least one survey suggests reduce the lack of demand for retirement benefits.¹⁴⁵ Indeed, one study found that large employers not sponsoring retirement plans tend to have similar characteristics among their employees: Higher proportions of part-time or part-year employees, younger employees, employees with lower earnings, and employees with less education.

Several additional factors may influence employer participation in expanded or newly established MEPs. For large employers, even though the potential cost savings associated with filing Form 5500s and audit reports discussed earlier can be substantial, the savings may not be large enough to persuade them to join a MEP. Switching from an existing well-established plan to a MEP could be a difficult and costly procedure in the short term.

In summary, there are many challenges and inherent uncertainties associated with efforts to expand the coverage of retirement plans, but this final rule would provide another opportunity for small employers and the self-employed to adopt a retirement savings plan. By reducing some of the burdens associated with setting up and administering retirement plans, this final rule should lower costs and encourage employers, particularly small employers, to establish a retirement savings plan for their workers.

10. Regulatory Alternatives

As required by E.O. 12866, the Department considered various alternative approaches in developing this final rule, which are discussed below.

Covering Other Types of MEPS: Executive Order 13847 called on the Department to consider whether businesses or organizations other than groups or associations of employers and PEOs should be able to sponsor a MEP by acting indirectly in the interest of participating employers in relation to the plan within the meaning of section 3(5) of ERISA. Consistent with the Executive Order, the Department specifically solicited public comments

¹⁴⁴ Copeland, "Employment-Based Retirement Plan Participation, 2013." Constantijn W.A. Panis & Michael J. Brien, "Target Populations of State-Level Automatic IRA Initiatives," (August 28, 2015) (available at <https://www.dol.gov/sites/default/files/ebsa/researchers/analysis/retirement/target-populations-of-state-level-automatic-ira-initiatives.pdf>).

¹⁴⁵ The Pew Charitable Trusts, "Employer Barriers to and Motivations for Offering Retirement Benefits," 2017.

¹³⁷ IRC section 402(g). IRS Notice 2018-83, 2018-47 I.R.B. 774 (11/19/2018).

¹³⁸ IRC section 415(c). IRS Notice 2018-83, 2018-47 I.R.B. 774 (11/19/2018).

¹³⁹ IRC section 45E(b).

¹⁴⁰ IRC section 25B.

¹⁴¹ Kerry Hannon, "The Best Retirement Plans for the Self-Employed," *Forbes*, (April 1, 2011).

¹⁴² Copeland, "Employment-Based Retirement Plan Participation, 2013."

¹⁴³ Cerulli Associates, *U.S. Retirement Markets 2016* (available at <https://www.cerulli.com/vapi/public/getcerullifile?fileid=Cerulli-US-Retirement-Markets-2016-Information-Packet>).

at the proposed rule stage regarding whether, and under what circumstances, it should address so-called “open MEPs” or “pooled employer plans.” These arrangements cover employees of employers with no relationship other than their joint participation in the MEP. The solicitation asked commenters who believe these arrangements should be addressed in this or a future rulemaking to include a discussion of why they should be treated as one employee benefit plan with the meaning of title I of ERISA rather than a collection of separate employer plans being serviced by a commercial enterprise that provides retirement plan products and services.

As discussed earlier in the preamble, more than half of the comments received on the proposed rule addressed this issue, and the vast majority supported a rule that would facilitate these arrangements. After reviewing the comments, the Department is persuaded that open MEPs deserve further consideration. The Department received a variety of different ideas and comments, some of which were contradictory. Given the wide range of possibilities, the Department does not believe it has developed a sufficient public record, or obtained sufficient data, to understand thoroughly the complete range of issues presented by these arrangements. Therefore, the Department has published a RFI elsewhere in today’s **Federal Register** to develop a more robust public record and to obtain sufficient data to support a future rulemaking.

The Department also solicited comments on whether the final rule should address the MEP status of so-called “corporate MEPs,” which are plans that cover employees of related employers that are not in the same controlled group or affiliated service group within the meaning of 414(b), (c), and (m) of the Code.¹⁴⁶ While using the commonality of interest provisions in this final rule to determine bona fide group or association status may not be the appropriate path for corporate MEPs, the Department recognizes that meaningful levels of common ownership may serve as an indicator of genuine economic or representational interests unrelated to the provision of benefits among the ownership group, such that one or more of the group members is acting “indirectly in the

interest of” the others within the meaning of ERISA section 3(5) in sponsoring a MEP for the group’s participation.

On the record established thus far, however, the Department lacks a meaningful basis on which to determine the precise level of ownership that conclusively distinguishes these bona fide ownership groups from commercial enterprises in which members have nominal ownership levels that exist primarily or solely to market, distribute, or otherwise provide employee benefits to members. The Department, therefore, also has decided to explore the corporate MEP topic in the RFI.

PEO Safe Harbor: The proposed rule contained two regulatory safe harbors for PEOs to determine whether they will be considered as performing substantial employment functions on behalf of their client-employers. The first safe harbor provides that a PEO will satisfy the requirement if, among other things, it is a Certified PEO (CPEO) under the Code and meets at least two criteria in the list in paragraph (c)(2)(ii)(D) through (I) of the proposal. The second safe harbor is for PEOs that do not satisfy the CPEO safe harbor but meet five or more criteria from the list in paragraph (c)(2)(ii) of the proposal.

In response to the proposed safe harbor, a commenter argued that the safe harbor standards should be the same for CPEOs and non-CPEOs and not more or less favorable for one business model rather than another. The commenter expressed concern that non-CPEOs would be unable to meet the “substantial employer functions” criteria in the proposed rule, and thus, unable to avail themselves of the non-CPEO safe harbor. The commenter viewed the proposal as favoring CPEOs and asserted that the Department should adopt a safe harbor that works for the entire PEO industry.

As discussed earlier in the preamble, in response to the comment, the Department streamlined the safe harbor in the final rule by providing only one safe harbor that applies to CPEOs and non-CPEOs. The Department determined that the complexity inherent in the proposal’s safe harbor could be reduced by combining the essential elements of the two safe harbors into a single safe harbor that both CPEOs and non-CPEOs can rely on. The Department believes these changes will allow both CPEOs and non-CPEOs to meet the requirements of the safe harbor and provide optimum choices for employers that are considering joining MEPs sponsored by PEOs.

