FEDERAL REGISTER

Vol. 84 Tuesday,

No. 185 September 24, 2019

Pages 49935–50286

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

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

Contents

Federal Register

Vol. 84, No. 185

Tuesday, September 24, 2019

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Executive Orders:
13887.....49935

5 CFR
532.....49941

7 CFR
1208.....49942
Proposed Rules:
993.....49963

10 CFR
Proposed Rules:
430.....49965

14 CFR
39.....49944

16 CFR
1130.....49947

20 CFR
404.....49950

26 CFR
1.....50108
Proposed Rules:
1.....50152

31 CFR
Proposed Rules:
800.....50174
802.....50214

37 CFR
Proposed Rules:
210.....49966

40 CFR
300 (3 documents) 49951, 49952, 49953
Proposed Rules:
60.....50244

42 CFR
88.....49954

48 CFR
Proposed Rules:
9.....49974
12.....49974
13.....49974
43.....49974
52.....49974

50 CFR
660.....49960

Federal Register
Vol. 84, No. 185
Tuesday, September 24, 2019

Presidential Documents

Title 3—

The President

Executive Order 13887 of September 19, 2019

Modernizing Influenza Vaccines in the United States to Promote National Security and Public Health

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Findings.* (a) Influenza viruses are constantly changing as they circulate globally in humans and animals. Relatively minor changes in these viruses cause annual seasonal influenza outbreaks, which result in millions of illnesses, hundreds of thousands of hospitalizations, and tens of thousands of deaths each year in the United States. Periodically, new influenza A viruses emerge from animals, including birds and pigs, that can spread efficiently and have sustained transmission among humans. This situation is called an influenza pandemic (pandemic). Unlike seasonal influenza, a pandemic has the potential to spread rapidly around the globe, infect higher numbers of people, and cause high rates of illness and death in populations that lack prior immunity. While it is not possible to predict when or how frequently a pandemic may occur, there have been 4 pandemics in the last 100 years. The most devastating pandemic occurred in 1918–1919 and is estimated to have killed more than 50 million people worldwide, including 675,000 Americans.

(b) Vaccination is the most effective defense against influenza. Despite recommendations by the Centers for Disease Control and Prevention (CDC) that nearly every American should receive the influenza vaccine annually, however, seasonal influenza vaccination levels in the United States have currently reached only about 45 percent of CDC goals.

(c) All influenza vaccines presently in use have been developed for circulating or anticipated influenza viruses. These vaccines must be reformulated for each influenza season as well as in the event of a pandemic. Additional research is needed to develop influenza vaccines that provide more effective and longer-lasting protection against many or all influenza viruses.

(d) The current domestic enterprise for manufacturing influenza vaccines has critical shortcomings. Most influenza vaccines are made in chicken eggs, using a 70-year-old process that requires months-long production timelines, limiting their utility for pandemic control; rely on a potentially vulnerable supply chain of eggs; require the use of vaccine viruses adapted for growth in eggs, which could introduce mutations of the influenza vaccine virus that may render the final product less effective; and are unsuitable for efficient and scalable continuous manufacturing platforms.

(e) The seasonal influenza vaccine market rewards manufacturers that deliver vaccines in time for the influenza season, without consideration of the speed or scale of these manufacturers' production processes. This approach is insufficient to meet the response needs in the event of a pandemic, which can emerge rapidly and with little warning. Because the market does not sufficiently reward speed, and because a pandemic has the potential to overwhelm or compromise essential government functions, including defense and homeland security, the Government must take action to promote faster and more scalable manufacturing platforms.

Sec. 2. *Policy.* It is the policy of the United States to modernize the domestic influenza vaccine enterprise to be highly responsive, flexible, scalable, and more effective at preventing the spread of influenza viruses. This is a public

health and national security priority, as influenza has the potential to significantly harm the United States and our interests, including through large-scale illness and death, disruption to military operations, and damage to the economy. This order directs actions to reduce the United States' reliance on egg-based influenza vaccine production; to expand domestic capacity of alternative methods that allow more agile and rapid responses to emerging influenza viruses; to advance the development of new, broadly protective vaccine candidates that provide more effective and longer lasting immunities; and to support the promotion of increased influenza vaccine immunization across recommended populations.

Sec. 3. *National Influenza Vaccine Task Force.* (a) There is hereby established a National Influenza Vaccine Task Force (Task Force). The Task Force shall identify actions to achieve the objectives identified in section 2 of this order and monitor and report on the implementation and results of those actions. The Task Force shall be co-chaired by the Secretary of Defense and the Secretary of Health and Human Services, or their designees.

(b) In addition to the Co-Chairs, the Task Force shall consist of a senior official from the following executive branch departments, agencies, and offices:

(i) the Department of Defense (DOD);

(ii) the Department of Justice;

(iii) the Department of Agriculture;

(iv) the Department of Veterans Affairs (VA);

(v) the Department of Homeland Security;

(vi) the United States Food and Drug Administration;

(vii) the Centers for Disease Control and Prevention;

(viii) the National Institutes of Health (NIH);

(ix) the Centers for Medicare and Medicaid Services (CMS); and

(x) the Biomedical Advanced Research and Development Authority (BARDA).

(c) The Co-Chairs may jointly invite additional Federal Government representatives, with the consent of the applicable executive department, agency, or office head, to attend meetings of the Task Force or to become members of the Task Force, as appropriate.

(d) The staffs of the Department of State, the Office of Management and Budget (OMB), the National Security Council, the Council of Economic Advisers, the Domestic Policy Council, the National Economic Council, and the Office of Science and Technology Policy (OSTP) may attend and participate in any Task Force meetings or discussions.

(e) The Task Force may consult with State, local, tribal, and territorial government officials and private sector representatives, as appropriate and consistent with applicable law.

(f) Within 120 days of the date of this order, the Task Force shall submit a report to the President, through the Assistant to the President for National Security Affairs, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget, and the Director of the Office of Science and Technology Policy. The report shall include:

(i) a 5-year national plan (Plan) to promote the use of more agile and scalable vaccine manufacturing technologies and to accelerate development of vaccines that protect against many or all influenza viruses;

(ii) recommendations for encouraging non-profit, academic, and private-sector influenza vaccine innovation; and

(iii) recommendations for increasing influenza vaccination among the populations recommended by the CDC and for improving public understanding of influenza risk and informed influenza vaccine decision-making.

(g) Not later than June 1 of each of the 5 years following submission of the report described in subsection (f) of this section, the Task Force shall submit an update on implementation of the Plan and, as appropriate, new recommendations for achieving the policy objectives set forth in section 2 of this order.

Sec. 4. *Agency Implementation.* The heads of executive departments and agencies shall also implement the policy objectives defined in section 2 of this order, consistent with existing authorities and appropriations, as follows:

(a) The Secretary of HHS shall:

(i) through the Assistant Secretary for Preparedness and Response and BARDA:

(A) estimate the cost of expanding and diversifying domestic vaccine-manufacturing capacity to use innovative, faster, and more scalable technologies, including cell-based and recombinant vaccine manufacturing, through cost-sharing agreements with the private sector, which shall include an agreed-upon pricing strategy during a pandemic;

(B) estimate the cost of expanding domestic production capacity of adjuvants in order to combine such adjuvants with both seasonal and pandemic influenza vaccines;

(C) estimate the cost of expanding domestic fill-and-finish capacity to rapidly fulfill antigen and adjuvant needs for pandemic response;

(D) estimate the cost of developing, evaluating, and implementing delivery systems to augment limited supplies of needles and syringes and to enable the rapid and large-scale administration of pandemic influenza vaccines;

(E) evaluate incentives for the development and production of vaccines by private manufacturers and public-private partnerships, including, in emergency situations, the transfer of technology to public-private partnerships—such as the HHS Centers for Innovation and Advanced Development and Manufacturing or other domestic manufacturing facilities—in advance of a pandemic, in order to be able to ensure adequate domestic pandemic manufacturing capacity and capability;

(F) support, in coordination with the DOD, NIH, and VA, a suite of clinical studies featuring different adjuvants to support development of improved vaccines and further expand vaccine supply by reducing the dose of antigen required; and

(G) update, in coordination with other relevant public health agencies, the research agenda to dramatically improve the effectiveness, efficiency, and reliability of influenza vaccine production;

(ii) through the Director of NIH, provide to the Task Force estimated timelines for implementing NIH's strategic plan and research agenda for developing influenza vaccines that can protect individuals over many years against multiple types of influenza viruses;

(iii) through the Commissioner of Food and Drugs:

(A) further implement vaccine production process improvements to reduce the time required for vaccine production (*e.g.,* through the use of novel technologies for vaccine seed virus development and through implementation of improved potency and sterility assays);

(B) develop, in conjunction with the CDC, proposed alternatives for the timing of vaccine virus selection to account for potentially shorter timeframes associated with non-egg based manufacturing and to facilitate vaccines optimally matched to the circulating strains;

(C) further support the conduct, in collaboration with the DOD, BARDA, and CDC, of applied scientific research regarding developing cell lines and expression systems that markedly increase the yield of cell-based and recombinant influenza vaccine manufacturing processes; and

(D) assess, in coordination with BARDA and relevant vaccine manufacturers, the use and potential effects of using advanced manufacturing platforms for influenza vaccines;

(iv) through the Director of the CDC:

(A) expand vaccine effectiveness studies to more rapidly evaluate the effectiveness of cell-based and recombinant influenza vaccines relative to egg-based vaccines;

(B) explore options to expand the production capacity of cell-based vaccine candidates used by industry;

(C) develop a plan to expand domestic capacity for whole genome characterization of influenza viruses;

(D) increase influenza vaccine use through enhanced communication and by removing barriers to vaccination; and

(E) enhance communication to healthcare providers about the performance of influenza vaccines, in order to assist them in promoting the most effective vaccines for their patient populations; and

(v) through the Administrator of CMS, examine the current legal, regulatory, and policy framework surrounding payment for influenza vaccines and assess adoption of domestically manufactured vaccines that have positive attributes for pandemic response (such as scalability and speed of manufacturing).

(b) The Secretary of Defense shall:

(i) provide OMB with a cost estimate for transitioning DOD's annual procurement of influenza vaccines to vaccines manufactured both domestically and through faster, more scalable, and innovative technologies;

(ii) direct, in coordination with the VA, CDC, and other components of HHS, the conduct of epidemiological studies of vaccine effectiveness to improve knowledge of the clinical effect of the currently licensed influenza vaccines;

(iii) use DOD's network of clinical research sites to evaluate the effectiveness of licensed influenza vaccines, including methods of boosting their effectiveness;

(iv) identify opportunities to use DOD's vaccine research and development enterprise, in collaboration with HHS, to include both early discovery and design of influenza vaccines as well as later-stage evaluation of candidate influenza vaccines;

(v) investigate, in collaboration with HHS, alternative correlates of immune protection that could facilitate development of next-generation influenza vaccines;

(vi) direct the conduct of a study to assess the feasibility of using DOD's advanced manufacturing facility for manufacturing cell-based or recombinant influenza vaccines during a pandemic; and

(vii) accelerate, in collaboration with HHS, research regarding rapidly scalable prophylactic influenza antibody approaches to complement a universal vaccine initiative and address gaps in current vaccine coverage.

(c) The Secretary of VA shall provide OMB with a cost estimate for transitioning its annual procurement of influenza vaccines to vaccines manufactured both domestically and with faster, more scalable, and innovative technologies.

Sec. 5. *Termination.* The Task Force shall terminate upon direction from the President or, with the approval of the President, upon direction from the Task Force Co-Chairs.

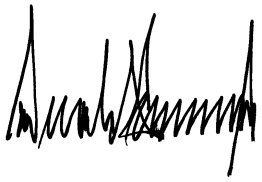
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 19, 2019.

[FR Doc. 2019–20804
Filed 9–23–19; 8:45 am]
Billing code 3295–F9–P

Rules and Regulations

Federal Register
Vol. 84, No. 185
Tuesday, September 24, 2019

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN85

Prevailing Rate Systems; Redefinition of Certain Nonappropriated Fund Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule amends the geographic boundaries of several nonappropriated fund (NAF) Federal Wage System (FWS) wage areas. Based on consensus recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC), the Office of Personnel Management (OPM) is defining St. Joseph County, Indiana, as an area of application county to the Lake, Illinois, NAF FWS wage area; Greene County, Missouri, as an area of application county to the Leavenworth-Jackson-Johnson, Kansas, NAF FWS wage area; Lucas County, Ohio, as an area of application county to the Macomb, Michigan, NAF FWS wage area; and the municipality of Mayaguez, Puerto Rico, as an area of application municipality to the Guaynabo-San Juan, PR, NAF FWS wage area. These changes are necessary because NAF FWS employees are now working in these locations, but the locations are not currently defined to NAF wage areas. In addition, OPM is removing the municipalities of Ceiba, Isabela, Toa Baja, and Vieques, PR, and the U.S. Virgin Islands of St. Croix and St. Thomas, from the wage area definition of the Guaynabo-San Juan NAF wage area because there are no longer NAF FWS employees working in these locations.

DATES: Effective October 24, 2019.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On June 10, 2019, OPM issued a proposed rule (84 FR 26767) to define—

- St. Joseph County, IN, as an area of application county to the Lake, IL, NAF FWS wage area;
- Greene County, MO, as an area of application county to the Leavenworth-Jackson-Johnson, KS, NAF FWS wage area;
- Lucas County, OH, as an area of application county to the Macomb, MI, NAF FWS wage area; and
- Municipality of Mayaguez, PR, as an area of application municipality to the Guaynabo-San Juan, PR, NAF FWS wage area.

In addition, the proposed rule removed the municipalities of Ceiba, Isabela, Toa Baja, and Vieques, PR, and the U.S. Virgin Islands of St. Croix and St. Thomas, from the wage area definition of the Guaynabo-San Juan, PR, NAF FWS wage.

FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus. These changes will apply on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

The 30-day comment period ended on July 10, 2019. OPM received one comment in support of the proposal to redefine Lucas County, OH, to the Macomb, MI, wage area.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix D to subpart B, amend the table by revising the wage area listing for the States of Illinois, Kansas, and Michigan and the Commonwealth of Puerto Rico to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

ILLINOIS
LAKE
Survey Area
Illinois:
Lake
Area of Application. Survey area.
Illinois:
Cook
Rock Island
Vermilion
Indiana:
St. Joseph
Iowa:
Johnson
Michigan:
Dickinson
Marquette
Wisconsin:
Brown
Dane
Milwaukee

St. Clair
Survey Area
Illinois:
St. Clair
Area of Application. Survey area plus:
Illinois:
Madison
Williamson
Indiana:
Vanderburgh
Missouri: (city)
St. Louis
Missouri: (counties)
Jefferson
Pulaski

KANSAS
Leaven-Worth-Jackson-Johnson
Survey Area
Kansas:
Leavenworth
Missouri:
Jackson
Johnson
Area of Application. Survey area.
Kansas:
Shawnee
Missouri:
Boone
Camden
Cass
Greene

Sedgwick
Survey Area
Kansas:
Sedgwick
Area of Application. Survey area.
Kansas:
Geary
Saline

* * * * *

MICHIGAN
Macomb
Survey Area
Michigan:
Macomb
Area of Application. Survey area.
Michigan:
Alpena
Calhoun
Crawford
Grand Traverse
Huron
Iosco
Kent
Leelanau
Ottawa
Saginaw
Washtenaw
Wayne
Ohio:
Lucas
Ottawa

* * * * *

PUERTO RICO
Guaynabo-San Juan
Survey Area
Puerto Rico:
Guaynabo
San Juan
Area of Application. Survey area.
Puerto Rico:
Aguadilla
Bayamon
Mayaguez
Ponce
Salinas

* * * * *

[FR Doc. 2019–20144 Filed 9–23–19; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[Document Number AMS–SC–19–0047]

Processed Raspberry Promotion, Research, and Information Order; Termination

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This final rule terminates the Processed Raspberry Promotion, Research, and Information Order (Order) in its entirety. This action is necessary because termination of the Order was favored by a majority of the eligible producers and importers voting in a referendum conducted from September 10 through October 5, 2018.