Working Owner Definition: The final rule’s definition of a working owner

requires a person to work a certain number of hours (*i.e.*, 20 hours per week or 80 hours per month) or have wages or self-employment income above a certain level (*i.e.*, wages or income must equal or exceed the working owner’s cost of coverage to participate in the group or association’s health plan if the individual is participating in that plan). In considering possible alternatives, the Department considered relying only on the hours worked threshold. However, the Department chose the formulation in this final rule (*i.e.*, allowing either the hours worked threshold or the income level threshold), because it best clarified when a working owner could join a group or association retirement plan. Additionally, based on its expectation that certain groups and associations may offer both AHPs and MEPs, the Department chose this formulation because it parallels the working owner definition from the AHP Rule.

11. Paperwork Reduction Act

The final rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*) because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

12. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final rule. The Department has determined that this final rule, which would clarify the persons that may act as an “employer” within the meaning of section 3(5) of ERISA in sponsoring a MEP, is likely to have a significant impact on a substantial number of small entities. Therefore, the Department provides its FRFA of the final rule below.

a. Need for and Objectives of the Rule

As discussed earlier in the preamble, the rule is necessary to expand access to MEPs, which could enable groups of private sector employers to participate in a collective retirement plan. MEPs meeting the requirements of the final rule are presented with an efficient

¹⁴⁶In Advisory Opinion 89–06A, the Department stated that it would consider a member of a controlled group that establishes a benefit plan for its employees and/or the employees of other members of the controlled group to be an employer within the meaning of ERISA section 3(5).

option to reduce the costs and complexity associated with establishing and maintaining defined contribution plans. This could encourage more plan formation and broader availability of affordable workplace retirement savings plans, especially among small employers and certain working owners. Thus, the Department intends and expects that the rule will deliver benefits primarily to the employees of many small businesses and their families including many working owners, as well as many small businesses themselves.

b. Affected Small Entities

The Small Business Administration estimates that firms with 1–499 employees plus nonemployer firms comprise 99.9 percent of U.S. businesses.¹⁴⁷ The rule applies to firms of all sizes. Small businesses, including sole proprietors, can join MEPs as long as they are eligible to do so and as long as the MEP sponsor meets the requirements of the rule. The Department believes that the smallest firms, those with less than 100 employees, are most likely to be attracted to the reduced costs and fiduciary responsibilities that are associated with offering retirement benefits through a MEP. The Department also believes that many self-employed workers will find MEPs attractive. Approximately 8 million self-employed workers between ages 21 and 70, representing six percent of all similarly aged workers, have no employees and usually work at least 20 hours per week. These self-employed workers will become eligible to join MEPs under the rule.¹⁴⁸

c. Impact of the Rule

As stated above, by expanding MEPs, this final rule will provide a more affordable option for retirement savings coverage for many small businesses, thereby potentially yielding economic benefits for participating small businesses and their employees. Some advantages of an ERISA-covered retirement plan (including MEPs, SEP-IRAs, and SIMPLE IRAs) over IRA-based savings options outside the workplace include: (1) Higher contribution limits, (2) potentially lower investment management fees, especially in larger

plans, (3) a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections, (4) automatic enrollment, and (5) stronger protections from creditors. At the same time, they provide employers with choice among plan features and the flexibility to tailor retirement plans to meet their business and employment needs.

There are no new recordkeeping or reporting requirements for compliance with the rule. In fact, the recordkeeping and reporting requirements would likely decrease for most small employers under the rule. For example, if an employer joins a MEP meeting the requirements of the rule, it can save some costs associated with filing Form 5500 and fulfilling audit requirements because a MEP is considered a single plan. Thus, one Form 5500 and audit report satisfies the reporting requirements. Accordingly, each participating employer would not need to file its own, separate Form 5500 and, for large plans or those few small plans that do not meet the small plan audit waiver, audit report. These reports are normally prepared by a combination of legal professionals, human resource professionals, and accountants.

The Department considered several alternatives, such as whether to cover other types of MEPs, in developing its formulation of the PEO Safe Harbor. The “Regulatory Alternatives” section of the RIA above discusses these significant regulatory alternatives in more detail.

d. Duplicate, Overlapping, or Relevant Federal Rules

The final rule would not conflict with any relevant federal rules. As discussed above, the rule will merely broaden the conditions under which the Department will view a group or association as acting as an “employer” under ERISA for purposes of offering a MEP and make clear the conditions for PEO sponsorship. As such, the criteria could also result in more MEPs being treated consistently under the Code and title I of ERISA, including MEPs administered by PEOs for the benefit of the employees of their client employers, as described in IRS Rev. Proc. 2002–21.

13. Congressional Review Act

The final rule is subject to the Congressional Review Act (CRA) provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The

rule is a “major rule” as that term is defined in 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of \$100 million or more.

14. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this final rule does not include any federal mandate that the Department expects will result in such expenditures by State, local, or tribal governments, or the private sector. This is because the rule merely clarifies which persons may act as an “employer” within the meaning of section 3(5) of ERISA in sponsoring a MEP and does not require any action or impose any requirement on the public sector or states.

15. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. E.O. 13132 requires federal agencies to follow specific criteria in forming and implementing policies that have “substantial direct effects” on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the final rule.

In the Department’s view, the final rule does not have federalism implications because it does not have a direct effect on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

16. Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This final rule is an E.O. 13771 deregulatory action, because it

¹⁴⁷ The Small Business Administration, Office of Advocacy, 2018 Small Business Profile. <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>. Last accessed on 10/03/2018. The SBA reports that there are 5,881,267 business with 1–499 employees. Many of these firms will have the option to join a MEP under this rule.

¹⁴⁸ DOL tabulations of the February 2019 Current Population Survey basic monthly data.

provides critical guidance that expands small businesses' access to high quality retirement plans at lower costs than otherwise are available, by removing certain Department-imposed restrictions on the establishment and maintenance of MEPs under ERISA.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor is amending 29 CFR part 2510 as follows:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

- 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(1), 1002(2), 1002(3), 1002(5), 1002(16), 1002(21), 1002(37), 1002(38), 1002(40), 1002(42), 1031, and 1135; Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 and 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. At 237 (2012), (E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457 (1997).

- 2. Section 2510.3–3 is amended by revising paragraph (c) introductory text to read as follows:

§ 2510.3–3 Employee benefit plan.

* * * * *

(c) *Employees.* For purposes of this section and except as provided in § 2510.3–5(e) and § 2510.3–55(d):

* * * * *

- 3. Section 2510.3–5 is amended by revising the section heading to read as follows:

§ 2510.3–5 Definition of Employer—Association Health Plans.

* * * * *

- 4. Section 2510.3–55 is added to read as follows:

§ 2510.3–55 Definition of Employer—Association Retirement Plans and Other Multiple Employer Pension Benefit Plans.

(a) *In general.* The purpose of this section is to clarify which persons may act as an “employer” within the meaning of section 3(5) of the Act in sponsoring a multiple employer defined contribution pension plan (hereinafter “MEP”). The Act defines the term “employee pension benefit plan” in section 3(2), in relevant part, as any plan, fund, or program established or maintained by an employer, employee organization, or by both an employer and an employee organization, to the extent by its express terms or as a result of surrounding circumstances such plan, fund, or program provides

retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond. For purposes of being able to establish and maintain an employee pension benefit plan within the meaning of section 3(2), an “employer” under section 3(5) of the Act includes any person acting directly as an employer, or any person acting indirectly in the interest of an employer in relation to an employee benefit plan. A group or association of employers is specifically identified in section 3(5) of the Act as a person able to act directly or indirectly in the interest of an employer, including for purposes of establishing or maintaining an employee benefit plan. A bona fide group or association of employers (as defined in paragraph (b) of this section) and a bona fide professional employer organization (as described in paragraph (c) of this section) shall be deemed to be able to act in the interest of an employer within the meaning of section 3(5) of the Act by satisfying the criteria set forth in paragraphs (b) and (c) of this section, respectively.

(b)(1) *Bona fide group or association of employers.* For purposes of title I of the Act and this chapter, a bona fide group or association of employers capable of establishing a MEP shall include a group or association of employers that meets the following requirements:

(i) The primary purpose of the group or association may be to offer and provide MEP coverage to its employer members and their employees; however, the group or association also must have at least one substantial business purpose unrelated to offering and providing MEP coverage or other employee benefits to its employer members and their employees. For purposes of satisfying the standard of this paragraph (b)(1)(i), as a safe harbor, a substantial business purpose is considered to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan. For purposes of this paragraph (b)(1)(i), a business purpose includes promoting common business interests of its members or the common economic interests in a given trade or employer community and is not required to be a for-profit activity;

(ii) Each employer member of the group or association participating in the plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan;

(iii) The group or association has a formal organizational structure with a governing body and has by-laws or other similar indications of formality;

(iv) The functions and activities of the group or association are controlled by its employer members, and the group's or association's employer members that participate in the plan control the plan. Control must be present both in form and in substance;

(v) The employer members have a commonality of interest as described in paragraph (b)(2) of this section;

(vi) The group or association does not make plan participation through the association available other than to employees and former employees of employer members, and their beneficiaries; and

(vii) The group or association is not a bank or trust company, insurance issuer, broker-dealer, or other similar financial services firm (including a pension recordkeeper or third-party administrator), or owned or controlled by such an entity or any subsidiary or affiliate of such an entity, other than to the extent such an entity, subsidiary or affiliate participates in the group or association in its capacity as an employer member of the group or association.

(2) *Commonality of interest.* (i) Employer members of a group or association will be treated as having a commonality of interest if either:

(A) The employers are in the same trade, industry, line of business or profession; or

(B) Each employer has a principal place of business in the same region that does not exceed the boundaries of a single State or a metropolitan area (even if the metropolitan area includes more than one State).

(ii) In the case of a group or association that is sponsoring a MEP under this section and that is itself an employer member of the group or association, the group or association will be deemed for purposes of paragraph (b)(2)(i)(A) of this section to be in the same trade, industry, line of business, or profession, as applicable, as the other employer members of the group or association.

(c)(1) *Bona fide professional employer organization.* A professional employer organization (PEO) is a human-resource company that contractually assumes certain employer responsibilities of its client employers. For purposes of title I of the Act and this chapter, a bona fide PEO is capable of establishing a MEP. A bona fide PEO is an organization that meets the following requirements:

(i) The PEO performs substantial employment functions on behalf of its client employers that adopt the MEP, and maintains adequate records relating to such functions;

(ii) The PEO has substantial control over the functions and activities of the MEP, as the plan sponsor (within the meaning of section 3(16)(B) of the Act), the plan administrator (within the meaning of section 3(16)(A) of the Act), and a named fiduciary (within the meaning of section 402 of the Act), and continues to have employee-benefit-plan obligations to MEP participants after the client employer no longer contracts with the organization.

(iii) The PEO ensures that each client employer that adopts the MEP acts directly as an employer of at least one employee who is a participant covered under the MEP; and

(iv) The PEO ensures that participation in the MEP is available only to employees and former employees of the PEO and client employers, employees and former employees of former client employers who became participants during the contract period between the PEO and former client employers, and their beneficiaries.

(2) *Safe harbor criteria for substantial employment functions.* For purposes of paragraph (c)(1)(i) of this section, whether a PEO performs substantial employment functions on behalf of its client employers is determined on the basis of the facts and circumstances of the particular situation. As a safe harbor, a PEO shall be considered to perform substantial employment functions on behalf of its client-employers that adopt the MEP if it meets the following criteria with respect to each client-employer employee that participates in the MEP—

(i) The PEO assumes responsibility for and pays wages to employees of its client-employers that adopt the MEP, without regard to the receipt or adequacy of payment from those client employers;

(ii) The PEO assumes responsibility for and reports, withholds, and pays any applicable federal employment taxes for its client employers that adopt the MEP, without regard to the receipt or adequacy of payment from those client employers;

(iii) The PEO plays a definite and contractually specified role in recruiting, hiring, and firing workers of its client-employers that adopt the MEP, in addition to the client-employer's responsibility for recruiting, hiring, and

firing workers. A PEO is considered to satisfy this standard if it recruits, hires, and fires, assumes responsibility for recruiting, hiring, and firing, or retains the right to recruit, hire, and fire workers of its client-employers that adopt the MEP, in addition to the client-employer's responsibility for recruiting, hiring, and firing workers; and

(iv) The PEO assumes responsibility for and has substantial control over the functions and activities of any employee benefits which the service contract may require the PEO to provide, without regard to the receipt or adequacy of payment from those client employers for such benefits.