DATES: *Effective Date:* September 25, 2019.

FOR FURTHER INFORMATION CONTACT: Patricia Petrella, Deputy Director, Promotion and Economics Division, Specialty Crop Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0244, Room 1406–S, Washington, DC 20250–0244, telephone (202)720–9915, facsimile (202) 205–2800, or electronic mail: *Patricia.Petrella@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule affecting 7 CFR part 1208 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425). The Processed Raspberry Promotion, Research, and Information Order, referred to herein as the ''Order'', is codified at 7 CFR part 1208.

Prior documents in this proceeding: Termination of Assessments, February 20, 2019 [84 FR 4951], Continuance Referendum, July 25, 2018 [83 FR 35153]; Processed Raspberry Promotion, Research, and Information Order, May 8, 2012 [77 FR 26911]; and Referendum Procedures, February 8, 2010 [75 FR 6089].

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 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, reducing costs, harmonizing rules and promoting flexibility. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and

will not have significant Tribal implications.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This final rule terminates the Order as prescribed in its § 1208.72 and section 522 of the 1996 Act. The 1996 Act authorizes a national processed raspberry promotion, research, and information program. In accordance with the 1996 Act, upon the request of the industry, USDA developed and implemented the Order, which became effective on May 9, 2012.

The Order covered persons who grew 20,000 pounds or more of raspberries for processing in the United States or imported 20,000 pounds or more of processed raspberries into the United States.

Section 518(c) of the 1996 Act (7 U.S.C. 7417(c)), and § 1208.71(b) of the Order provide that the Secretary of Agriculture (Secretary) shall conduct a subsequent referendum among people subject to assessments. The Order states that subsequent referenda will be held every seven years to determine whether producers of raspberries for processing and importers of processed raspberries favor continuance of the Order. A referendum also may be held by request of 10 percent or more of eligible voters, by request of the Council established by the Order, or when the Secretary deems it necessary. The Order shall continue if it is favored by a majority of producers and importers voting in the referendum, who during a representative period, have been engaged in the production or importation of processed raspberries.

In March 2018, USDA received a petition requesting a referendum from more than the required 10 percent of eligible producers of raspberries for processing and importers of processed raspberries. As such, a referendum was held from September 10 through October 5, 2018. The representative period for establishing voter eligibility was January 1 through December 31, 2017. Persons who grew 20,000 pounds or more of raspberries for processing in the United States or imported 20,000 pounds or more of processed raspberries into the United States during the representative period and were subject to assessment during the representative period were eligible to vote. Notice of the referendum was published in the **Federal Register** on July 25, 2018 (83 FR 35153). Termination of the Order was favored by 57 percent of the eligible producers and importers voting in the referendum.

In addition, in accordance with § 1208.73 of the Order, the USDA appointed three members of the Council to serve as trustees for the purpose of liquidating the assets of the Council.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the economic impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $7.5 million.

According to the Council, it is estimated that there are 160 producers of raspberries for processing and 30 first handlers of raspberries for processing in the United States. Dividing the processed raspberry crop value for 2017 reported by the National Agricultural Statistics Service (NASS) of $102,691,456 [1] by the number of producers yields an annual average producer revenue of $641,821. It is estimated that 75 percent of first handlers shipped under $7.5 million worth of processed raspberries.

Likewise, based on U.S. Customs data, it is estimated there are 136 importers of processed raspberries. Using 2017 Customs data, nearly all importers, or 99 percent, import less than $7.5 million worth of processed raspberries annually. Thus, the majority of domestic producers, first handlers, and importers of processed raspberries would be considered small entities.

Regarding the value of the commodity, as mentioned above, based on 2017 NASS data, the value of the domestic crop was about $102 million. According to U.S. Customs data, the value of 2017 imports was about $55 million.

According to the Council, in 2017 there were 202 eligible producers and importers who paid about $1.2 million in assessments. When the Order was published in the **Federal Register** on May 8, 2012, the USDA stated that an anticipated $1.2 million of assessments would be collected from about 245 eligible entities. The assessment rate currently is one cent per pound of processed raspberries. This is the same rate that was set when the program first started. USDA has issued a rule to terminate the assessments which was effective on February 21, 2019 (84 FR 4951).

Although research and promotion order requirements are imposed on handlers and importers, the costs of the requirements are often passed on to producers. Termination of the Order, and the resulting regulatory relaxation, would therefore be expected to reduce costs for handlers, importers and producers.

This action will not impose any additional reporting or recordkeeping requirements on either large or small producers or importers of processed raspberries.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Termination Order

Termination of the Order was favored by a majority of the eligible producers

[1] Noncitrus Fruits and Nuts 2017 Summary, June 2018, USDA, National Agricultural Statistics Service, pg. 83.

and importers voting in a referendum conducted in September and October 2018. The Act requires that, upon such a determination by referendum, the Department shall terminate the Order. The assets of the Council have been liquidated, and a final audit of the Council's books has been conducted.

It is therefore ordered, that pursuant to section 522 of the Act, the Order is hereby terminated.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because (1) this action relieves restrictions on handlers and importers by terminating the requirements of the Order; (2) termination of the Order was favored by a majority of qualified producers and importers voting in a referendum in September–October 2018; and (3) the assets of the Council have been liquidated and a final audit of the Council's books has been conducted.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

PART 1208—[REMOVED]

■ For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 6802 *et seq.,* 7 CFR part 1208 is removed.

Dated: September 16, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–20343 Filed 9–23–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0692; Product Identifier 2018–NE–19–AD; Amendment 39–19735; AD 2019–18–08]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–16–04 for all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines. AD 2019–16–04 required a visual inspection of the 1st-stage low-pressure compressor (LPC) rotor assembly, referred to after this as the ''engine fan hub assembly,'' for damage, a one-time eddy current inspection (ECI) of the engine fan hub blade slot bottom and blade slot front edge for cracks; and removal of parts if damage or defects are found. AD 2019–16–04 also required replacement of the engine fan hub blade lock assembly for certain GP7270 and GP7277 model turbofan engines. This AD, for certain GP7270 and GP7277 model turbofan engines, reduces the compliance time for the initial ECI and requires repetitive ECIs of the engine fan hub blade slot bottom and blade slot front edge for cracks. This AD also retains the visual inspection requirements of the engine fan hub assembly for all GP7270 and GP7277 model turbofan engines. This AD was prompted by an uncontained failure of the engine fan hub. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 9, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 9, 2019.

The FAA must receive any comments on this AD by November 8, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.engineallianceportal.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0692.

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–2019–0692; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2019–16–04, Amendment 39–19707 (84 FR 41617, August 15, 2019), (''AD 2019–16–04''), for all EA GP7270 and GP7277 model turbofan engines. AD 2019–16–04 required a visual inspection of the engine fan hub assembly for damage, a one-time ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks, and removal of parts if damage or defects are found that are outside serviceable limits. AD 2019–16–04 required an independent inspection of the engine fan hub assembly prior to reassembly of the engine fan hub blade lock assembly. AD 2019–16–04 also required replacement of the engine fan hub blade lock assembly for certain serial-numbered GP7270 and GP7277 model turbofan engines. AD 2019–16–04 resulted from the manufacturer's determination that an independent inspection of the fan hub assembly for damage was necessary prior to the reassembly of the engine fan hub blade lock assembly for all EA GP7270 and GP7277 model turbofan engines. The FAA issued AD 2019–16–04 to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly.

Actions Since AD 2019–16–04 Was Issued

Since the FAA issued AD 2019–16–04, the manufacturer identified a fatigue crack originating inboard of a blade slot after the manufacturer performed a metallurgical examination of the engine fan hub that was recovered, related to the September 30, 2017 event. After performing a risk assessment, the manufacturer determined the need to reduce the compliance time for the initial ECI and add a repetitive ECI. The FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EA Alert Service Bulletin (ASB) EAGP7–A72–389, Revision No. 5, dated August 23, 2019. The ASB describes procedures for ECI of the EA GP7270 and GP7277 model turbofan engines fan hub assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed EA ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019. The ASB provides guidance on replacement or modification of the engine fan hub blade lock assembly.

The FAA also reviewed the following service information:

Subtask 72–31–42–210–001–A, of Task 72–31–42–000–802–A, from the A380 Aircraft Maintenance Manual (AMM). This subtask describes an on-wing visual inspection that is to be performed after removal of the engine fan hub blade lock assembly.

Figure 405 of Task 72–00–31–420–004 of the EA GP7000 Series Engine Manual (EM). This figure and task describe a visual inspection that is to be performed after removal of the engine fan hub blade lock assembly when the engine is in the shop.

Subtask 72–00–00–210–012–A, of Task 72–00–00–210–806–A, from the A380 Aircraft Maintenance Manual (AMM). This subtask describes an on-wing visual inspection that is to be performed after reassembly of the engine fan hub blade lock assembly.

Task 72–00–31–420–004, Paragraph 1.E.(13), of the GP7000 Series EM describes a visual inspection that is to be performed after reassembly of the engine fan hub blade lock assembly when the engine is in the shop.

Table 601 in Subtask 72–00–00–210–012–A, Task 72–00–00–210–806, from the A380 AMM or Task 72–00–31–220–010 of the EA GP7000 Series EM. Table 601 and Task 72–00–31–220–010 provide guidance on acceptable damage service limits.

FAA's Determination

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

AD Requirements

This AD requires, for certain GP7270 and GP7277 model turbofan engines, an initial and repetitive ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks. For all GP7270 and GP7277 model turbofan engines, this AD also requires an independent inspection of the engine fan hub assembly prior to the reassembly of the engine fan hub blade lock assembly and a visual inspection of the engine fan hub assembly for damage. For certain serial-numbered GP7270 and GP7277 model turbofan engines, this AD requires replacement of the engine fan hub blade lock assembly with a part eligible for installation.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0692 and product identifier 2018–NE–19–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule 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 final rule.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects zero engines installed on airplanes of U.S. registry. We have revised the estimate of work hours to complete the ECI based on updated service information.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
ECI	20 work-hours × $85 per hour = $1,700	$0	$1,700	$0
Visual inspection	1 work-hour × $85 per hour = $85	0	85	0
Replace fan hub blade lock assembly	25 work-hours × $85 per hour = $2,125	28,000	30,125	0

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace engine fan hub assembly	50 work-hours × $85 per hour = $4,250	$790,500	$794,750

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) AD 2019–16–04, Amendment 39–19707 (84 FR 41617, August 15, 2019), and adding the following new AD:

2019–18–08 Engine Alliance: Amendment 39–19735; Docket No. FAA–2019–0692; Product Identifier 2018–NE–19–AD.

(a) Effective Date

This AD is effective October 9, 2019.

(b) Affected ADs

This AD replaces AD 2019–16–04, Amendment 39–19707 (84 FR 41617, August 15, 2019) (''AD 2019–16–04'').

(c) Applicability

This AD applies to all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by an uncontained failure of the engine fan hub. The FAA is issuing this AD to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly. The unsafe condition, if not addressed, could result in uncontained failure of the engine fan hub assembly, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For EA GP7270 and GP7277 model turbofan engines with engine fan hub assembly part numbers (P/Ns) 5760221 or 5760321, within 1,700 cycles since new, or within 150 flight cycles (FCs) after the effective date of this AD, or within 330 FCs since an eddy current inspection (ECI) was performed in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 2.A and 2.B, of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019, or earlier versions of that ASB; or within 330 FCs since overhaul, whichever occurs later:

(i) For engine fan hub assemblies at the low-pressure compressor (LPC) module assembly level, perform an ECI of the engine fan hub blade slot bottoms and front edges in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 1.B. and 1.C., of EA ASB EAGP7–A72–389, Revision No. 5, dated August 23, 2019.

(ii) For engine fan hub assemblies at the piece part level, perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs at Piece Part Level, paragraphs 1.A. and 1.B., of EA ASB EAGP7–A72–389, Revision No. 5, dated August 23, 2019.

(iii) For engine fan hub assemblies installed in an engine (on-wing or off-wing), perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs Installed in an Engine, paragraphs 3.B. and 3.C., of EA ASB EAGP7–A72–389, Revision No. 5, dated August 23, 2019.

(iv) Thereafter, repeat the ECI of the engine fan hub blade slot bottoms and front edges at intervals not exceeding 330 FCs since the previous ECI required by paragraphs (g)(1)(i) through (iii) of this AD, as applicable.

(v) If any ECI of the engine fan hub assembly results in a rejectable indication per the Appendix, Added Data, of EA ASB EAGP7–A72–389, Revision No. 5, dated August 23, 2019, remove the engine fan hub assembly from service and, before further flight, replace with a part that is eligible for installation.

(2) For all GP7270 and GP7277 model turbofan engines, after the effective date of this AD:

(i) At the next disassembly of the engine fan hub blade lock assembly, visually inspect the following areas for damage:

(A) The fan hub blade lock retention hooks (also known as lock ring contact area); and

(B) The fan hub rim face.

(ii) At the next reassembly of the fan hub blade lock assembly, visually inspect the following areas of the engine fan hub for damage:

(A) The fan hub scallop areas;

(B) The fan hub bore area behind the balance flange;

(C) The fan hub fan blade lock retention hooks;

(D) The fan hub rim face; and

(E) The clinch nut holes.

(iii) After any reassembly per paragraph (g)(2)(ii), before further flight, perform an

independent inspection of all areas of the engine fan hub referenced in paragraph (g)(2)(ii) of this AD for damage.

(iv) Thereafter, repeat the inspections required by paragraphs (g)(2)(i) through (iii) of this AD at each disassembly and reassembly of the engine fan hub blade lock assembly.

(v) As an optional terminating action to the inspection requirements and independent inspection requirements of paragraph (g)(2)(i) through (iii) of this AD, insert the requirements for the visual inspections and independent inspections required by these paragraphs as Required Inspection Items in the approved continuous airworthiness maintenance program for the airplane.

(vi) If damage is found outside serviceable limits during the inspections required by (g)(2)(i) through (iii) of this AD, before further flight, remove the engine fan hub assembly from service and replace it with a part eligible for installation.

(3) For GP7270 and GP7277 model turbofan engines with engine serial numbers P550101 through P550706, remove the engine fan hub blade lock assembly, P/N 5700451, by September 1, 2020, and replace with a part eligible for installation. Refer to EA ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019, for guidance on replacement of the engine fan hub blade lock assembly.

(h) Credit for Previous Actions

You may take credit for the inspections required by paragraph (g)(1)(i) through (iii) of this AD if you performed the inspections before the effective date of this AD using EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019, or an earlier version.

(i) Definitions

(1) For the purpose of this AD, a part eligible for installation for replacement of the engine fan hub blade lock assembly is:

(i) A part that is not P/N 5700451, or

(ii) An engine fan hub blade lock assembly that has been modified in accordance with EA ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019, or EA ASB EAGP7–A72–418, Revision No. 0, dated December 7, 2018.

(2) For the purpose of this AD, an independent inspection is a second visual inspection performed by an individual qualified to perform inspections who was not involved in the original inspection of the engine fan hub assembly following disassembly and reassembly of the engine fan hub blade lock assembly.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 2019–16–04, AD 2018–11–16 (83 FR 27891, June 15, 2018), and AD 2019–03–04 (84 FR 4694, February 19, 2019) are approved as AMOCs for the corresponding provisions of this AD.

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Alert Service Bulletin EAGP7–A72–389, Revision No. 5, dated August 23, 2019.

(ii) [Reserved]

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

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

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

Issued in Burlington, Massachusetts, on September 18, 2019.

Karen M. Grant,

Acting Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–20599 Filed 9–23–19; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1130

[Docket No. CPSC–2018–0018]

Amendment to Requirements for Consumer Registration of Durable Infant or Toddler Products

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In 2009, the Consumer Product Safety Commission (CPSC) fulfilled a statutory requirement in the Consumer Product Safety Improvement Act of 2008 (CPSIA) to issue a rule requiring manufacturers of durable infant or toddler products to establish a consumer registration program. The Commission is now finalizing an amendment to the definition of ''durable infant or toddler product'' in the rule to include the full statutory definition; clarify that the scope of each listed product category is further defined in the applicable mandatory standard; clarify listed product categories using the product name in the applicable mandatory standard; and clarify the scope of the infant carriers and bassinets and cradles product categories.