(d) *Dual treatment of working owners as employers and employees.* (1) A working owner of a trade or business without common law employees may qualify as both an employer and as an employee of the trade or business for purposes of the requirements in paragraph (b) of this section, including the requirement in paragraph (b)(1)(ii) of this section that each employer member of the group or association adopting the MEP must be a person acting directly as an employer of one or more employees who are participants covered under the MEP, and the requirement in paragraph (b)(1)(vi) of this section that the group or association does not make participation through the group or association available other than to certain employees and former employees and their beneficiaries.

(2) The term “working owner” as used in this paragraph (d) means any person who a responsible plan fiduciary reasonably determines is an individual:

(i) Who has an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including a partner or other self-employed individual;

(ii) Who is earning wages or self-employment income from the trade or business for providing personal services to the trade or business; and

(iii) Who either:

(A) Works on average at least 20 hours per week or at least 80 hours per month providing personal services to the working owner's trade or business, or

(B) In the case of a MEP described in paragraph (b) of this section, if applicable, has wages or self-employment income from such trade or business that at least equals the working

owner's cost of coverage for participation by the working owner and any covered beneficiaries in any group health plan sponsored by the group or association in which the individual is participating or is eligible to participate.

(3) The determination under this paragraph (d) must be made when the working owner first becomes eligible for participation in the defined contribution MEP and continued eligibility must be periodically confirmed pursuant to reasonable monitoring procedures.

(e) *Severability.* (1) If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of complete invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof.

(2) *Examples.* (i) If any portion of paragraph (b)(1)(i) of this section (containing the substantial business purpose requirement) is found to be void in a manner contemplated by paragraph (e)(1) of this section, then the whole of paragraph (b)(1)(i) of this section shall be construed as follows: “The group or association must be a viable entity in the absence of offering and providing MEP coverage or other employee benefits to its employer members and their employees.”

(ii) If any portion of paragraph (d) of this section (containing the “working owner” provision) is found to be void in a manner contemplated by paragraph (e)(1) of this section, such a decision does not impact the ability of a bona fide group or association to meet the “commonality of interest” requirement in paragraph (b)(2) of this section by being located in the same geographic locale.

Signed at Washington, DC, on July 22, 2019.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2019–16074 Filed 7–29–19; 8:45 am]

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DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Parts 2510**

RIN 1210-AB92

“Open MEPs” and Other Issues Under Section 3(5) of the Employee Retirement Income Security Act

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Request for information.

SUMMARY: This document is a request for information regarding the definition of “employer” in section 3(5) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The document mainly seeks comments on whether to amend our regulations to facilitate the sponsorship of “open MEPs” by persons acting indirectly in the interests of unrelated employers whose employees would receive benefits under such arrangements. The term “open MEP” in this document refers to a single defined contribution retirement plan that covers employees of multiple unrelated employers. The information received in response to the questions in this document may form the basis of future rulemaking under ERISA. This request for information was triggered in part by public comments received on a related rulemaking action under section 3(5) of ERISA, with respect to which a final rule is being published elsewhere in this issue of this *Federal Register*. This document also solicits information on other issues raised by these commenters, but which were considered beyond the scope of that final rule.

DATES: Comments should be submitted to the Department on or before October 29, 2019.

ADDRESSES: You may submit written comments, identified by 1210-AB92, to either of the following addresses:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: 1210-AB92 “Open MEPs” and Other Issues Under Section 3(5) of ERISA.

Instructions: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting

comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at <http://www.regulations.gov> and <http://www.dol.gov/agencies/ebsa>, and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N-1513, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT:

Colleen Brisport, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**I. Background***A. In General*

The Department of Labor (Department) published a final rule (MEP Final Rule) in this issue that expands access to affordable quality retirement savings options by clarifying the circumstances under which an employer group or association or a professional employer organization (PEO) may sponsor a single workplace defined contribution retirement plan under title I of ERISA (as opposed to providing an arrangement that constitutes multiple retirement plans). The final regulation does this by clarifying that employer groups or associations and PEOs can, when satisfying certain criteria, constitute “employers” within the meaning of section 3(5) of ERISA. As an “employer,” the group or association, or PEO, can sponsor a single defined-contribution “employee pension benefit plan” within the meaning of section 3(2) of ERISA, for its members or client employers (such plans, whether characterized as “Association Retirement Plans” or not, are collectively referred to hereinafter as Multiple Employer Plans, “MEPs,” unless otherwise specified).

The MEP Final Rule responds to Executive Order 13847, “Strengthening Retirement Security in America” issued on August 31, 2018 (Executive Order), which directed the Secretary of Labor to examine policies that would: (1) Clarify and expand the circumstances under which United States employers, especially small and mid-sized businesses, may sponsor or adopt a MEP as a workplace retirement option for their employees, subject to appropriate safeguards; and (2) increase retirement

security for part-time workers, sole proprietors, working owners, and other entrepreneurial workers with non-traditional employer-employee relationships by expanding their access to workplace retirement plans, including MEPs.

B. The Statute

ERISA applies not to every employee benefit plan, but, as relevant here, to an “employee benefit plan” sponsored by an “employer.” ERISA § 4(a)(1); 29 U.S.C. 1003(a)(1).¹ Section 3(5) of ERISA, in turn, defines the term “employer.” In relevant part it states that the term “employer” means “any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.” 29 U.S.C. 1002(5).

C. Bona Fide Groups or Associations of Employers

Under the MEP Final Rule, a bona fide group or association of employers is considered an “employer” and may sponsor a MEP for its members if certain conditions are satisfied. Four of these criteria are that the group or association must have a formal organizational structure, be controlled by its employer members, have at least one substantial business purpose unrelated to offering and providing employee benefits to its members, and limit plan participation to employees and former employees of employer members. In addition, employer members must have a commonality of interest, each employer must directly act as an employer of at least one employee participating in the MEP, and the group or association must not be a financial services firm. The commonality criteria is satisfied if the employer members have common geography or industry—*i.e.*, they are in the same trade, industry, line of business or profession; or each employer has a principal place of business in the same region that does not exceed the boundaries of a single State or metropolitan area (even if the metropolitan area includes more than one State).

D. Bona Fide Professional Employer Organizations

Under the MEP Final Rule, a bona fide PEO is considered an “employer” and may sponsor a MEP for its client employers if four conditions are

¹ ERISA also covers benefit plans established or maintained by employee organizations and such plans established or maintained by both employers and employee organizations.

satisfied.² The PEO must perform substantial employment functions on behalf of its client employers. The PEO must have substantial control over the functions of the MEP, as the plan sponsor, administrator, and a named fiduciary. The PEO must ensure that each client employer has at least one employee covered under the MEP. The PEO also must ensure that participation in the MEP is available only to employees and former employees.

E. Need for This Request for Information

The MEP Final Rule was preceded by a notice of proposed rulemaking (Proposed Rule) on the same topic.³ The Proposed Rule solicited comments on, *inter alia*, so-called “open MEPs” or “pooled employer plans,” which generally are arrangements that cover employees of employers with no relationship other than their joint participation in the MEP. The Proposed Rule specifically requested comments on whether, and under what circumstances, these arrangements should and could be operated as ERISA-covered plans. The solicitation asked commenters who believe that these arrangements should be addressed by rulemaking to include a discussion of why such an arrangement should be treated as one employee benefit plan within the meaning of title I of ERISA rather than as a collection of separate employer plans being serviced by a commercial enterprise that provides retirement plan products and services. Such commenters also were encouraged to provide suggestions regarding the regulatory conditions that should apply to these particular arrangements.

The Department received approximately sixty (60) comments in response to the Proposed Rule. More than half of the comments received addressed this issue, and the majority were supportive of the Department promulgating a rule that would facilitate these arrangements.⁴ Supporting commenters argued that open MEPs would best promote the objectives of Executive Order 13847 and that open MEPs are not precluded by ERISA. They

argued that the text of ERISA demonstrates that open MEPs may be sponsored by “any person acting . . . indirectly in the interest of an employer, in relation to an employee benefit plan.” They asserted that the Proposed Rule contained an unnecessarily narrow interpretation of “employer” under section 3(5) of ERISA. They speculated that the narrow view in the Proposed Rule was likely influenced by the Department’s experience with abusive Multiple Employer Welfare Arrangement (MEWA) schemes in the past, but they aver that defined contribution MEPs are structurally different arrangements with fundamentally different regulatory ecosystems than MEWAs.

But even among the supporters of open MEPs, there were very different ideas on how the Proposed Rule might best be amended to facilitate open MEPs. Some commenters, for example, recommended eliminating some or all of the substantial business purpose, control, and commonality requirements from the Proposed Rule’s bona fide group or association provisions, and the provision that prohibits financial services firms from being the group or association that establishes the MEP. Other commenters, however, recommended modifications to, and an expansion of, the Proposed Rule’s bona fide PEO provisions. These commenters argued that the bona fide PEO framework, with appropriate modifications, could readily be expanded beyond the narrow scope of PEOs to include commercial enterprises more generally. To these commenters, a commercial entity’s willingness to exert substantial control over the functions and activities of the MEP, as the plan sponsor, plan administrator, and as a named fiduciary provides a sufficient basis to conclude that such an entity is acting “indirectly in the interest of an employer . . . in relation to an employee benefit plan” for purposes of section 3(5) of ERISA, without regard to whether the entity is a PEO.

Not all commenters, however, supported the idea of open MEPs. Some commenters supported the prohibition against commercial entities and financial services firms being able to sponsor MEPs as an “employer” under section 3(5) of ERISA. Among other things, these commenters raised issues regarding statutory authority and potential conflicts of interests among those businesses, entities, and other commercial ventures that most likely would be interested and willing to sponsor open MEPs. A few commenters viewed the topic of open MEPs as perhaps being better suited for

legislation, given the wide range of issues presented under ERISA and the Internal Revenue Code (Code).

After reviewing the comments, the Department is persuaded that open MEPs deserve further consideration. The Department does not believe that it has acquired a sufficient public record on, or a thorough understanding of, the complete range of issues presented by the topic. In light of this and the conflict in the comments about whether and how to permit open MEPs, as well as legislation pending in the 116th Congress, the Department has decided to stimulate further debate and to further develop the public record by soliciting comments on a broad range of issues relating to open MEPs, as set forth in Section II of this document.

F. Regulatory Authority

The Department has broad authority to craft regulations under section 505 of ERISA. This section provides, in relevant part, that “the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter.” This authority extends to situations where, as here, the text of ERISA section 3(5) is ambiguous on its face.⁵

II. Request for Information

This document contains a number of questions. Respondents need not answer every question, but should identify, by number, each question addressed. Interested persons also are encouraged to address any other matters they believe are germane to the general topic of the request for information.⁶

A. “Open MEPs”

1. Should the Department amend 29 CFR 2510.3–55 to expressly permit financial institutions or other persons to maintain a single defined contribution retirement plan on behalf of multiple unrelated employers (hereinafter “open MEP”)? Many commenters on the Proposed Rule argued in support of open MEPs. Do you agree with the commenters? If the answer is yes or no, why?

2. What type of person or persons should be recognized as capable of being an “employer” under the “indirectly in the interest” clause in section 3(5) of ERISA for purposes of establishing and maintaining an open MEP? For example, many commenters suggested that banks, insurance companies, broker-dealers, and other

² A PEO generally refers to an organization that enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. The provisions of a PEO arrangement typically state that the PEO assumes certain employment responsibilities that the client-employer would otherwise fulfill with respect to employees.

³ 83 FR 53534 (October 23, 2018).

⁴ Comments on the Proposed Rule are available here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB88>.

⁵ See 83 FR 28912, 14 (June 21, 2018); 83 FR 53534, 37 (Oct. 23, 2018) (citing case law that observed the ambiguity).

⁶ Comments will be shared with the Department of the Treasury.

similar financial services firms (including pension recordkeepers and third-party administrators) (hereinafter “Commercial Entities”) should be recognized for this purpose. Are these commenters correct, and why? What, if any, are appropriate limitations on the types of Commercial Entities that should be recognized as employers?

3. If a Commercial Entity could sponsor an open MEP, what conflicts of interest, if any, would the Commercial Entity, affiliates, and related parties likely have with respect to the plan and its participants? To what extent could a Commercial Entity that sponsors the open MEP affect its own compensation or the compensation of affiliates or related parties through its actions as a sponsor, fiduciary, or service provider to the plan? What categories of fees and compensation, direct or indirect, would Commercial Entities, affiliates, and related parties likely receive as a result of sponsoring the MEP, rendering services to the MEP, or offering investments (including proprietary products) to the MEP? How could these or other such conflicts of interest be appropriately mitigated? How effective would the suggested conflict-mitigation approaches likely be in safeguarding MEPs from conduct that favors the interests of the Commercial Entity, affiliates, or related parties at the plan’s expense? Would prohibited transaction exemptions be necessary to avoid violations of Section 406 of ERISA and imposition of excise taxes under Section 4975(c) of the Internal Revenue Code? Are different mitigating provisions appropriate for different Commercial Entities, and why or why not?