DATES:

Effective Date: The rule will become effective on October 24, 2019.

Compliance Date for Contoured Changing Pads: Contoured changing pads, a subcategory of baby changing products in § 1130.2(a)(14), must comply with this rule starting on September 24, 2020.

FOR FURTHER INFORMATION CONTACT: Keysha L. Walker, Compliance Officer, Office of Compliance & Field Operations, Regulatory Enforcement Division, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; 301–504–6820, Email: *kwalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104 of the CPSIA is the Danny Keysar Child Product Safety Notification Act. Section 104 of the CPSIA requires that for ''durable infant or toddler products,'' the CPSC must (1) issue a mandatory rule for each product based on the applicable voluntary standard, and (2) issue a rule requiring consumer registration for such products. 15 U.S.C. 2056a(b) and (d).[1] In 2009, the Commission issued a regulation to implement the second requirement, *i.e.,* that manufacturers provide a means for consumers to register ''durable infant or toddler products'' so that consumers can receive direct notification in the event of a product recall. The rule is codified at 16 CFR part 1130, Requirements for Consumer Registration of Durable Infant or Toddler Products (part 1130, or the consumer registration rule).

[1] Since 2009, the Commission has issued final rules for 23 durable infant or toddler products. Mandatory standards for durable infant or toddler products are codified in 16 CFR parts 1215 through 1235, and parts 1237 and 1238. Currently, part 1236 is reserved for Inclined Infant Sleep Products, a proposed rule that has not been finalized.

The two aspects of section 104, consumer registration and product standards, are both based on the definition of ''durable infant or toddler product'' set forth in section 104(f) of the CPSIA: ''durable products intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' The statute lists 12 product categories included within the definition, such as cribs, toddler beds, high chairs, strollers, and swings. In a 2009 rulemaking, the Commission explained that the list of products in section 104(f), and codified in the Commission's consumer registration rule in 16 CFR 1130.2, is not static. At that time, the Commission added six product categories to the 12 listed in the CPSIA. 74 FR 68668, 68669 (Dec. 29, 2009).

On October 9, 2018, the Commission issued a notice of proposed rulemaking (NPR), proposing to make the following changes to part 1130 to clarify the scope of products covered by the rule:

- State the full statutory definition of ''durable infant or toddler product'' in section 104(f)(1);
- Specify that the listed product categories are further defined in the applicable mandatory standards;
- List ''sling carriers,'' ''soft infant and toddler carriers,'' ''handheld infant carriers,'' and ''frame child carriers'' as a subset of infant carriers, to avoid confusion regarding whether these products are subject to the consumer registration rule, and to reflect each product category using the name of the applicable mandatory standard;
- Clarify that ''bedside sleepers'' are a subset of bassinets, to avoid confusion regarding whether bedside sleepers are subject to the consumer registration rule, and to reflect the product name used in the mandatory standard; and
- Revise the term ''changing tables'' to ''baby changing products,'' to reflect the product name used in the mandatory standard.

83 FR 50542. After reviewing the comments, the Commission is finalizing this rule, without modification.

II. Response to Comments

CPSC received seven comments on the NPR. Only one comment addressed a substantive issue, while all of the remaining comments generally support the concept of the consumer registration rule, and support amending the definition of ''durable infant or toddler product'' to clarify the scope of products subject to the rule. The Commission is not making any changes in the final rule based on the comments received. Below we summarize and respond to the substantive comment on the proposed rule.

Comment—One commenter disagreed with the proposed 1-year effective date for contoured changing pads, stating that many of the manufacturers make other durable infant or toddler products and have registration programs in place. The commenter opines that because of technological advances, product registration programs should take no longer than 6 months to implement, even if no program is in place. The commenter recommended an effective date for contoured changing pads that is 6 months after publication of the final rule.

Response—The Commission agrees that many manufacturers of contoured changing pads make other products subject to the consumer registration rule, and therefore, these manufacturers are likely to have an established consumer registration program. However, the final rule for baby changing products identified 25 firms that supply only contoured changing pads and no other changing products. At least 13 of these 25 firms are not otherwise in the durable infant and toddler product market and are unlikely to have an existing consumer registration program. The commenter provided no information, and we have none, to demonstrate that these 13 firms have established a consumer registration program since issuance of the rule for changing products. Additionally, the baby changing products rule (16 CFR part 1235) went into effect on June 26, 2018, a year after publication of the final rule. For these reasons, the rule provides a 12-month effective date for a consumer registration program for contoured changing pads, consistent with previous effective periods for new products subject to the consumer registration requirement in part 1130.

III. Description of the Final Rule

A. Definition

The final rule updates the definition of ''durable infant or toddler product'' in 16 CFR 1130.2(a) to state the full statutory definition of ''durable infant or toddler product'' and to clarify that the scope of the product categories listed can be found in the applicable mandatory standard.

B. Product Categories

The final rule updates the description of product categories subject to the rule by listing the name of each product category that aligns with the name of the product category used in the applicable voluntary or mandatory standard.[2] Furthermore, to provide information on the scope of the products covered by a product category, the final rule states that the scope of each product category is further defined in the applicable mandatory standard.

1. Infant Carriers

Section 104(f)(H) of the CPSIA lists ''infant carriers'' as a product category included in the term ''durable infant or toddler products.'' ASTM International has four separate voluntary standards for infant carriers, and the Commission has now issued four separate mandatory standards, one for each subtype of infant carrier:

- 16 CFR part 1225, Hand-Held Infant Carriers
- 16 CFR part 1226, Soft Infant and Toddler Carriers
- 16 CFR part 1228, Sling Carriers
- 16 CFR part 1230, Frame Child Carriers.

Although the Commission added ''Infant Slings'' to the list of products in 16 CFR § 1130.2(a) when finalizing the 2009 consumer registration rule, the registration rule does not list the other sub-categories of infant carriers. To clarify that all four types of infant carriers are subject to the consumer registration requirement, the final rule amends § 1130.2(a)(8) to state: ''Infant carriers, including soft infant and toddler carriers, hand-held infant carriers, sling carriers, and frame child carriers.'' The final rule removes ''infant slings'' as a separate product category in 16 CFR 1130.2(a)(18), and changes the product name from ''infant slings'' to ''sling carriers,'' to align with the name of the mandatory rule in part 1228.

2. Bedside Sleepers

Currently, the product ''bedside sleepers'' [3] is not listed in part 1130. However, when the Commission issued a mandatory standard pursuant to section 104(b) of the CPSIA for bedside sleepers (codified at 16 CFR part 1222), the Commission considered bedside sleepers to be a subset of ''bassinets and cradles.'' 79 FR 2581, 2583 (Jan. 15,

[2] Some products may be listed in part 1130 before the Commission issues the corresponding mandatory standard. In those cases, the Commission will list the product category as defined in the current voluntary standard, which typically provides specificity about the scope of the product category.

[3] A bedside sleeper is a bassinet-type product, intended to provide a sleeping environment for an infant up to approximately 5 months of age, or when a child begins to push up on his or her hands and knees, whichever comes first. These products are designed to be secured to an adult bed, for the purpose of having a baby sleep in close proximity to an adult.

2014). To resolve any confusion about whether bedside sleepers are subject to part 1130, the final rule revises § 1130.2(a)(12) to state: ''Bassinets and cradles, including bedside sleepers.''

3. Changing Tables

Currently, ''changing tables'' is listed as a durable infant or toddler product in 16 CFR 1130.2(14). However, the Commission's standard for these products is called ''Safety Standard for Baby Changing Products,'' codified at 16 CFR part 1235.[4] CPSC's standard covers products that are included in the scope of the voluntary standard on which it is based, ASTM F2388–18, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use*. Accordingly, CPSC's standard includes changing tables, changing table accessories, contoured changing pads, and add-on changing units. The final rule revises § 1130.2(a)(14) to use the term ''baby changing products'' to be consistent with the Commission's mandatory standard.

III. Effective Date and Compliance Date

The Administrative Procedure Act generally requires that the effective date of a rule be at least 30 days after publication of the final rule. The final rule takes effect 30 days after publication, but has a different compliance date for contoured changing pads, as follows.

A. Thirty-Day Effective Date

Most of the changes in the final rule are clarifications to the definition of ''durable infant or toddler product'' to state the full statutory definition, and to identify more clearly product categories that already are subject to the consumer registration rule (*i.e.,* the statutory definition, infant carrier list, and bedside sleepers). Because these revisions clarify the text of the rule and do not impose new burden on any manufacturer, the final rule has a 30-day effective date for the addition of the statutory language in § 1130.2(a), and for the clarifications to product categories in sections 1130.2(a)(8), (a)(11), and (a)(12).

B. Twelve-Month Compliance Date for Contoured Changing Pads

For the reasons stated in the NPR and section II of this preamble, the final rule has a 12-month compliance date for contoured changing pads. The other types of ''baby changing products'' (changing tables, changing table accessories, and add-on changing units) have all been required to be in compliance with part 1130 since December 29, 2010, under the previously listed category ''changing tables.'' 74 FR at 68669. Therefore, the 12-month compliance date applies only to contoured changing pads.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that agencies review a proposed rule and a final rule for the rule's potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 104(d)(1) of the CPSIA, however, the provision that establishes the requirement for a consumer registration rule, the RFA does not apply when promulgating a rule under this provision. Consequently, the Commission has not prepared an FRFA and no certification is necessary. We note that the amendment mostly provides clarifications that would not have any economic impact. Providing a longer (12 month) compliance date for the one product that has not been subject to the registration rule, contoured changing pads, should reduce the economic impact on manufacturers of those products.

V. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have ''little or no potential for affecting the human environment,'' and therefore, they do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5. This final rule falls within the categorical exclusion to prepare an environmental impact statement.

VI. Paperwork Reduction Act

Section 104(d)(1) of the CPSIA excludes this rulemaking from the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 through 3520. Consequently, no Paperwork Reduction Act analysis is necessary.

VII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. The Commission's authority to issue this consumer registration rule is section 16(b) of the CPSA, 15 U.S.C. 2065(b). Accordingly, this rule is not a consumer product safety standard, and the preemption provision of section 26(a) of the CPSA does not apply to the Commission's final rule.

VIII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, OIRA designated this rule as not a ''major rule,'' as defined in 5 U.S.C. 804(2). Additionally, to comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends Part 1130 of Title 16 of the Code of Federal Regulations as follows:

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

■ 1. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

■ 2. Amend § 1130.1 by revising the last sentence in paragraph (c) to read as follows:

§ 1130.1 Purpose, scope, and effective date.

* * * * *

(c) * * * Compliance with this part 1130 shall be required on September 24, 2020 for contoured changing pads (a

[4] The final rule for baby changing products was published on June 26, 2018, and became effective on June 26, 2019.

type of baby changing product). The rule shall apply to durable infant or toddler products, as defined in § 1130.2(a), that are manufactured on or after those dates.

■ 3. Amend § 1130.2 by revising paragraphs (a) introductory text, (a)(8), (11), (12), (14), (17), and removing paragraph (a)(18)

§ 1130.2 Definitions.

(a) *Definition of Durable Infant or Toddler Product* means the following products intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. The listed product categories are further defined in the applicable standards that the Commission issues under section 104(b) of the Consumer Product Safety Improvement Act of 2008, and include products that are combinations of the following product categories:

* * * * *

(8) Infant carrier, including soft infant and toddler carriers, hand-held infant carriers, sling carriers, and frame child carriers;

* * * * *

(11) Swings;

(12) Bassinets and cradles, including bedside sleepers;

* * * * *

(14) Baby changing products;

* * * * *

(17) Bed rails.

* * * * *

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–20049 Filed 9–23–19; 8:45 am]

BILLING CODE 6355–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2019–0036]

RIN 0960–AI44

Extension of Expiration Dates for Two Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Respiratory Disorders and Genitourinary Disorders. We are making no other revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

DATES: This final rule is effective on September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Director, Office of Medical Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in part B of the listings when we assess your impairment(s). If the criteria in part B do not apply, we may use the criteria in part A when those criteria consider the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending the dates on which the listings for the following two body systems will no longer be effective as set out in the following chart:

Listing	Current expiration date	Extended expiration date
Respiratory Disorders 3.00 and 103.00	October 7, 2019	December 10, 2021.
Genitourinary Disorders 6.00 and 106.00	December 9, 2019	December 10, 2021.

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.[2] We intend to update the two listings affected by this final rule as necessary based on medical advances as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration dates. Therefore, we are extending the expiration dates listed above.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which two body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations [3] provide that we may extend, revise, or

[1] We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

[2] Since we last extended the expiration dates of the listings affected by this final rule in June 2016 (81 FR 37138) and October 2014 (79 FR 61221), we published final rules revising the medical criteria for evaluating hematological disorders (80 FR 21159 (2015)), cancer (malignant neoplastic diseases) (80 FR 28821 (2015)), neurological disorders (81 FR 66137 (2016)), mental disorders (81 FR 66137 (2016)), and human immunodeficiency virus (HIV) infection (81 FR 86915 (2016)).

[3] See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

promulgate the body system listings again. Therefore, we determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in these two body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Executive Order 13771

This regulation does not impose novel costs on the public and as such is considered an exempt regulatory action under E.O. 13771.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Andrew Saul,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 in the introductory text by revising items 4 and 7 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

4. Respiratory Disorders (3.00 and 103.00): December 10, 2021.

* * * * *

7. Genitourinary Disorders (6.00 and 106.00): December 10, 2021.

* * * * *

[FR Doc. 2019–20444 Filed 9–23–19; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0010; FRL–9999–92–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Townsend Saw Chain Co. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the soil, sediment, surface water, surficial aquifer, and the intermediate aquifer of this Site with the exception of a limited area (5000–8000 square feet) of the intermediate aquifer below the 1C clay in the vicinity of monitoring wells IMW–01B, MW–128, and OW–143 of the Townsend Saw Chain Co. Superfund Site (Site) located in Pontiac, South Carolina, 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 partial deletion pertains to the soil, sediment, surface water, surficial aquifer, and the intermediate aquifer of this Site. A limited area (5000–8000 square feet) of the intermediate aquifer below the 1C clay in the vicinity of monitoring wells IMW–01B, MW–128, and OW–143 of the Townsend Saw Chain Co. will remain on the NPL and is not being considered for deletion as part of this action. The EPA and the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

DATES: This action is effective September 24, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1990–0010. All documents in the docket are listed on the *http://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 *http://www.regulations.gov* or in hard copy at the site information repositories:

US EPA Region 4, Superfund & Emergency Management Divison Records Center, 61 Forsyth Street SW, Atlanta, Georgia 30303, (800) 435–9234 Hours of operation: Monday–Friday 8 a.m. to 4:30 p.m.

Northeast Regional Library, 7490 Parklane Road, Columbia, South Carolina, Monday–Thursday: 9:00 a.m.–9:00 p.m., and Friday–Saturday: 9:00 a.m.–6:00 p.m., Phone: (803) 736–6575.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder, Remedial Project Manager, U.S. Environmental Protection

Agency, Region 4, 61 Forsyth St. SW, Atlanta, GA 30303. (404) 562–9121, email: *Majumder.joydeb@epa.gov*.

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: The soil, sediment, surface water, surficial aquifer, and the intermediate aquifer of this Site with the exception of a limited area (5000–8000 square feet) of the intermediate aquifer below the 1C clay in the vicinity of monitoring wells IMW–01B, MW–128, and OW–143 of the Townsend Saw Chain Co. Superfund Site (Site) located in Pontiac, South Carolina. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** 84 FR 35054, on July 22, 2019.

The closing date for comments on the Notice of Intent for Partial Deletion was August 21, 2019. No public comments were received and EPA will proceed with the partial deletion.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. 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. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

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, and Water supply.

Dated: September 9, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

For reasons set out in the preamble, 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. 9601–9657; 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.