4. The current regulation contains provisions that limit the breadth of ERISA section 3(5)’s “indirectly in the interest” clause as applied to the two types of multiple employer plans covered by that regulation. For instance, in the case of a bona fide group or association, the regulation contains the commonality and control requirements. As another example, in the case of a bona fide PEO, the regulation contains the substantial employment functions and control requirements. Are limiting principles or conditions needed in the case of open MEPs? Please explain why or why not. If such principles or conditions are necessary or helpful, please provide examples of principles or conditions that would be appropriate limitations along with reasons for such limitations.

5. Commenters offered two distinctly different approaches on how the current regulation could be reformulated to facilitate open MEPs. For example, some commenters recommended amending

the bona fide group or association provisions by deleting the commonality and control requirements, and the prohibition on Commercial Entities. Other commenters, by contrast, recommended modifying the bona fide PEO provisions to cover Commercial Entities, but with additional or different criteria to reflect the differences between PEOs and these other entities. What are the benefits and drawbacks of each of these approaches, and are there other approaches or alternatives the Department should consider?

6. If the Department took either approach described in the prior question, what would the impact be on MEPs offered by existing groups or associations of employers or by existing PEOs? Is there a risk that open MEPs, under either approach, would undermine or destabilize these existing arrangements? For example, would nationwide open MEPs undermine or destabilize geography-based MEPs sponsored by groups or associations? If so, what steps could the Department take to mitigate such impacts? For instance, commenters on the Proposed Rule suggested that bona fide group or association MEPs should be permitted to cover regions larger than the boundaries of a single State or metropolitan area that includes more than one State. Are these commenters correct? Why or why not?

7. Some commenters raised concerns about the potential cost and complexity arising from the application of the various qualification requirements under section 401(a) of the Code (e.g., nondiscrimination, exclusive benefit, minimum participation, minimum coverage, and top-heavy requirements) to the potentially large numbers of employers that theoretically could participate in a nationwide open MEP. These commenters are concerned that the cost and complexity of these requirements in this context may offset some of the savings otherwise associated with establishing and maintaining an open MEP. Are these commenters correct? If so, do the potential costs and complexities outweigh the benefits of offering open MEPs?

8. Would a regulation facilitating the adoption and marketing of open MEPs by Commercial Entities have an impact on the implementation, administration, or enforcement of any State or federal laws, apart from ERISA and the Internal Revenue Code, particularly including securities, insurance, and banking laws? Are there any specific issues relating to such other laws, which the Department should consider in connection with any rulemaking effort?

B. Corporate MEPs

The Proposed Rule solicited comments on whether the MEP Final Rule should address the status of so-called “corporate MEPs,” a term not defined in ERISA. For that purpose, the Proposed Rule considered “corporate MEPs” to be defined contribution plans that cover employees of employers related by some level of common ownership, but that are not in the same controlled group or affiliated service group within the meaning of section 414(b), (c), or (m) of the Code.

In response, one commenter provided an example of what it described as a common fact pattern that should be addressed by rulemaking or other guidance. The example involves two companies, A and B, in different industries and different parts of the country, where, as a result of an acquisition, A now owns 60% of B but the remaining 40% of B is owned by unrelated parties. If A and B jointly maintain a retirement plan for the benefit of their employees, it does not appear that A and B would meet the commonality of interest conditions to qualify as a MEP and, consequently, this “corporate MEP” would not be a single plan under the Proposed Rule, but instead would be two plans for purposes of ERISA.

The Department recognizes that meaningful levels of common ownership may serve as an indicator that the members of the ownership group have among themselves a sufficient relationship, unrelated to the provision of benefits. This relationship may be enough such that one or more of these members can be said to be acting “indirectly in the interest of” the others within the meaning of ERISA section 3(5) to sponsor a MEP for the group’s participation. In DOL Advisory Opinion 89–06A, for example, the Department opined that a member of a controlled group of corporations that establishes a benefit plan for its employees and the employees of other members of the controlled group is considered to be an employer within the meaning of ERISA section 3(5), such that only one plan exists for all members of the group.⁷

On the existing public record, however, the Department lacks a meaningful basis on which to determine the precise level of ownership, below the controlled group of corporations

⁷ With respect to a plan maintained by one or more members of a controlled group of corporations (within the meaning of section 1563(a) of the Code, determined without regard to sections 1563(a)(4) and (e)(3)(C)), all employees of such corporations shall be treated as employed by a single employer. 29 USC 1060(c).

threshold established in section 414(b) of the Code (or the corresponding threshold for a controlling interest in a trade or business in section 414(c) of the Code), that conclusively distinguishes bona fide ownership groups from commercial enterprises in which members have nominal ownership levels and which exist primarily or solely to market, distribute, underwrite or otherwise provide employee benefits to the nominal owners.

9. Should the Department amend 29 CFR 2510.3–55 to address “corporate MEPs,” and if so, why and how? Apart from the definition of a controlled group of corporations within the meaning of section 414(b) of the Code, (or a group of trades or businesses under common control within the meaning of section 414(c) of the Code), is there a precise level of common ownership that could and should be used to deem two or more corporations, trades, or businesses to have sufficient ownership ties such that any one of these corporations, trades, or businesses can be said to be able to act “indirectly in the interest of” the others within the meaning of ERISA section 3(5) to sponsor a MEP for the group’s participation? Are there aspects of control or commonality that the Department should consider in addition to the precise level of common ownership? Put another way, if the Department were to consider facts and circumstances, either in addition to, or in lieu of, level of common ownership, what facts and circumstances would be appropriate to consider? Also, what sufficient ties are needed for two or more tax-exempt organizations or a tax-exempt organization and another organization to be treated as an employer within the meaning of section 3(5) of ERISA?

10. Should members of an “affiliated service group” within the meaning of section 414(m) of the Code be treated as an employer within the meaning of section 3(5) of ERISA? If so, why?

C. Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act Questions

Executive Order 12866 (E.O. 12866) requires an assessment of the anticipated costs and benefits to the government and the public of a significant rulemaking action, and of the alternatives considered, using the

guidance provided by the Office of Management and Budget. Under E.O. 12866, a determination must be made whether implementation of this rule will be economically significant. A rule that has an annual effect on the economy of \$100 million or more is considered economically significant.

In addition, the Regulatory Flexibility Act may require the preparation of an analysis of the impact on small entities of proposed rules and regulatory alternatives. A regulatory flexibility analysis must generally include, among other things, an estimate of the number of small entities subject to the regulations (for this purpose, plans, employers, and issuers and, in some contexts small governmental entities), the expense of the reporting, recordkeeping, and other compliance requirements (including the expense of using professional expertise), and a description of any significant regulatory alternatives considered that would accomplish the stated objectives of the statute and minimize the impact on small entities. For this purpose, the Agency considers a small entity to be an employee benefit plan with fewer than 100 participants.

The Paperwork Reduction Act requires an estimate of how many “respondents” will be required to comply with any “collection of information” requirements contained in regulations and how much time and cost will be incurred by the respondents as a result. A collection of information includes recordkeeping, reporting to governmental agencies, and third-party disclosures.

The Department is requesting comments that may contribute to the analyses that will be performed under these requirements, both generally and with respect to the following specific areas:

11. What costs and benefits would be associated with allowing an open MEP consisting of employers with no relationship other than their joint participation in the MEP to be operated as a single ERISA-covered plan? How would the costs and benefits of open MEPs compare to those associated with MEPs sponsored by bona fide groups and associations and (PEOs)? Please explain.

12. What types of entities would have business motives to sponsor open

MEPs? For each type, how prevalent would their sponsorship likely be? What would be the economic advantages and disadvantages of each type of entity for employers and participants and beneficiaries? Please explain.

13. What types of employers would join open MEPs? What size would they be (*i.e.*, would large employers, mid-size employers, or small employers be particularly interested in joining an open MEP)? How many would join open MEPs to begin offering retirement benefits to workers who previously did not have access to them? How many employers would be switching away from another type of retirement savings vehicle or plan? What type? Please explain.

14. Please describe how prevalent automatic enrollment would likely be among employers that join open MEPs.

15. Please describe how common it will likely be for employers participating in open MEPs to accept rollovers from other qualified plans.

16. Please indicate how many self-employed people are likely to join open MEPs.

17. Please compare the overall cost of providing defined contribution retirement benefits among the following types of retirement plans:

- a. Open MEPs.
- b. MEPs sponsored by bona fide groups and associations.
- c. MEPs sponsored by PEOs.
- d. Single-employer plans sponsored by small businesses.

Additionally, please compare what the likely total plan fees will be for a.–d. Please compare the likely costs and fees for various component services, such as asset management, recordkeeping, and marketing and distribution, across a–d.

18. What costs and benefits would be associated with allowing corporate MEPs described in Section B., above, to operate as single ERISA-covered defined contribution plans?

Signed at Washington, DC, on July 22, 2019.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2019–16072 Filed 7–29–19; 8:45 am]

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FEDERAL REGISTER

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Part V

The President

Proclamation 9912—Anniversary of the Americans with Disabilities Act, 2019

Presidential Documents

Title 3—

Proclamation 9912 of July 25, 2019

The President

Anniversary of the Americans with Disabilities Act, 2019

By the President of the United States of America

A Proclamation

On the 29th anniversary of the Americans with Disabilities Act (ADA), we celebrate this historic legislation, which reflects our Nation's dedication to securing the equal rights and defending the intrinsic dignity of all men and women. Today, we renew our commitment to empowering Americans with disabilities through equal access so they can achieve their full potential, and we celebrate their contributions to our great Nation.

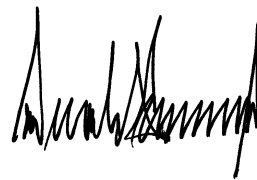
Since 1990, the ADA has transformed the lives of millions of Americans by promoting equal access to employment, government services, public accommodations, commercial facilities, and public transportation. The more than 61 million Americans who are currently living with disabilities are part of the fabric of our Nation, and the ADA helps eliminate barriers to their full participation in every community across the country. We are grateful for the ADA for helping to foster a vibrant culture of inclusivity in our Nation.

Employment opportunities for Americans with disabilities are growing, and the unemployment rate for Americans with disabilities reached its lowest level ever during my Administration. Our Nation is building on the precedent of the ADA by taking further steps to ensure opportunity for all Americans. My Administration continues to encourage hiring individuals with disabilities, including through our Multi-Agency Task Force on Improving Employment for People with Disabilities. We are making extraordinary strides in removing obstacles that stand in the way of those with disabilities to lead healthy, self-sufficient, and independent lives. I signed an Executive Order to increase apprenticeship opportunities for all Americans, including those with disabilities. This action has helped bring reforms to ineffective training and workforce development programs, better enabling Americans with disabilities to develop in-demand skills for a wide range of industries. We also are actively supporting research to develop new technologies that will increase access and quality of life for Americans with disabilities. And we are addressing the significant extra living expenses Americans with disabilities often face through enhanced awareness of Achieving a Better Life Experience accounts, which allow money to be saved for qualified disability-related expenses without having to pay taxes on earnings.

As we commemorate the anniversary of the ADA, we recommit to working together to ensure Americans with disabilities have every opportunity to realize the American Dream.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 26, 2019, as a day in celebration of the 29th Anniversary of the Americans with Disabilities Act. I call upon all Americans to observe this day with appropriate ceremonies and activities that celebrate the contributions of Americans with disabilities and to renew our commitment to achieving the promise of our freedom for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.





FEDERAL REGISTER

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Part VI

The President

Memorandum of July 26, 2019—Reforming Developing-Country Status in the World Trade Organization

Presidential Documents

Title 3—

Memorandum of July 26, 2019

The President

Reforming Developing-Country Status in the World Trade Organization

Memorandum for the United States Trade Representative

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby directed as follows:

Section 1. Policy. The World Trade Organization (WTO) was created to spur economic growth and raise standards of living by establishing international trade rules premised on principles of transparency, openness, and predictability. Although economic tides have risen worldwide since the WTO's inception in 1995, the WTO continues to rest on an outdated dichotomy between developed and developing countries that has allowed some WTO Members to gain unfair advantages in the international trade arena. Nearly two-thirds of WTO Members have been able to avail themselves of special treatment and to take on weaker commitments under the WTO framework by designating themselves as developing countries. While some developing-country designations are proper, many are patently unsupportable in light of current economic circumstances. For example, 7 out of the 10 wealthiest economies in the world as measured by Gross Domestic Product per capita on a purchasing-power parity basis—Brunei, Hong Kong, Kuwait, Macao, Qatar, Singapore, and the United Arab Emirates—currently claim developing-country status. Mexico, South Korea, and Turkey—members of both the G20 and the Organization for Economic Cooperation and Development (OECD)—also claim this status.