■ 2. Table 1 of appendix B to part 300 is amended by removing the entry for ''SC, Townsend Saw Chain Co, Pontiac'' and adding an entry for ''SC, Townsend Saw Chain Co. Superfund Site, Pontiac'' in its place to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
SC	Townsend Saw Chain Co. Superfund Site.	Pontiac	P.
*	*	*	*

[a] = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * * * *

P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2019–20346 Filed 9–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9999–97–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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 announces the deletion of the Intel Corp. (Santa Clara III) Superfund Site (Site) located in Santa Clara, California, 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). EPA and the State of California, through the San Francisco Regional Water Quality Control Board, have determined that all appropriate response actions under CERCLA have been completed. However, the deletion of the Site does not preclude future actions under Superfund.

DATES: This action is effective September 24, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1986–0005. All documents in the docket are listed on the website *http://www.regulations.gov.* Docket materials are also available at the site information repository: Superfund Records Center, 75 Hawthorne Street, Room 3110, San Francisco, California, Hours: 8:00 a.m.–4:00 p.m.; (415) 947–8717.

FOR FURTHER INFORMATION CONTACT: Holly Hadlock, Superfund 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: The site to be deleted from the NPL is the Intel Corp. (Santa Clara III) Superfund Site, Santa Clara, California. A Notice of Intent to Delete was published in the **Federal Register** (84 FR 37195–37198) on July 31, 2019. The closing date for comments was August 30, 2019. EPA received one public comment opposing its decision to delete the Site from the NPL. The commenter opposed the deletion because of the concern that contamination could return. EPA believes the deletion is appropriate because the applicable NPL deletion criterion established by the NCP has been met: The responsible party, Intel Corporation, has implemented all

appropriate response actions for groundwater set forth in the 2010 amendment to the 1990 Record of Decision, which selected the remedy for contaminated groundwater at the Site. Confirmation sampling indicates that all contaminants of concern are below state and federal drinking water standards. Since there is no ongoing source of contamination at the Site, EPA is confident that the groundwater at the Site will continue to meet State and Federal drinking water standards in the future. EPA prepared a responsiveness summary and placed it in both the docket at *www.regulations.gov* (EPA–HQ–SFUND–1986–0005) and in the repository listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. 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. Deletion of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

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: September 10, 2019.

Kerry Drake,

Acting Regional Administrator, Region 9.

For reasons set out in the preamble, 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. 9601–9657; 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.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended by removing the entry for ''CA'', ''Intel Corp. (Santa Clara III)'', ''Santa Clara''.

[FR Doc. 2019–20345 Filed 9–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0001; FRL–9999–91–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Escambia Wood—Pensacola Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of 50 acres of the Escambia Wood—Pensacola Superfund Site (Site) located in Pensacola, Florida, 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 partial deletion pertains to 50 acres of former residential property in the former neighborhoods of Oak Park, Escambia Arms, Herman & Pearl and Clarinda Triangle, part of Operable Unit One (soils). The remaining areas of Operable Unit One (about 50 acres) and Operable Unit Two (groundwater) will remain on the NPL and are not being considered for deletion as part of this action. The EPA and the State of Florida, through the Florida Department of Environmental Protection (FDEP), have determined that all appropriate response actions under CERCLA, other than five-year reviews and operation and maintenance, have been completed. However, this partial deletion does not preclude future actions under Superfund.

DATES: This action is effective September 24, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1994–0001. All documents in the docket are listed on the *http://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 *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Region 4, Superfund & Emergency Management Divison Records Center, 61 Forsyth Street SW, Atlanta, Georgia 30303, (800) 435–9234 Hours of operation: Monday–Friday 8 a.m. to 4:30 p.m.

West Florida Genealogy Branch Library, 5740 N Ninth Ave., Pensacola, Florida, 32504. (850) 494–7373 Hours of operation—Tuesday–Saturday 10 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Erik Spalvins, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303, (404) 562–8938, email: *spalvins.erik@epa.gov.*

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: 50 Acres of former residential property (in the former neighborhoods of Oak Park, Escambia Arms, Herman & Pearl and Clarinda Triangle) of the Escambia Wood—Pensacola Superfund Site, Pensacola, Florida. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** (84 FR 35059) on July 22, 2019.

The closing date for comments on the Notice of Intent for Partial Deletion was August 21, 2019. No adverse public comments were received, and EPA will proceed with the partial deletion.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. 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. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

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: September 6, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

For reasons set out in the preamble, 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. 9601–9657; 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.

■ 2. Table 1 of appendix B to part 300 is amended by revising the entry for ''FL'', ''Escambia Wood—Pensacola'', ''Pensacola'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
FL	Escambia Wood—Pensacola	Pensacola	P.
*	*	*	*

[a] = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * * * *

P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2019–20347 Filed 9–23–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

[NIOSH Docket 094]

World Trade Center Health Program; Petition 023—Uterine Cancer, Including Endometrial Cancer; Finding of Insufficient Evidence

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Denial of petition for addition of a health condition.

SUMMARY: On April 23, 2019, the Administrator of the World Trade Center (WTC) Health Program received a petition (Petition 023) to add ''endometrial cancer'' to the List of WTC-Related Health Conditions (List). Upon reviewing the scientific and medical literature, including information provided by the petitioner, the Administrator has determined that the available evidence does not have the potential to provide a basis for a decision on whether to add the major site uterine cancer, including its subtype, endometrial cancer, to the List. The Administrator also finds that insufficient evidence exists to request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC), to publish a proposed rule, or to publish a determination not to publish a proposed rule.

DATES: The Administrator of the WTC Health Program is denying this petition for the addition of a health condition as of September 24, 2019.

ADDRESSES: Visit the WTC Health Program website at *https://www.cdc.gov/wtc/received.html* to review Petition 023.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C–48, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113), added Title XXXIII to the Public Health Service (PHS) Act,[1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits for health conditions on the List to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

All references to the Administrator of the WTC Health Program (Administrator) in this document mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his designee.

Pursuant to section 3312(a)(6)(B) of the PHS Act, interested parties may petition the Administrator to add a health condition to the List in 42 CFR 88.15. Within 90 days after receipt of a valid petition to add a condition to the List, the Administrator must take one of the following four actions described in section 3312(a)(6)(B) of the PHS Act and § 88.16(a)(2) of the Program regulations: (1) Request a recommendation of the STAC, (2) publish a proposed rule in the **Federal Register** to add such health condition, (3) publish in the **Federal Register** the Administrator's determination not to publish such a proposed rule and the basis for such determination, or (4) publish in the **Federal Register** a determination that insufficient evidence exists to take action under (1) through (3) above.

B. Procedures for Evaluating a Petition for Cancer

In addition to the regulatory provisions, the WTC Health Program has developed policies to guide the

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm-61. Those portions of the James Zadroga 9/11 Health and Compensation Act of 2010 found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

review of submissions and petitions,[2] as well as the analysis of evidence supporting the potential addition of a type of cancer to the List.[3]

A valid petition must include sufficient medical basis for the association between the September 11, 2001, terrorist attacks and the health condition to be added; in accordance with WTC Health Program policy, reference to a peer-reviewed, published, epidemiologic study about the health condition among 9/11-exposed populations or to clinical case reports of health conditions in WTC responders or survivors may demonstrate the required medical basis.[4] Studies linking 9/11 agents[5] or hazards to the petitioned health condition may also provide sufficient medical basis for a valid petition.

After the Program has determined that a petition is valid, the Administrator must direct the Program to conduct a systematic literature search (a keyword search of relevant scientific databases) to gather information about the following: (1) Studies about the type of cancer requested to be added to the List among 9/11-exposed populations, (2) studies showing a potential causal association between the requested cancer and a health condition on the List, and (3) classifications of the World Health Organization's International Agency for Research on Cancer (IARC) and the National Toxicology Program (NTP) *Report on Carcinogens* relevant to the requested cancer. Peer-reviewed, published, epidemiologic studies of the cancer in 9/11-exposed populations are considered relevant. The quantity and quality of relevant studies are reviewed for their potential to provide a basis for deciding whether to propose adding the type of cancer to the List.

If the Program determines that the relevant studies have the potential to provide a basis for deciding whether to propose adding the type of cancer to the List, the cancer type may be added to the List if one of the four following methods is met:

Method 1. Epidemiologic Studies of September 11, 2001-Exposed Populations.

The peer-reviewed, published, epidemiologic studies of 9/11-exposed populations are assessed by applying the following criteria extrapolated from the Bradford Hill criteria, as appropriate:

a. Strength of the association between a 9/11 exposure and a type of cancer (including the precision of the risk estimate[6]),

b. Consistency of the findings across multiple studies. If only a single published epidemiologic study is available for assessment, the consistency of findings cannot be evaluated and more emphasis will be placed on evaluating the strength of the association and the precision of the risk estimate,

c. Biological gradient, or dose-response relationships between 9/11 exposures and the type of cancer, and

d. Plausibility and coherence with known facts about the biology of the type of cancer.

Method 2. Established Causal Associations.

A type of cancer may be added to the List if there is well-established scientific support published in multiple epidemiologic studies for a causal association between that cancer and a condition already on the List of WTC-Related Health Conditions.

Method 3. Review of Evaluations of Carcinogenicity in Humans.

A type of cancer may be added to the List under Method 3 if *both* of the following criteria are satisfied:

3A. Published Exposure Assessment Information. A 9/11 agent included in the *Inventory of 9/11 Agents*[7] is identified, and

3B. Evaluation of Carcinogenicity in Humans from Scientific Studies. NTP has determined that the [identified] 9/11 agent is *known to be a human carcinogen* or is *reasonably anticipated to be a human carcinogen,* and IARC has determined there is *sufficient* or *limited* evidence that the 9/11 agent causes [the requested] type of cancer.

Method 4. Review of Information Provided by the WTC Health Program Scientific/Technical Advisory Committee.[8]

A type of cancer may be added to the List if the STAC has provided a reasonable basis for adding a type of cancer.

If the evaluation of evidence required for any of the four methods demonstrates that the criteria in that method are satisfied, the Administrator will propose the addition of the type of cancer to the List.

C. Petition 023

On April 23, 2019, the Administrator received a petition (Petition 023) requesting the addition of ''endometrial cancer'' to the List.[9] The petition included a 2002 study by Lioy *et al.*[10] and a 2017 study by McElroy *et al.*[11] which together provided sufficient medical basis for the petition to be considered valid because they demonstrate the presence of 9/11 agents, including cadmium, at the WTC site and that cadmium exposure is associated with a statistically significant increase in endometrial cancer risk. However, because neither Lioy *et al.* [2002] nor McElroy *et al.* [2017] is a peer-reviewed, published, epidemiologic study of endometrial cancer (or the major site, uterine cancer) in a 9/11-exposed population, neither study is considered relevant nor are they further reviewed in this action.

In the Program's List of WTC-Related Health Conditions, types of cancer are identified by the major cancer site/histology groups that are commonly used in the reporting of cancer incidence data, using the groupings standardized by the National Cancer Institute's Surveillance, Epidemiology and End Results Program (SEER) for national cancer surveillance.[12] Cancer subtypes are not included in the List. Because endometrial cancer is a subtype of uterine cancer,[13] the Program has

[2] *See* WTC Health Program [2014], *Policy and Procedures for Handling Submissions and Petitions to Add a Health Condition to the List of WTC-Related Health Conditions,* May 14, 2014, *http://www.cdc.gov/wtc/pdfs/WTCHPPPPetitionHandlingProcedures14May2014.pdf.*

[3] *See* WTC Health Program [2019], *Policy and Procedures for Adding Types of Cancer to the List of WTC-Related Health Conditions,* May 1, 2019, *https://www.cdc.gov/wtc/pdfs/policies/WTCHP_PP_Addition_of_Cancer_Policy_UPDATED_050719-508.pdf.*

[4] *See supra* note 2.

[5] 9/11 agents are chemical, physical, biological, or other hazards reported in a published, peer-reviewed exposure assessment study of responders, recovery workers, or survivors who were present in the New York City disaster area, or at the Pentagon site, or the Shanksville, Pennsylvania site, as those locations are defined in 42 CFR 88.1, as well as those hazards not identified in a published, peer-reviewed exposure assessment study, but which are reasonably assumed to have been present at any of the three sites. *See* WTC Health Program [2018], *Development of the Inventory of 9/11 Agents,* July 17, 2018, *https://wwwn.cdc.gov/ResearchGateway/Content/pdfs/Development_of_the_Inventory_of_9-11_Agents_20180717.pdf.*

[6] A precision of the risk estimate describes the uncertainty inherent in estimating the strength of association (the effect size) between exposure and health effect from observational data. It is expressed as a confidence interval illustrating a range of values that contains the true effect size. A narrow confidence interval indicates a more precise measure of the effect size and a wider interval indicates greater uncertainty.

[7] The *Inventory of 9/11 Agents* is composed of those agents identified in Tables 1–4 of the document, *Development of the Inventory of 9/11 Agents. See supra* note 5.

[8] The WTC Health Program Scientific/Technical Advisory Committee may be convened by the Administrator if he determines that its advice would be helpful. *See supra* note 3 at Sec. V.

[9] *See* Petition 023, *WTC Health Program: Petitions Received, http://www.cdc.gov/wtc/received.html.*

[10] Lioy PJ, Weisel CP, Millette JR, Eisenreich S, Vallero D, Offenberg J, Turpin B, Zhong M, Cohen MD, Prophete C, Yang I, Stiles R, Chee G, Johnson W, Porcja R, Alimokhtari S, Hale RC, Weschler C, Chen LC [2002], *Characterization of the Dust/Smoke Aerosol that Settled East of the World Trade Center (WTC) in Lower Manhattan after the Collapse of the WTC11 September 2001,* Environ Health Perspect 110(7), 703–714.

[11] McElroy JA, Kruse RL, Guthrie J, Gangnon RE, Robertson JD [2017], *Cadmium Exposure and Endometrial Cancer Risk: A Large Midwestern U.S. Population-Based Case-Control Study,* PLoS ONE 12(7): e0179360.

[12] National Cancer Institute [2008], Surveillance Epidemiology and End Results: Site Recode ICD–O–3/WHO 2008 Definition, *https://seer.cancer.gov/siterecode/icdo3_dwhoheme/index.html/.*

[13] Endometrial cancer develops in the lining of the uterus, called the endometrium. Although endometrial uterine cancer is the most common type of uterine cancer, accounting for more than 90 percent of cases, there are other types of uterine

Continued

determined that the scope of this petition and subsequent Program review should include both endometrial cancer and the major site, uterine cancer.

D. Assessment of Scientific and Medical Information

In response to Petition 023, the Program conducted both a systematic literature search to identify peer-reviewed, published studies of uterine cancer, including endometrial cancer, in 9/11-exposed women, as well as a review of NTP and IARC classifications of 9/11 agents, including those 9/11 agents identified by IARC as carcinogenic agents with *sufficient* or *limited* evidence that the agent causes uterine cancer, including endometrial cancer, in humans.[14] The National Cancer Institute has not identified any of the health conditions on the List of WTC-Related Health Conditions as known risk factors for uterine or endometrial cancer; therefore, a systematic literature search for studies regarding a causal association between uterine or endometrial cancer and a health condition on the List was not conducted.[15]

Literature Search Results

Two publications were identified in the search for studies specifically regarding uterine cancer, including endometrial cancer, among 9/11-exposed populations, thus meeting the Program's criteria for further evaluation: Li *et al.* [2012] [16] and its update Li *et al.* [2016].[17] In addition to the two Li *et al.* publications found in the literature search, the Program was aware of additional studies examining all types of cancer in 9/11-exposed subpopulations (rescue and recovery workers and survivors); these additional studies were also reviewed to determine whether they may provide further insight into cancer incidence and mortality applicable to the evaluation of uterine cancer, including endometrial cancer: Jordan *et al.* [2011] [18] and its update Jordan *et al.* [2018],[19] Zeig-Owens *et al.* [2011] [20] and its update Moir *et al.* [2016],[21] Solan *et al.* [2013],[22] Kleinman *et al.* [2015],[23] and Stein *et al.* [2016].[24] Of the additional studies, only Zeig-Owens *et al.* [2011] and its update Moir *et al.* [2016] were found not to be relevant (they were not peer-reviewed, published, studies of uterine or endometrial cancer in the 9/11-exposed population) because neither addressed cancers in female WTC responders. The other five additional studies, along with Li *et al.* [2012] and Li *et al.* [2016], were found to be relevant and were reviewed for quantity and quality, below.

The Program reviewed the NTP *Report on Carcinogens* [25] and found that twelve 9/11 agents [26] are *known to be human carcinogens* and twenty-seven 9/11 agents are *reasonably anticipated to be human carcinogens.* [27] However, IARC has not determined that any of these thirty-nine 9/11 agents demonstrate *sufficient* or *limited* evidence of a causal association with uterine or endometrial cancer in humans.[28]

Review of Relevant Studies

The studies identified as relevant during the literature review process were further assessed to determine whether they have sufficient quality and quantity to demonstrate a potential to support the addition of uterine cancer, including endometrial cancer. The relevant studies introduced above are described below, including a description of their respective strengths and limitations.

Jordan *et al.* [2011] conducted a mortality study among the cohort of WTC Health Registry enrollees that included 13,337 rescue/recovery workers (3,188 women) and 28,593 survivors (16,733 women) living in New York City at the time of their enrollment. The authors identified deaths occurring in 2003–2009 through linkage to New York City vital records and the National Death Index (NDI). Standardized mortality ratios (SMRs) were calculated with New York City rates from 2000 to 2009 as the reference. Within the cohort, proportional hazards were used to examine the relation between WTC-related exposure levels (high, intermediate, or low for each group, based on exposure to the dust cloud, and time and duration working on the pile) and all-cause mortality, but not mortality for specific cancers. All-

cancer. *See https://www.cancer.gov/types/uterine/patient/endometrial-treatment-pdq.*

[14] Databases searched include: CINAHL, Embase, NIOSHTIC–2, ProQuest Health & Safety, PsycINFO, Ovid MEDLINE, Scopus, Toxicology Abstracts/TOXLINE, and WTC Health Program Bibliographic Database. Keywords used to conduct the search include: Endometrial neoplasm, endometrial cancer, endometrial carcinoma, malignant neoplasm of endometrium, adenocarcinoma of endometrium, cancer of the endometrium, Uterine Neoplasm, malignant neoplasm of corpus uteri, uterine cancer, uterine carcinoma. The literature search was conducted in English-language journals on May 23, 2019.

[15] No health conditions on the List of WTC-Related Health Conditions are known risk factors for uterine cancer. *See https://www.cancer.gov/types/uterine/hp/endometrial-prevention-pdq.*

[16] Li J, Cone JE, Kahn AR, Brackbill RM, Farfel MR, Greene CM, Hadler JL, Stayner LT, Stellman SD [2012], *Association between World Trade Center Exposure and Excess Cancer Risk,* JAMA 308(23):2479–88.

[17] Li J, Brackbill RM, Liao TS, Qiao B, Cone JE, Farfel MR, Hadler JL, Kahn AR, Konty KJ, Stayner LT, Stellman SD [2016], *Ten-Year Cancer Incidence in Rescue/Recovery Workers and Civilians Exposed to the September 11, 2001 Terrorist Attacks on the World Trade Center,* Am J Ind Med 59(9):709–21.

[18] Jordan HT, Brackbill RM, Cone JE, Debcoudhury I, Farfel MR, Greene CM, Hadler JL, Kennedy J, Li J, Liff J, Stayner L, Stellman SD [2011], *Mortality among Survivors of the Sept 11, 2001, World Trade Center Disaster: Results from the World Trade Center Health Registry Cohort,* Lancet 378(9794):879–87.

[19] Jordan HT, Stein CR, Li J, Cone JE, Stayner L, Hadler JL, Brackbill RM, Farfel MR [2018], *Mortality among Rescue and Recovery Workers and Community Members Exposed to the September 11, 2001 World Trade Center Terrorist Attacks, 2003–2014,* Environ Res 163:270–9.

[20] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011], *Early Assessment of Cancer Outcomes in New York City Firefighters after the 9/11 Attacks: an Observational Cohort Study,* Lancet 378(9794):898–905.

[21] Moir W, Zeig-Owens R, Daniels RD, Hall CB, Webber MP, Jaber N, Yiin JH, Schwartz T, Liu X, Vossbrinck M, Kelly K, Prezant D [2016], *Post-9/11 Cancer Incidence in World Trade Center-Exposed New York City Firefighters as Compared to a Pooled Cohort of Firefighters from San Francisco, Chicago and Philadelphia (9/11/2001–2009),* Am J Ind Med 59(9):722–30.

[22] Solan S, Wallenstein S, Shapiro M, Teitelbaum SL, Stevenson L, Kochman A, Kaplan J, Dellenbaugh C, Kahn A, Biro FN, Crane M, Crowley L, Gabrilove J, Gonsalves L, Harrison D, Herbert R, Luft B, Markowitz SB, Moline J, Niu X, Sacks H, Shukla G, Udasin I, Lucchini RG, Boffetta P, Landrigan PJ [2013], *Cancer Incidence in World Trade Center Rescue and Recovery Workers, 2001–2008,* Environ Health Perspect 21(6):699–704.

[23] Kleinman EJ, Christos PJ, Gerber LM, Reilly JP, Moran WF, Einstein AJ, Neugut AI [2015], *NYPD Cancer Incidence Rates 1995–2014 Encompassing the Entire World Trade Center Cohort,* J Occup Environ Med 57(10):e101–13.

[24] Stein CR, Wallenstein S, Shapiro M, Hashim D, Moline JM, Udasin I, Crane MA, Luft BJ, Lucchini RG, Holden WL [2016], *Mortality among World Trade Center Rescue and Recovery Workers, 2002–2011,* Am J Ind Med 59(2):87–95.

[25] National Toxicology Program, HHS [2016], *Report on Carcinogens,* 14th Edition (Research Triangle Park, NC). *https://ntp.niehs.nih.gov/go/roc14.*

[26] As identified in the *Inventory of 9/11 Agents, see supra* notes 7 and 5.

[27] The 39 total 9/11 agents identified by NTP are as follows: Arsenic, Asbestos, Benzene, Beryllium, 1,3-Butadiene, Cadmium, Nickel, Silica, Solar Radiation, Soot, Sulfuric Acid, Trichloroethylene (*Known To Be Human Carcinogens*); as well as Acetaldehyde, Acrylonitrile, Benz[a]anthracene, Benzo[k]fluoranthene, Benzo[a]pyrene, Carbon Tetrachloride, Chloroform, Cobalt, Dibenz[a,h]anthracene, 1,4-Dichlorobenzene, Dichlorodiphenyltrichloroethane, 1,2-Dichloroethane, Dichloromethane, 1,3-Dichloropropene, Diesel Exhaust Particulates, 1,4-Dioxane, Hexachlorobenzene, Lead, Hexachlorocyclohexane, Mirex, Naphthalene, Nickel, Polybrominated Biphenyls, Polychlorinated Biphenyls, Styrene, Tetrachloroethylene, and Toluene Diisocyanates (*Reasonably Anticipated To Be Human Carcinogens*).

[28] International Agency for Research on Cancer [1976], *IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man: Cadmium, Nickel, Some Epoxides, Miscellaneous Industrial Chemicals and General Considerations on Volatile Anesthetics,* Volume 11; Lyon, France.

cause SMRs were significantly lower than that expected for rescue/recovery workers (SMR = 0.45, 95% CI (confidence interval) 0.38–0.53) and survivors (SMR = 0.61, 95% CI 0.56–0.66). There were no significantly elevated SMRs for any category of cancer examined, including cancer of female genital organs, among all studied Registry enrollees (SMR = 0.82, 95% CI 0.49–1.28), rescue/recovery workers (SMR = 0.67, 95% CI 0.08–2·43), or survivors (SMR = 0.84, 95% CI 0.49–1.35). Separate SMRs for cancer of specific types of female genital organs, including uterine cancer, were not provided. SMRs were adjusted for age, sex, race, and calendar year. Adjusted hazard ratios (AHRs) were adjusted for age, sex, race and ethnic origin, income, smoking, and, for survivors, Registry recruitment source. This study's limitations include possible selection bias, since enrollment in the Registry is voluntary. Exposure reporting may also be subject to recall error because 9/11 exposures were self-reported 2 to 3 years after the September 11, 2001 terrorist attacks and subsequent clean-up of the sites. The healthy worker effect puts the population of rescue/recovery workers at a lower risk of cancer compared to the general population,[29] which includes persons who are chronically ill, hospitalized, or otherwise unemployable. In addition, other potential confounders, such as family cancer history and occupational exposures prior to September 11, 2001, were not measured.

Jordan *et al.* [2018] updated their 2011 study, discussed above, by including the full cohort of WTC Health Registry enrollees, not only those living in New York City at time of enrollment, and adding 5 years of follow-up. The 2018 update included 29,280 rescue/recovery workers (6,422 women) and 39,643 survivors (21,126 women). The authors used New York City population mortality rates from 2003 to 2012 as the primary reference, and also conducted a secondary analysis using U.S. population comparison rates from 2003 to 2011. Proportional hazards were used to examine the relation between WTC-related exposure levels (high, intermediate, or low for each group, based on time and duration in lower Manhattan) and total mortality, as well as overall cancer mortality, but not mortality for specific cancer types. Overall cancer SMRs were not elevated for rescue/recovery workers (SMR = 0.94, 95% CI 0.84–1.05), but were significantly elevated among survivors (SMR = 1.14, 95% CI 1.06–1.24) when compared to the New York City population; no elevated SMRs were reported for all cancers using the general U.S. population as reference. Cancers of the female genital organs were not significantly elevated among rescue/recovery workers or survivors (observed deaths = 7, SMR = 0.67, 95% CI 0.27–1.39 and observed deaths = 43, SMR = 1.17, 95% CI 0.85–1.58, respectively). The authors also examined 119 sub-categories of the major causes of death, but only reported statistically significant results; uterine cancers were not among the reported causes of death, suggesting that the risk of uterine cancer was not significantly elevated. No statistically significant elevations and no significant trends were observed in the analyses of the association between WTC-related exposures and overall cancer mortality. Like the previously reviewed study, Jordan *et al.* [2018] is prone to selection bias, because enrollment in the Registry was voluntary. Further, 9/11 exposures were self-reported 2 to 3 years after the September 11, 2001 terrorist attacks, and thus are subject to recall error. The healthy worker effect may put the population of rescue/recovery workers at a lower risk of cancer compared with the general population. An analogous effect has been seen in people who volunteer for health studies and might have contributed to the low relative mortality in both the rescue/recovery and survivor participants. As in the previously described study, other potential confounders, such as family cancer history and occupational exposures prior to September 11, 2001, were not measured.

Li *et al.* [2012] conducted a cancer incidence study among enrollees in the WTC Health Registry who were residents of New York State on September 11, 2001, and had no history of cancer at the time of enrollment. A total of 55,778 individuals were eligible for the study, including 21,850 involved in rescue/recovery (4,185 women) and 33,928 survivors not involved in rescue/recovery (18,922 women). The authors identified cancers by linkage to 11 state cancer registries based on the state of residence of the cohort member, and based expected numbers of cancers on New York State cancer rates. They used qualitative descriptions of 9/11 exposures to classify Registry enrollee exposure as high, intermediate, or low based on time and duration in lower Manhattan. The authors conducted separate analyses for rescue/recovery workers and for survivors, and presented separate results for the period of enrollment through 2006 (early period) and 2007 through 2008 (later period). Among rescue/recovery workers, the standardized incidence ratio (SIR)[30] for all cancer sites combined was not statistically significantly elevated in either period (early period, SIR = 0.94; 95% CI, 0.82–1.08; later period SIR = 1.14; 95% CI, 0.99–1.30). Uterine cancer incidence was not elevated for rescue/recovery workers during the early period (five cases or less [the precise number of cases was not reported, likely because of restrictions on reporting small numbers], SIR = 0.97, 95% CI 0.2–2.83), and no cases were reported during the later period. Among survivors, no significantly increased incidence for all cancer sites combined was observed in either period. Uterine cancer incidence was not elevated for survivors during the early or late periods (early: observed uterine cancers = 16, SIR = 1.01, 95% CI 0.58–1.65 and late: observed uterine cancers = 14, SIR = 1.01, 95% CI 0.55–1.69, respectively). Results of analyses to assess the risk of uterine cancer as a function of 9/11 exposure levels were not reported. SIRs were stratified by age (5-year age groups), race/ethnicity, sex, and calendar period (2003–2006 and 2007–2008). Exposure covariates included age at enrollment, sex, race/ethnicity, 2002 household income level, education level, smoking status, enrollment source (identified by employers, government agencies, and other entities or by an outreach campaign), and history of asthma, cardiovascular disease, stroke, emphysema, or diabetes reported at enrollment. But other potential confounders, such as family cancer history and occupational exposures prior to September 11, 2001, were not measured. The study by Li *et al.* [2012] is prone to selection bias because enrollment in the Registry was voluntary. The authors attempted to mitigate this bias by restricting the analyses to individuals without prior invasive cancer history documented in any of the 11 state cancer registries and focusing on cancer incidence from 2007 to 2008. Self-reported 9/11 exposures may be subject to recall error. Cancer cases identified through linkages with

[29] The healthy worker effect is a form of selection bias ''typically seen in observational studies of occupational exposures with improper choice of comparison group (usually general population).'' *See* Chowdhury R, Shah D, Payal AR, [2017], *Healthy Worker Effect Phenomenon: Revisited with Emphasis on Statistical Methods—A Review,* Indian J Occup Environ Med 21(1), 2–8.

[30] SIR is a mathematical expression that compares the incidence experience between the population under study and the experience of that population had they had the same incidence experience of a comparison population.

state cancer registries might be underestimated, especially among those without a known Social Security number because a percentage of Registry enrollees did not provide one. The findings on rescue/recovery workers may also be prone to the healthy worker effect.

Li *et al.* [2016] updated their 2012 study, discussed above, which evaluated excess cancer among WTC Health Registry enrollees. In the 2016 update, the authors added 3 years of follow-up to allow for 10 years of cancer latency since the WTC-related exposures. The 2016 study recalibrated the definition of ''WTC disaster physical exposures'' to emphasize potential contaminants containing carcinogens. The analysis focused on cancers occurring from 2007 through 2011. The study included a total of 60,339 eligible individuals, including 24,863 rescue/recovery workers (5,015 women) and 35,476 survivors not involved in rescue/recovery (18,845 women). The authors identified cancers by linkage to 11 state cancer registries based on the state of residence of the cohort member, and based expected numbers of cancers on overall New York State rates and person-years of follow-up during 2007–2011, adjusted for age (5-year groups), race/ethnicity, sex, and calendar period (2007–2011). The study found that overall cancer incidence was significantly greater than the reference (non-9/11-exposed) population among both rescue/recovery workers (SIR = 1.11, 95% CI 1.03–1.20) and survivors (SIR = 1.08, 95% CI 1.02–1.15). Uterine cancer incidence was not significantly elevated among rescue/recovery workers nor among survivors (observed uterine cancers = 8, SIR = 0.82, 95% CI 0.35–1.62 and observed uterine cancers = 37, SIR = 1.03, 95% CI 0.72–1.41, respectively). Comparisons among exposure groups were not reported for uterine cancer. In internal analyses, hazard ratios and 95% CI were adjusted for age at enrollment, sex, race/ethnicity, smoking, education, income, and history of a serious non-malignant medical condition; however, findings for uterine cancer were not reported. Other potential confounders were not measured. This study was prone to selection bias, because enrollment in the Registry was voluntary; the authors attempted to mitigate this bias by restricting the analyses to individuals without prior invasive cancer history documented in any of the 11 state cancer registries and focusing on cancer incidence from 2007 through 2011. In addition, findings on rescue/recovery workers may also be subject to the healthy worker effect.