When the wealthiest economies claim developing-country status, they harm not only other developed economies but also economies that truly require special and differential treatment. Such disregard for adherence to WTO rules, including the likely disregard of any future rules, cannot continue to go unchecked.

China most dramatically illustrates the point. Since joining the WTO in 2001, China has continued to insist that it is a developing country and thus has the right to avail itself of flexibilities under any new WTO rules. The United States has never accepted China's claim to developing-country status, and virtually every current economic indicator belies China's claim. After years of explosive growth, China has the second largest Gross Domestic Product in the world, behind only the United States. China accounts for nearly 13 percent of total global exports of goods, while its global share of such exports jumped five-fold between 1995 and 2017. It has been the largest global exporter of goods each year since 2009. Further, China's pre-eminent status in exports is not limited to goods from low-wage manufacturing sectors. China currently ranks first in the world for exports of high-technology products, with such exports alone increasing by 3,800 percent between 1995 and 2016.

Other economic figures tell a similar story. Valued at nearly \$1.5 trillion, China's outbound foreign direct investment (FDI) exceeds that of 32 of 36 OECD countries, while its inbound FDI of nearly \$2.9 trillion exceeds all but one OECD country. China is home to 120 of the world's 500 largest companies, and its defense expenditures and total number of satellites in space are second only to those of the United States.

Notwithstanding these facts and other evidence of economic vibrancy, China and too many other countries have continued to style themselves as developing countries, allowing them to enjoy the benefits that come with that status and seek weaker commitments than those made by other WTO Members. These countries claim entitlement to longer timeframes for the imposition of safeguards, generous transition periods, softer tariff cuts, procedural advantages for WTO disputes, and the ability to avail themselves of certain export subsidies—all at the expense of other WTO Members. These countries have also consistently sought weaker commitments than other WTO Members in ongoing negotiations, which has significantly stymied progress. Moreover, many of the world's most advanced economies have used developing-country status as an excuse not to comply with the most basic notification requirements under WTO rules, depriving United States traders of vital trade data. The status quo cannot continue.

The WTO is in desperate need of reform, without which the WTO will be unable to address the needs of workers and businesses or the challenges posed by the modern global economy. The United States is also pressing for critical reforms in other multilateral international organizations to help ensure that those organizations recognize the economic development of their members and can work within their mandates to address important challenges. The need to reform international economic institutions is not just a challenge for the United States but for all countries that participate in the global marketplace.

With respect to the WTO, there is no hope of progress in resolving this challenge until the world's most advanced economies are prepared to take on the full commitments associated with WTO membership. To help ensure that those countries live up to their commitments, it shall be the policy of the United States to make trade more free, fair, and reciprocal by devoting all necessary resources toward changing the WTO approach to developing-country status such that advanced economies can no longer avail themselves of unwarranted benefits despite abundant evidence of economic strength.

Sec. 2. *Changing the WTO Approach to Flexibilities Associated with Developing-Country Status.* (a) To advance the policy set forth in section 1 of this memorandum, the United States Trade Representative (USTR) shall, as appropriate and consistent with applicable law, use all available means to secure changes at the WTO that would prevent self-declared developing countries from availing themselves of flexibilities in WTO rules and negotiations that are not justified by appropriate economic and other indicators. Where appropriate and consistent with law, the USTR shall pursue this action in cooperation with other like-minded WTO Members.

(b) Within 60 days of the date of this memorandum, the USTR shall update the President on his progress under subsection (a) of this section.

Sec. 3. *Ending Unfair Trade Benefits.* (a) If, within 90 days of the date of this memorandum, the USTR determines that substantial progress has not been made toward achieving the changes described in section 2 of this memorandum, the USTR shall, as appropriate and to the extent consistent with law:

(i) no longer treat as a developing country for the purposes of the WTO any WTO Member that in the USTR's judgment is improperly declaring itself a developing country and inappropriately seeking the benefit of flexibilities in WTO rules and negotiations; and

(ii) where relevant, not support any such country's membership in the OECD.

(b) Before taking any action under subsection (a) of this section, the USTR shall:

(i) consult with the Trade Policy Committee established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872);

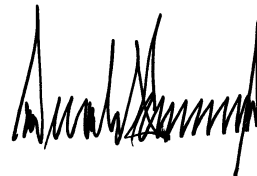
(ii) consult with the National Security Council and the National Economic Council as to the advisability of interagency coordination through the

process described in National Security Presidential Memorandum–4 of April 4, 2017 (Organization of the National Security Council, the Homeland Security Council, and Subcommittees), or any successor document; and

(iii) consider the WTO Member's involvement in global trade, membership in key economic decision-making groups, placement within relative economic and other indicators, and any other factors the USTR deems appropriate.

(c) The USTR shall publish on its website a list of all self-declared developing countries that the USTR believes are inappropriately seeking the benefit of developing-country flexibilities in WTO rules and negotiations.

Sec. 4. *Publication.* The USTR is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 26, 2019



FEDERAL REGISTER

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Part VII

The President

Notice of July 30, 2019—Continuation of the National Emergency With Respect to Lebanon

Presidential Documents

Title 3—

Notice of July 30, 2019

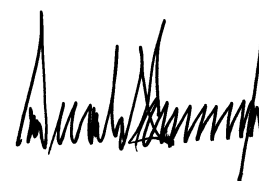
The President

Continuation of the National Emergency With Respect to Lebanon

On August 1, 2007, by Executive Order 13441, the President declared a national emergency with respect to Lebanon pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions; to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation; to reassert Syrian control or contribute to Syrian interference in Lebanon; or to infringe upon or undermine Lebanese sovereignty. Such actions contribute to political and economic instability in that country and the region.

Certain ongoing activities, such as Iran's continuing arms transfers to Hizballah—which include increasingly sophisticated weapons systems—serve to undermine Lebanese sovereignty, contribute to political and economic instability in the region, and continue to constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on August 1, 2007, and the measures adopted on that date to deal with that emergency, must continue in effect beyond August 1, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Lebanon declared in Executive Order 13441.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 30, 2019.

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