Solan *et al.* [2013] conducted a cancer incidence study among 20,984 non-FDNY WTC Health Program members (3,203 women) involved in rescue, recovery, and cleanup efforts at Ground Zero after 9/11. The authors identified cancer cases through linkage with the tumor registries in the four states in which 98 percent of WTC responders resided at time of enrollment in the Program. Self-reported exposures were categorized based on four variables: Pre-September 11, 2001 occupation, extent of exposure to the dust cloud on September 11, 2001, duration of time spent working at the site, and work on the debris pile during four periods (September 2001, October 2001, November–December 2001, and January–June 2002). An integrated exposure variable was created using a 4-point scale (very high, high, intermediate, and low) based on total time spent working at Ground Zero, exposure to the dust cloud, and work on the debris pile. The authors obtained vital status through linkage with the NDI and next-of-kin reports. Expected numbers of cancer cases were calculated based on state rates (for New York, New Jersey, and Connecticut residents) and national rates (for Pennsylvania residents) according to age (in 5-year groups), sex, and race/ethnicity for each year at risk. The observed and expected numbers of cancers were used to calculate SIRs. The SIR among study participants was elevated and statistically significant for all cancer sites combined (SIR = 1.15; 95% confidence interval (CI), 1.06–1.25). Fewer than six cases of uterine cancer were observed, and no additional information was reported for this type of cancer. Furthermore, no SIRs were reported for uterine cancer nor were risk ratios reported for the association between 9/11 exposure variables and uterine cancer. Certain potential confounders, such as family cancer history, were not measured. The study is also prone to selection bias, because enrollment in the WTC Health Program is voluntary. Although the authors used all available exposure metrics, relative risk was not reported for the association between 9/11 exposure variables and uterine cancer. This study may also be subject to the healthy worker effect, which puts this population at a lower risk of cancer compared to the general population.

Kleinman *et al.* [2015] investigated cancer incidence in 39,946 police officers employed by the New York City Police Department (NYPD) on September 11, 2001 (6,366 women), followed during the time periods 1995 to 2000 and 2002 to 2014. The authors reported a 44 percent increase in the overall median age-adjusted incidence rate for all cancers, but no increase in the overall median age-adjusted incidence rates for either malignant neoplasms of the uterus, unspecified part (based on two cases diagnosed pre-9/11 and zero cases diagnosed post-9/11) or uterine adenosarcomas (based on zero cases diagnosed pre-9/11 and three cases post-9/11). This study is limited by the inherent problems with its design (*i.e.,* the effects of age, time period, and cohort parameters are intertwined in a manner which complicates study interpretation); the study is further limited by the small number of cancer cases observed as well as the absence of information regarding participants' presence in the dust cloud and the dates and duration of their 9/11 exposures.

Stein *et al.* [2016] conducted a mortality study of 28,918 rescue/recovery workers (4,286 women) enrolled in the WTC Health Program between July 16, 2002, and December 31, 2011. The authors were aware that 16,177 WTC responders were alive due to follow-up visits after the end of 2011, and therefore linked the remainder (n = 12,741) to the National Death Index (NDI). Mortality information from the NDI was supplemented by next-of-kin report. Similar to the study by Solan *et al.* [2013], discussed above, the authors of this study created an integrated exposure variable using a 4-point scale (very high, high, intermediate, and low) based on total time spent working at Ground Zero, exposure to the dust cloud, and work on the debris pile. SMRs were standardized for age (5-year groups), sex, race, and calendar year to compare all-cause and cause-specific mortality among responders with mortality in the U.S. general population. Hazard ratios were adjusted for age on September 11, 2001, pre-September 11, 2001 occupation, sex, race/ethnicity, year of WTC Health Program enrollment, smoking, and measured body mass index. Overall mortality in this cohort was statistically significantly decreased (SMR = 0.43; 95% CI, 0.39–0.48), although an overall cancer SMR was not reported. Most cancer site-specific SMRs were significantly decreased; however, the SMR for cancer of the female genital organs was decreased but was not statistically significant (SMR = 0.65, 95% CI 0.08–2.37) and was based on only two deaths. An SMR for uterine cancer was not provided, neither were hazard ratios for the association between WTC-related exposure variables and mortality from

uterine cancer. Some potential confounders, such as family cancer history, were not measured. The study is prone to selection bias because enrollment in the WTC Health Program was voluntary. Social Security numbers were available for only 37 percent of the records sent to NDI for linkage, limiting the quality of the matches. The healthy worker effect may put this population at a lower risk of cancer compared to the general population.

Quantity and Quality Review of Relevant Studies

The quantity and quality of these seven studies were reviewed together to examine whether the available evidence has the potential to provide a basis for a decision on whether to add uterine cancer, including endometrial cancer, to the List. Prospective cohort studies, like those described above, have the advantage that study participants are considered to be disease-free at the beginning of the observation period when their exposure occurred; therefore, in such studies it is often possible to establish the temporal sequence between exposure and outcome. Cancer studies, however, present unique concerns since some cancers become apparent only after long periods of time following exposure.[31] This latency effect means it is possible that a cancer may have been present but undetected prior to September 11, 2001. In addition, all of the studies described above have had a relatively short period of follow-up since September 11, 2001.

The size and makeup of the cohorts studied may also limit the usefulness of the studies. The studies discussed above may not have the necessary statistical power to detect excesses in uterine cancer, due to the small number of females in the cohort. This is especially a concern with studies of 9/11-exposed rescue/recovery workers since those cohorts are not sizeable and only approximately 15 percent female. Moreover, the overlap in participation in the studies may limit the interpretation of consistency of findings among the studies. Approximately 20 percent of 9/11-exposed rescue/recovery workers enrolled in the WTC Health Program are also enrolled in the WTC Health Registry. These two cohorts also may be prone to selection bias, because enrollment in the respective programs was voluntary. For the WTC Health Registry cohort, it is possible that differential participation due to race/ethnicity, socioeconomic status, age, or their perception of being affected by the 9/11 attacks, may have occurred. For the rescue/recovery worker cohort enrolled in the WTC Health Program, their health status, including their cancer diagnosis, may have prompted them to enroll. A strength of these studies is that findings are available for both 9/11-exposed rescue/recovery workers as well as survivors.

The relevant studies published to date, and reviewed above, do not provide consistent evidence that uterine cancer, including endometrial cancer, incidence or mortality is elevated among WTC responders and/or survivors. In addition, the studies did not report a dose-response relationship between WTC-related exposures and uterine cancer, including endometrial cancer. Taken together, these studies do not have sufficient quality and quantity to demonstrate a potential to provide a basis for a decision on whether to add uterine cancer, including endometrial cancer, to the List. Accordingly, these studies are not further reviewed.

Administrator Determination

Upon review of the evidence available in peer-reviewed, published, epidemiological studies and updates regarding uterine cancer, including endometrial cancer, among 9/11-exposed populations, the Administrator has determined that the available evidence does not have the potential to provide a basis for deciding whether to propose adding uterine cancer, including endometrial cancer, to the List. Accordingly, the Administrator has not directed the Program to assess the available evidence using Methods 1, 2, or 3, nor has he directed the Program to request advice from the STAC pursuant to Method 4, discussed above.

The WTC Health Program may consider uterine cancer, including endometrial cancer, to be a condition medically associated with a certified WTC-related health condition in individual cases. Program members who think their uterine or endometrial cancer is a side effect of treatment of a certified WTC-related health condition should ask their WTC Health Program medical provider whether their endometrial cancer might be considered a medically associated health condition.

E. Administrator's Final Decision on Whether To Propose the Addition of Uterine Cancer, Including Endometrial Cancer, to the List

Pursuant to PHS Act, sec. 3312(a)(6)(B)(iv) and 42 CFR 88.16(a)(2)(iv), the Administrator has determined that insufficient evidence is available to take further action at this time, including proposing the addition of uterine cancer, including endometrial cancer, to the List (pursuant to PHS Act, sec. 3312(a)(6)(B)(ii) and 42 CFR 88.16(a)(2)(ii)) or publishing a determination not to publish a proposed rule in the **Federal Register** (pursuant to PHS Act, sec. 3312(a)(6)(B)(iii) and 42 CFR 88.16(a)(2)(iii)). The Administrator has also determined that requesting a recommendation from the STAC (pursuant to PHS Act, sec. 3312(a)(6)(B)(i) and 42 CFR 88.16(a)(2)(i)) is unwarranted.

For the reasons discussed above, the Petition 023 request to add endometrial cancer to the List of WTC-Related Health Conditions is denied.

F. Approval To Submit Document to the Office of the Federal Register

The Secretary, HHS, or his designee, the Director, Centers for Disease Control and Prevention (CDC) and Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), authorized the undersigned, the Administrator of the WTC Health Program, to sign and submit the document to the Office of the Federal Register for publication as an official document of the WTC Health Program. Robert Redfield M.D., Director, CDC, and Administrator, ATSDR, approved this document for publication on September 12, 2019.

John J. Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2019–20364 Filed 9–23–19; 8:45 am]

BILLING CODE 4163–18–P

[31] This delay between environmental exposure and onset of cancer symptoms is referred to as the ''cancer latency period.'' For more information about latency for cancers and how the WTC Health Program has addressed this issue, please see *Minimum Latency & Types or Categories of Cancer,* Jan. 6, 2015, *https://www.cdc.gov/wtc/pdfs/policies/WTCHP-Minimum-Cancer-Latency-PP–01062015–508.pdf.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 190913–0028]

RIN 0648–BJ21

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–2020 Biennial Specifications and Management Measures; Correction

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

ACTION: Final rule; correcting amendments.

SUMMARY: This action contains corrections to the final rules related to 2019–2020 Biennial Harvest Specifications and Management Measures for groundfish harvested in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California published on December 12, 2018, and May 10, 2019. These corrections are necessary so the regulations accurately implement the Pacific Fishery Management Council's intent.

DATES: This correction is effective September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Brian Hooper, phone: 206–526–6117 or email: *brian.hooper@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published a final rule on December 12, 2018, (83 FR 63970), that implemented the 2019–2020 harvest specifications and management measures for groundfish harvested in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. That final rule was effective January 1, 2019. After publication of the final rule, the need for four corrections was noted by NMFS.

This action corrects: (1) The definition of groundfish for nearshore rockfish south of 40°10′ N latitude; (2) the depth restrictions in the Cowcod Conservation Area; (3) language describing the use of small footrope gear inside the Columbia and Klamath River Salmon Conservation Zones; and (4) the 2019 yellowtail rockfish allocations north of 40°10′ N latitude.

Corrections

The final rule for the 2019–2020 groundfish harvest specifications and management measures (83 FR 63970; December 12, 2018) contained an error in the amendatory instructions for the definition of ''Groundfish'' in 50 CFR 660.11. In adding new subparagraphs to describe stock complex changes, the portion of the definition for nearshore rockfish south of 40°10′ N latitude was inadvertently deleted. This rule restores the deleted text. The substance of the text is unchanged from what was previously in the regulations.

The final rule contained a revision to the depth boundary within which commercial fixed gear and recreational gear is allowed to operate in the Western Cowcod Conservation Area. Fishing was permitted shoreward of the 20 fathom (fm) (36.6 m) depth contour prior to the 2019–2020 biennial harvest specifications final rule. The final rule revised the depth boundary to allow fishing shoreward of the 40 fm (73 m) depth contour. In the regulations for this change at §§ 660.230(d)(10)(ii) and 660.330(d)(11)(ii), NMFS did not explicitly describe how the 40 fm (73 m) depth contour is delineated, or cross reference the depth contour definition in existing regulations. This rule corrects these regulations to note that a coordinate list describing the 40 fm (73 m) depth contour can be found in § 660.71.

The final rule also contained an error at § 660.130(c)(2)(iii) when describing use of small footrope gear inside the Columbia and Klamath River Salmon Conservation Zones. In the rule, NMFS inadvertently substituted the word ''required'' for ''prohibited'' when describing the use of selective flatfish trawl (SFFT), a type of small footrope trawl gear, in the area. The final rule for a separate action, revising Federal regulations that restricted the use and configuration of bottom and midwater trawl gear for vessels fishing under the Pacific Coast Groundfish Fishery's Trawl Rationalization Program (83 FR 62269; December 3, 2018), also erroneously used the word ''required'' rather than ''prohibited.'' Language describing the use of small footrope trawl gear, inside the Columbia and Klamath River Salmon Conservation Zones is being corrected to state that small footrope trawl gears other than SFFT are ''prohibited,'' consistent with the Pacific Fishery Management Council's intent for regulations in this area.

The final rule for Annual Specifications and Management Measures for the 2019 Tribal and Non-Tribal Fisheries for Pacific Whiting (84 FR 20578; May 10, 2019) inadvertently changed the yellowtail rockfish allocation north of 40°10′ N latitude at Table 1b to Part 600, Subpart C. The Pacific Whiting specifications final rule incorrectly stated the yellowtail rockfish fishery harvest guideline (HG) as 4,951.9 metric tons (mt), as well as the trawl and non-trawl allocations as 4,357.7 mt and 594.2 mt respectively. To be consistent with the yellowtail rockfish allocations established in the final rule for the 2019–2020 groundfish harvest specifications and management measures (83 FR 63970), this rule corrects the fishery HG to 5,233.9 mt, as well as the trawl and non-trawl allocations to 4,605.8 mt and 678.1 mt respectively.

All of these corrections are consistent with the Pacific Fishery Management Council action for the 2019–2020 groundfish harvest specifications and are minor corrections to correctly implement the Council's intent in their final action taken in June 2018.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to public interest. Notice and comment are unnecessary and contrary to the public interest because this action corrects inadvertent errors related to the December 12, 2018, final rule. Immediate correction of the errors is necessary to prevent confusion among participants in the fishery that could result in issues with enforcement of area management. To effectively correct the errors, the changes in this action must be effective upon publication as the fishery has already begun. Thus, there is not sufficient time for notice and comment. In addition, notice and comment is unnecessary because this notice makes only minor changes to correct inadvertent errors related to the December 12, 2018, final rule. These corrections will not affect the results of analyses conducted to support management decisions in the Pacific coast groundfish fishery. These corrections are consistent with the Pacific Fishery Management Council's intent for regulations and the public expects the regulations to be written as in the correction. No change in operating practices in the fishery is required.

For the same reasons stated above, the AA has determined good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). This notice makes only minor corrections to the final rule which was effective January 1, 2019. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants. Because prior

notice and an opportunity for public comment are not required to be provided 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 not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: September 16, 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 660 is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for 50 CFR part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, in the definition for ''Groundfish'', add paragraph (7)(i)(D) to read as follows:

§ 660.11 General definitions.

* * * * *

Groundfish * * *

(7) * * *

(i) * * *

(D) South of 40°10′ N lat. (Southern California): Nearshore rockfish are divided into three management categories:

(*1*) Shallow nearshore rockfish consists of black and yellow rockfish, S. chrysomelas; China rockfish, S. nebulosus; gopher rockfish, S. carnatus; grass rockfish, S. rastrelliger; kelp rockfish, S. atrovirens.

(*2*) Deeper nearshore rockfish consists of black rockfish, S. melanops; blue rockfish, S. mystinus; brown rockfish, S. auriculatus; calico rockfish, S. dalli; copper rockfish, S. caurinus; deacon rockfish, S. diaconus; olive rockfish, S. serranoides; quillback rockfish, S. maliger; treefish, S. serriceps.

(*3*) California scorpionfish, Scorpaena guttata.

* * * * *

■ 3. Revise Table 1b to part 660, subpart C, to read as follows:

TABLE 1b TO PART 660, SUBPART C—2019, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT[a b]	Trawl		Non-trawl	
			%	Mt	%	Mt
Arrowtooth flounder	Coastwide	13,479.1	95	12,805.1	5	674.0
Big skate[a]	Coastwide	452.1	95	429.5	5	22.6
Bocaccio[a]	S of 40°10′ N lat	2,050.9	39	800.7	61	1,250.2
Canary rockfish[a d]	Coastwide	1,382.9	72	999.6	28	383.3
Chilipepper	S of 40°10′ N lat	2,451.1	75	1,838.3	25	612.8
COWCOD[a b]	S of 40°10′ N lat	6.0	36	2.2	64	3.8
Darkblotched rockfish[c]	Coastwide	731.2	95	694.6	5	36.6
Dover sole	Coastwide	48,404.4	95	45,984.2	5	2,420.2
English sole	Coastwide	9,873.8	95	9,380.1	5	493.7
Lingcod	N of 40′10° N lat	4,593.0	45	2,066.9	55	2,526.2
Lingcod	S of 40′10° N lat	1,027.7	45	462.5	55	565.2
Longnose skate[a]	Coastwide	1,851.7	90	1,666.5	10	185.2
Longspine thornyhead	N of 34°27′ N lat	2,552.6	95	2,425.0	5	127.6
Pacific cod	Coastwide	1,093.8	95	1,039.1	5	54.7
Pacific whiting[g]	Coastwide	362,682.0	100	362,682.0	0	0.0
Pacific ocean perch[e]	N of 40°10′ N lat	4,317.6	95	4,101.7	5	215.9
Petrale sole	Coastwide	2,587.4	95	2,458.0	5	129.4
Sablefish	N of 36° N lat	NA	See Table 1c			
Sablefish	S of 36° N lat	1,985.8	42	834.0	58	1,151.8
Shortspine thornyhead	N of 34°27′ N lat	1,617.7	95	1,536.8	5	80.9
Shortspine thornyhead	S of 34°27′ N lat	888.8	NA	50.0	NA	838.8
Splitnose rockfish	S of 40°10′ N lat	1,733.4	95	1,646.7	5	86.7
Starry flounder	Coastwide	433.2	50	216.6	50	216.6
Widow rockfish[f]	Coastwide	11,582.6	91	10,540.2	9	1,042.4
YELLOWEYE ROCKFISH	Coastwide	41.9	8	3.4	92	38.6
Yellowtail rockfish	N of 40°10′ N lat	5,233.9	88	4,605.8	12	628.1
Minor Shelf Rockfish North[a]	N of 40°10′ N lat	1,977.1	60.2	1,190.2	39.8	786.9
Minor Shelf Rockfish South[a].	S of 40°10′ N lat	1,545.9	12.2	188.6	87.8	1,357.3
Minor Slope Rockfish North	N of 40°10′ N lat	1665.2	81	1,348.8	19	316.4
Minor Slope Rockfish South	S of 40°10′ N lat	723.8	63	456.0	37	267.8
Other Flatfish	Coastwide	6,248.5	90	5,623.7	10	624.9

[a] Allocations decided through the biennial specificaton process.

[b] The cowcod fishery harvest guideline is further reduced to an ACT of 6.0 mt.

[c] Consistent with regulations at § 660.55(c), 9 percent (62.5 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 26.3 mt for the Shorebased IFQ Program, 15.0 mt for the MS sector, and 21.3 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

[d] 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.

[e] Consistent with regulations at § 660.55(c), 17 percent (697.3 mt) of the total trawl allocation for Pacific ocean perch is allocated to the Pacific whiting fishery, as follows: 292.9 mt for the Shorebased IFQ Program, 167.4 mt for the MS sector, and 237.1 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

[f] Consistent with regulations at § 660.55(c), 10 percent (1,054 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 442.7 mt for the shorebased IFQ fishery, 253 mt for the mothership fishery, and 358.4 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

[g] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent (123,312 mt) for the C/P Coop Program; 24 percent (87,044 mt) for the MS Coop Program; and 42 percent (152,326.5 mt) for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation (7,616 mt) may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

■ 4. In § 660.130, revise paragraph (c)(2)(iii) to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(iii) *Salmon conservation area restrictions.* The use of small footrope trawl, other than selective flatfish trawl gear, is prohibited inside the Klamath River Salmon Conservation Zone (defined at § 660.131(c)(1)) and the Columbia River Salmon Conservation Zone (defined at § 660.131(c)(2)).

* * * * *

■ 5. In § 660.230, revise paragraph (d)(10)(ii) to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(d) * * *

(10) * * *

(ii) Fishing for rockfish and lingcod is permitted shoreward of the boundary line approximating the 40 fm (73 m) depth contour within the CCAs when trip limits authorize such fishing and provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed in § 660.71.

* * * * *

■ 6. In § 660.330, revise paragraph (d)(11)(ii) to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(d) * * *

(11) * * *

(ii) Fishing for rockfish and lingcod is permitted shoreward of the boundary line approximating the 40 fm (73 m) depth contour within the CCAs when trip limits authorize such fishing and provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed in § 660.71.

* * * * *

[FR Doc. 2019–20248 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 185
Tuesday, September 24, 2019

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS–SC–19–0056; SC19–993–1 PR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Prune Marketing Committee (Committee) to decrease the assessment rate established for the 2019–20 and subsequent crop years from $0.28 to $0.25 per ton of salable dried prunes. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by October 24, 2019.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Maria Stobbe, Marketing Specialist, or Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 538–1674, Fax: (559) 487–5906, or Email: *Maria.Stobbe@usda.gov* or *Terry.Vawter@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 993, as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. Part 993 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of dried prunes operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposal does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California dried prune handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable dried prunes beginning on August 1, 2019, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The Committee formulates and discusses the assessment rate in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This proposed rule would decrease the assessment rate for the 2019–20 and subsequent crop years from $0.28 to $0.25 per ton of salable dried prunes handled for the 2019–20 and subsequent crop years.

The Order's assessment rate of $0.28 had been in effect since the 2013–14 crop year. The Committee met on June 20, 2019, and unanimously recommended 2019–20 crop year expenditures of $24,500 and an assessment rate of $0.25 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were $20,470. The assessment rate of $0.25 is $0.03 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to reflect an anticipated larger crop, which is expected to result in assessment

revenue greater than anticipated expenses.

The major expenditures recommended by the Committee for the 2019–20 year include $13,300 for personnel, and $11,200 for operating expenses. In comparison, budgeted expenses for these items in 2018–19 were $10,490, and $9,980, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and expected shipments of 110,000 tons of salable dried prunes. Income derived from proposed reduced handler assessment estimated to be $27,500 (110,000 × $0.25), along with interest income, would be adequate to cover budgeted expenses of $24,500.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2019–20 crop year budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of dried prunes in the production area and 20 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to Committee data, the average price for California dried prunes during the 2017–18 season was approximately $1,980 per ton with a total production of 105,000 tons. Using the average price and shipment information, the number of handlers (20), and assuming a normal distribution, the majority of handlers would have average annual receipts of greater than $7,500,000. Thus, the majority of California dried prune handlers may be classified as large business entities.

In addition, and assuming a normal distribution, dividing the average prune crop value for 2017 reported by the National Agricultural Statistics Service (NASS) of $206,084,000, by the number of producers (800) yields an average annual producer revenue estimate of about $257,605. Based on the foregoing, the majority of producers of California dried prunes may be classified as small entities.

This proposed rule would decrease the assessment rate collected from handlers for the 2019–20 and subsequent crop years from $0.28 to $0.25 per ton of salable California dried prunes. The Committee unanimously recommended 2019–20 expenditures of $24,500 and an assessment rate of $0.25 per ton of salable dried prunes handled. The proposed assessment rate of $0.25 is $0.03 lower than the rate currently in effect. The quantity of assessable dried prunes for the 2019–20 crop year is estimated at 110,000 tons. Thus, the proposed $0.25 rate should provide $27,500 in assessment income (110,000 × $0.25). Income derived from handler assessments, along with interest income, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2019–20 crop year include $13,300 for personnel, and $11,200 for operating expenses. In comparison, budgeted expenses for these items in 2018–19 were $10,490, and $9,980, respectively.

The Committee recommended decreasing the assessment rate, given that the increase in crop size and the associated revenue would be sufficient to fund its proposed 2019–20 crop year expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Executive Committee and NASS. Alternative expenditure levels were discussed by the Executive Committee, which reviewed the relative value of various activities to the prune industry. This committee determined that all program activities were adequately funded; thus, no alternate expenditure levels were deemed appropriate. Additionally, maintaining the current assessment rate of $0.28 per ton of salable dried prunes was discussed. However, sufficient funds would be generated at the larger crop size ($27,500), even if assessed at the lower assessment rate proposed. The proposed rate of $0.25 per ton of salable dried prunes may exceed anticipated expenses by $3,000, thereby providing contingency funds for unexpected expenses.

Based on these discussions and estimated shipments, the recommended assessment rate of $0.25 would provide $27,500 in assessment income. The Committee determined that assessment revenue and interest income would be adequate to cover budgeted expenses for the 2019–20 crop year.

A review of historical information and preliminary information pertaining to the upcoming crop year indicate that the average grower price for the 2019–20 crop year should be approximately $2,000 per ton of salable dried prunes. Therefore, the estimated assessment revenue for the 2019–20 crop year as a percentage of total grower revenue would be about 0.01 percent.

This proposed rule would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. Decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Committee widely publicizes its meetings throughout the California prune industry. The Committee's June 20, 2019, meeting was open to the public, and all entities, both large and small, were able to express views on all issues. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and

assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plum, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 993.347 [Amended]

■ 2. Amend § 993.347 to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2019, an assessment rate of $0.25 per ton of salable dried prunes is established for California dried prunes.

Dated: September 18, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–20572 Filed 9–23–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0022]

RIN 1904–AE76

Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps; Correction

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

ACTION: Notice of proposed determination and request for comment; correction.

SUMMARY: On September 5, 2019, the U.S. Department of Energy (''DOE'') published a notice of proposed determination (''NOPD'') initially determining that energy conservation standards for general service incandescent lamps (''GSILs'') do not need to be amended (hereafter the ''September 2019 NOPD''). This correction addresses typographical errors that appear in the September 2019 NOPD. This document corrects values listed in Tables V.4, V.7, V.9, and V.10, and corrects duplicative numbering of tables and reference to those tables. Neither the errors nor the corrections in this document affect the substance of the rulemaking or any initial conclusions reached in support of the NOPD.

DATES: This document is published on September 24, 2019.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In support of the September 2019 NOPD and the proposed determination that energy conservation standards for GSILs do not need to be amended, DOE conducted a shipments analysis, a life-cycle cost (''LCC'') analysis, a national impact analysis (''NIA''), and a manufacturer impact analysis (''MIA''). DOE displayed certain results of the LCC analysis in Table V.4, certain results of the NIA in Table V.7, and certain results of the MIA in Tables V.9 and V.10. There are typographical errors in these tables and the discussion of these tables. All these corrections result in minor differences to the magnitude of the values changed and do not impact the proposed determination presented in the document. For the shipments analysis correction, the value changes by 2.2 percent; for the LCC analysis correction, the value changes by 0.13 percent; for the NIA corrections, the values change between 0.04 and 0.05 percent; and for the MIA corrections, the values change between 5 and 6 percent. The NOPD also assigned duplicative table numbers to two sets of tables, which may result in confusion when referencing the tables. This document identifies and corrects these typographical errors.

Correction

In the **Federal Register** published on September 5, 2019 (84 FR 46830), in FR Doc. 2019–18941, the following corrections are made:

1. On page 46848, in the 1st column, correct the 4th sentence in the 1st paragraph to read:

''In the scenario with substitution, fitting the NEMA data to the widely used Bass model for the market adoption of new technology [35] suggests that, even in the absence of Federal regulation, LED lamps will have captured a significant majority of the GSL market by 2023 (79.5 percent of the residential market and 94.2 percent of the commercial market).'';

2. On page 46849, replace the table heading ''Table IV.12—Summary of Inputs and Methods for the National Impact Analysis'' with ''Table IV.13—Summary of Inputs and Methods for the National Impact Analysis'';

3. On page 46849, in the 3rd column, correct the 1st sentence in the 2nd paragraph to read:

''Table IV.13 summarizes the inputs and methods DOE used for the NIA analysis for the NOPD.'';

4. On page 46853, in Table V.4—Average Annualized LCC Savings Results by Trial Standard Level-LCC with Substitution-Continued, replace the value ''0.43'' in the column headed ''Percent of consumers that experience net cost'' with ''0.3'';

5. On page 46853, replace the table heading ''Table V.4—Cumulative

National Energy Savings for GSILs and GSIL alternatives; 30 Years of Shipments (2023–2052)'' with ''Table V.5—Cumulative National Energy Savings for GSILs and GSIL alternatives; 30 Years of Shipments (2023–2052)'';

6. On page 46853, in the 3rd column, correct the 3rd sentence in the 1st paragraph to read:

''Table V.5 presents DOE's projections of the NES for each TSL considered for GSILs, as well as considered GSIL alternatives.'';

7. On page 46853, in the 3rd column, correct the 5th sentence in the 1st paragraph to read:

''In addition to GSIL energy savings, Table V.5 illustrates the increased energy consumption of consumers who transition to out-of-scope lamps, including CFL, LED, and incandescent alternatives, because more consumers purchase these lamps at TSL 1 relative to the no-standards case.'';

8. On page 46854, in the 3rd column, correct the 1st sentence in the 1st paragraph to read:

''The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.6.'';

9. On page 46854, in Table V.7—Cumulative Net Present Value of Quantifiable Consumer Benefits for GSILs and GSIL Alternatives; 30 Years of Shipments (2023–2052), replace the values ''5.436'' and ''4.173'' in the column headed ''TSL 1'' with ''5.434'' and ''4.171'' respectively;

10. On page 46855, in the 3rd column, correct the 1st sentence in the 3rd paragraph to read:

''Table V.9 and Table V.10 present the results of the industry cash flow analysis for GSIL manufacturers under the preservation of gross margin and the technology specific markup scenarios.'';

11. On page 46855, in Table V.9—Manufacturer Impact Analysis for GSILs—Preservation of Gross Margin Markup Scenario, replace the values ''(5.0)'' and ''(1.6)'' in the column headed ''TSL 1'' with ''(5.3)'' and ''(1.7)'' respectively;

12. On page 46856, in Table V.10—Manufacturer Impact Analysis for GSILs—Technology Specific Markup Scenario, replace the value ''(3.7)'' in the column headed ''TSL 1'' with ''(3.9)'';

13. On page 46856 in the 1st column, correct the 1st sentence of the 1st paragraph to read:

''At TSL 1, DOE estimates that impacts on INPV will range from −$5.3 million to −$3.9 million, or a change in INPV of −1.7 to −1.2 percent.'';

14. On page 46858, in the 1st column, correct the 1st sentence in the 5th paragraph to read:

''Under the consumer choice analysis, the NPV of consumer benefits at TSL 1 would be $2.241 billion using a discount rate of 7 percent, and $4.171 billion using a discount rate of 3 percent.''; and

15. On page 46858 in the 2nd column, correct the 4th sentence of the 1st paragraph to read:

''At TSL 1, DOE estimates that INPV will decrease between $5.3 million to $3.9 million, or a decrease in INPV of 1.7 to 1.2 percent.''

Procedural Issues and Regulatory Review

DOE has concluded that the initial determinations made pursuant to the various procedural requirements applicable to the September 2019 NOPD remain unchanged for this NOPD technical correction. These initial determinations are set forth in the September 2019 NOPD. 84 FR 46830, 46858–46860.

Signed in Washington, DC, on September 10, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary For Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–20399 Filed 9–23–19; 8:45 am]

BILLING CODE 6450–01–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2019–5]

Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notification of inquiry.

SUMMARY: The U.S. Copyright Office is issuing a notification of inquiry regarding the Musical Works Modernization Act, title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act. Title I establishes a blanket compulsory license, which digital music providers may obtain to make and deliver digital phonorecords of musical works. The blanket license, which will be administered by a mechanical licensing collective, will become available on January 1, 2021. The MMA specifically directs the Copyright Office to adopt a number of regulations to govern the new blanket licensing regime, including regulations regarding notices of license, notices of nonblanket activity, usage reports and adjustments, information to be included in the mechanical licensing collective's database, database usability, interoperability, and usage restrictions, and the handling of confidential information. The statute also vests the Office with general authority to adopt such regulations as may be necessary or appropriate to effectuate this new blanket licensing structure. To promulgate these regulations, the Office seeks public comment regarding the subjects of inquiry discussed in this notification.

DATES: Initial written comments must be received no later than 11:59 p.m. Eastern Time on November 8, 2019. Written reply comments must be received no later than 11:59 p.m. Eastern Time on December 9, 2019.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/mma-implementation/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Anna Chauvet, Associate General Counsel, by email at *achau@copyright.gov,* or Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Music Modernization Act and the Copyright Office's Regulatory Authority

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA'').[1] Title I of the MMA, the Musical Works Modernization Act, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17

[1] Public Law 115–264, 132 Stat. 3676 (2018).

U.S.C. 115.[2] Prior to the MMA, licensees obtained a section 115 compulsory license on a per-work, song-by-song basis, by serving a notice of intention to obtain a compulsory license (''NOI'') on the relevant copyright owner (or filing it with the Copyright Office if the Office's public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.[3]

The MMA amends this regime most significantly by establishing a new blanket compulsory license that digital music providers may obtain to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity,'' where such activity qualifies for a compulsory license).[4] Instead of licensing one song at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (''MLC''), which has recently been designated by the Register of Copyrights.[5] The blanket licensing structure is designed to reduce the transaction costs associated with song-by-song licensing by commercial services striving to offer ''as much music as possible,'' while ''ensuring fair and timely payment to all creators'' of the musical works used on these digital services.[6] Under the MMA, the statutory licensing of phonorecords that are not DPDs (*e.g.,* CDs, vinyl, tapes, and other types of physical phonorecords) continues to operate on a per-work, song-by-song basis, the same as before.[7]

The new blanket license will become available upon the statutory license availability date (*i.e.,* January 1, 2021).[8] Before then, the MMA ''creates a transition period in order to move from the current work-by-work license to the new blanket license.'' [9] On and after the license availability date, a compulsory license to make and distribute DPDs will generally only be available through the new blanket license, apart from a limited exception for record companies to continue using the song-by-song licensing process to make and distribute permanent downloads embodying a specific individual musical work (called an ''individual download license'').[10]

As previously detailed by the Office,[11] the MLC, through its board of directors and task-specific committees,[12] is responsible for a variety of duties under the blanket license, including receiving usage reports from digital music providers, collecting and distributing royalties associated with those uses, identifying musical works embodied in particular sound recordings, administering a process by which copyright owners can claim ownership of musical works (and shares of such works), and establishing a musical works database relevant to these activities.[13] By statute, digital music providers will bear the reasonable costs of establishing and operating the MLC through an administrative assessment, to be determined, if necessary, by the Copyright Royalty Judges (''CRJs'').[14] The MMA also permits the Register to designate a digital licensee coordinator (''DLC'') to represent licensees in the assessment proceeding, to serve as a non-voting member of the MLC, and to carry out other functions.[15]

Effective July 8, 2019, following a comprehensive public process, the Register, with the approval of the Librarian of Congress, selected and designated entities and their individual board members as the MLC and DLC, respectively.[16] The Office also adopted technical amendments to its relevant pre-MMA regulations, including those pertaining to NOIs and statements of account, to harmonize them with the MMA's requirements.[17] Those amendments were generally directed at the present transition period before the blanket license becomes available. They did not speak to compulsory licensing of DPDs under the new blanket license, which is addressed through this notification of inquiry.

The MMA enumerates several regulations that the Copyright Office is specifically directed to promulgate to govern the new blanket licensing regime, including with respect to notices of license, notices of nonblanket activity, reports of usage, database information, database usability, interoperability, and usage restrictions, and the handling of confidential information. Additionally, Congress invested the Copyright Office with ''broad regulatory authority'' [18] to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license].'' [19] The legislative history contemplates that the Office will ''thoroughly review[ ]'' policies and procedures established by the MLC and its three committees, and promulgate regulations that ''balance[ ] the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' [20] It further

[2] *See* S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.''); *see also* H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee's efforts to review music copyright laws).

[3] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, Copyright and the Music Marketplace 28–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing operation of prior section 115 license).

[4] 17 U.S.C. 115(d)(1), (e)(7); *see* H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket license and the mechanical licensing collective); S. Rep. No. 115–339, at 3–6 (same).

[5] 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2019).

[6] S. Rep. No. 115–339, at 4, 8.

[7] 17 U.S.C. 115(b)(1); *see* H.R. Rep. No. 115–651, at 3 (noting ''[t]his is the historical method by which record labels have obtained compulsory licenses''); S. Rep. No. 115–339, at 3 (same); *see also* U.S. Copyright Office, Orrin G. Hatch–Bob Goodlatte Music Modernization Act, *https://www.copyright.gov/music-modernization/.*

[8] 17 U.S.C. 115(d)(2)(B), (e)(15).

[9] H.R. Rep. No. 115–651, at 10; S. Rep. No. 115–339, at 10; *see* 17 U.S.C. 115(b)(2)(A), (d)(9), (d)(10). The Copyright Office has separately issued regulatory updates related to digital music providers' obligations during this transition period before the blanket license is available. *See* 84 FR 10685 (Mar. 22, 2019); 83 FR 63061 (Dec. 7, 2018).

[10] 17 U.S.C. 115(b)(2)(B), (b)(3), (e)(12); *see* H.R. Rep. No. 115–651, at 4; S. Rep. No. 115–339, at 3–4. As the legislative history notes, the MMA ''maintains the 'pass-through' license for record labels to obtain and pass through mechanical license rights for individual permanent downloads,'' but eliminates the pass-through license for digital music providers ''to engage in activities related to interactive streams or limited downloads.'' H.R. Rep. No. 115–651, at 4; S. Rep. No. 115–339, at 4.

[11] *See generally* 84 FR 32274; 83 FR 65747 (Dec. 21, 2018).

[12] By statute, the MLC board must establish three committees. First, an operations advisory committee will make recommendations concerning the operations of the MLC, ''including the efficient investment in and deployment of information technology and data resources.'' 17 U.S.C. 115(d)(3)(D)(iv). Second, an unclaimed royalties oversight committee will establish policies and procedures necessary to undertake a fair distribution of unclaimed royalties. *Id.* at 115(d)(3)(D)(v), (d)(3)(J)(ii). Third, a dispute resolution committee will establish policies and procedures for copyright owners to address disputes relating to ownership interests in musical works, including a mechanism to hold disputed funds pending the resolution of the dispute. *Id.* at 115(d)(3)(D)(vi), (d)(3)(H)(ii), (d)(3)(K).

[13] *Id.* at 115(d)(3)(C).

[14] *Id.* at 115(d)(7)(D).

[15] *Id.* at 115(d)(5)(B); *see also id.* at 115(d)(3)(D)(i)(IV), (d)(5)(C).

[16] 84 FR at 32295.

[17] 84 FR 10685; 83 FR 63061.

[18] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4.

[19] 17 U.S.C. 115(d)(12)(A).

[20] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. The Conference Report further contemplates that the Office's review will be important because the MLC must operate in a manner that can gain the trust of the entire music community, but can only be held liable under a standard of gross negligence when carrying out certain of the policies and procedures adopted by its board. Conf. Rep. at 4.

states that ''[t]he Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.'' [21] Together, the statute and legislative history make clear that Congress intended for the Office to oversee and regulate the MLC as necessary and appropriate,[22] as well as periodically review that designation.[23] Indeed, Congress acknowledged that ''[a]lthough the legislation provides specific criteria for the collective to operate, it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations.'' [24]

The Office has recently addressed adjacent matters in two proceedings, concerning updating of the relevant section 115 regulations to account for the current interim period and the Register's designation of the MLC and DLC.[25] The designation of the MLC received multiple public comments, some with respect to issues such as the MLC's prospective governance practices and performance of its duty to eventually distribute unclaimed accrued royalties following a proscribed holding period, that the Office noted at the time were also able to be addressed in additional ways by the statute, including this delegation of regulatory authority.[26] Taking seriously Congress's instructions to exercise its regulatory authority ''to ensure the fair treatment of interested parties'' by the MLC,[27] in designating the MLC and DLC, the Office stated that it ''intends to conduct its oversight role in a fair and impartial manner; songwriters are encouraged to participate in these future rulemakings.'' [28]

B. Overview of the Rulemaking Process

To establish necessary and appropriate regulations to govern the new blanket licensing system, the Office now seeks public comment on the subjects discussed below. The Copyright Office is issuing this notification of inquiry as the first step in promulgating the regulations required by the MMA to govern the blanket license regime. After reviewing the comments received in response, the Office plans to publish multiple notices of proposed rulemaking, each focusing on one or more of the regulatory categories discussed below. The Office has concluded that this phasing is the best way for it to efficiently and thoughtfully conduct the relevant regulatory proceedings in light of the upcoming license availability date and the Office's available resources. To aid the Office's review, it is requested that where a submission responds to more than one of the below categories, it be divided into discrete sections that have clear headings to indicate the category being discussed in each section. Comments addressing a single category should also have a clear heading to indicate which category it discusses.

In responding to this notification, commenters are encouraged to indicate whether any of the below categories should be prioritized over others with respect to the order in which the Office addresses them. For example, it may be beneficial to establish rules governing the musical works database and reports of usage early on to aid the MLC in building its database infrastructure and developing related IT systems. As another example, establishing confidentiality rules sooner rather than later may help the MLC and DLC share information as effectively and efficiently as possible as they both get ready for the license availability date.

On the other hand, for example, while any relevant regulatory activity regarding the MLC's obligation to distribute unclaimed accrued royalties (*e.g.,* engaging in good-faith efforts to publicize notice relating to pending distributions at least ninety days in advance [29]) would relate to important, core responsibilities of the MLC, it appears logical to prioritize other regulatory provisions directed at more imminent MLC functions. Unlike most of the other subjects discussed below, which must be addressed before the January 1, 2021 license availability date, no unclaimed accrued royalties may be distributed until January 1, 2023, at the earliest.[30] Further, the Office is separately required by the MMA to undertake a study, to be concluded by July 2021, that recommends best practices for the MLC to identify and locate copyright owners with unclaimed royalties, encourage copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties.[31] The Office plans to commence that study this winter and looks forward to having broad industry participation, including by interested songwriters, regarding this important issue.

The Office welcomes parties to file joint comments on issues of common agreement and consensus.[32] The Office will also consider how to utilize informal meetings to gather additional information on discrete issues prior to publishing notices of proposed rulemaking by establishing guidelines for *ex parte* communications. Relevant guidelines will be issued at a later date on *https://www.copyright.gov/rulemaking/mma-implementation/,* and will be similar to those imposed in other proceedings.[33] Any such communications will be on the record to ensure the greatest possible transparency, but would only supplement, not substitute for, the written record.

While all public comments are welcome, as applicable, the Office encourages parties to provide specific proposed regulatory language for the Office to consider and for others to comment upon. Similarly, commenters replying to proposed language may want to offer alternate language for consideration.

Commenters are reminded that while the Office's regulatory authority is relatively broad,[34] it is obviously constrained by the law Congress enacted; the Office can fill statutory gaps, but will not entertain proposals that conflict with the statute.[35]

---

[21] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[22] The Office notes that in the MLC designation proceeding many commenters supported the Office performing a meaningful oversight role to the extent permissible under the statute. 84 FR at 32280 n.120.

[23] 17 U.S.C. 115(d)(3)(B)(ii).

[24] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[25] *See* 84 FR 32274; 84 FR 10685; 83 FR 63061.

[26] 84 FR at 32283.

[27] H.R. Rep. No. 115–651, at 6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4.

[28] 84 FR at 32283.

[29] *See* 17 U.S.C. 115(d)(3)(J)(iii)(II)(dd).

[30] *Id.* at 115(d)(3)(H)(i), (J)(i)(I); *see* 84 FR at 32291 (noting the Office's and the designated MLC's agreement on this issue).

[31] Public Law 115–264, sec. 102(f), 132 Stat. 3676, 3722–23.

[32] *See, e.g.,* Joint Comments of Nat'l Music Publishers' Ass'n & Dig. Media Ass'n Submitted in Response to Copyright Royalty Board's November 5, 2018, Notification of Inquiry (Dec. 10, 2018) (regarding regulations relating to enactment of the MMA); Joint Comments of Dig. Media Ass'n, Nat'l Music Publishers' Ass'n, Recording Indus. Ass'n of Am., Harry Fox Agency, Inc., & Music Reports, Inc. Submitted in Response to U.S. Copyright Office's July 27, 2012, Notice of Proposed Rulemaking (Oct. 25, 2012) (regarding section 115 statement of account regulations).

[33] *See, e.g.,* 83 FR at 65753–54 (identifying guidelines for *ex parte* communications in MLC and DLC designation proceeding); 82 FR 49550, 49563 (Oct. 26, 2017) (identifying guidelines for *ex parte* communications in section 1201 rulemaking); 82 FR 58153, 58154 (Dec. 11, 2017) (identifying guidelines for *ex parte* communications in rulemaking regarding cable, satellite, and DART license reporting practices).

[34] *See* Conf. Rep. at 4, 12 (stating that the Office has ''broad regulatory authority'' to promulgate regulations that ''balance[ ] the need to protect the public's interest with the need to let the new collective operate without over-regulation'').

[35] *See, e.g., Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005) (''[A]mbiguities in statutes within an agency's

II. Subjects of Inquiry

A. Notices of License and Nonblanket Activity

The MMA requires entities engaging in covered activities to file notice with the MLC regarding such activities; the notice will vary depending upon whether or not the entity is seeking a blanket license with respect to this activity. The Copyright Office must proscribe regulations regarding the form and content for both notices of license and notices of nonblanket activity.

1. Notices of License

To obtain a blanket license, a digital music provider must submit a notice of license (''NOL'') to the MLC ''that specifies the particular covered activities in which the digital music provider seeks to engage.'' [36] The MLC is to ''receive, review, and confirm or reject notices of license from digital music providers,'' and is required to ''maintain a current, publicly accessible list of blanket licenses that includes contact information for the licensees and the effective dates of such licenses.'' [37] The statute requires that NOLs ''comply in form and substance with requirements that the Register of Copyrights shall establish by regulation.'' [38] The Office seeks public input on any issues that should be considered relating to the form and substance of NOLs, including but not limited to the necessary level of detail (*e.g.,* whether NOLs should generally be similar in scope to the Office's current notice of use form under sections 112 and 114,[39] and more specifically, whether a digital music provider should be required or encouraged to describe its interactive streaming service in additional detail, such as by providing the specific types of offerings comprising that service).

2. Notices of Nonblanket Activity

Under the MMA, certain entities engaging in covered activities pursuant to voluntary licenses or individual download licenses that meet certain criteria must comply with various obligations related to the blanket compulsory license even though they do not operate under a blanket license.[40] These significant nonblanket licensees (''SNBLs'') must submit to the MLC notices of nonblanket activity (''NNBAs''), reports of usage, and any required payments of the administrative assessment.[41] According to the legislative history, SNBLs are required to make these filings and contribute to the administrative assessment ''because they are presumed to benefit from'' the new musical works database that the MLC is tasked with maintaining and ''as a way to avoid parties attempting to avoid funding of the mechanical licensing collective by engaging in direct deals outside the blanket license.'' [42]

Specifically, the statute requires SNBLs to submit NNBAs to the MLC no later than forty-five days after the license availability date, or forty-five days after the end of the first full month in which an entity initially qualifies as a SNBL, whichever occurs later.[43] NNBAs are provided ''for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.'' [44] The MLC will ''receive notices of nonblanket activity from significant nonblanket licensees,'' and is required to ''maintain a current, publicly accessible list of notices of nonblanket activity that includes contact information for significant nonblanket licensees and the dates of receipt of such notices.'' [45] The statute also requires that NNBAs ''comply in form and substance with requirements that the Register of Copyrights shall establish by regulation.'' [46] The Office seeks public input on any issues that should be considered relating to the form and substance of NNBAs, including, for example, whether an NNBA should be required to be updated or renewed, and the level of description of activity it should contain.

B. Data Collection and Delivery Efforts

While the MLC is ultimately tasked with the core project of matching musical works to sound recordings embodying those works, and identifying and locating the copyright owners of those works (and shares thereof), the MMA also outlines roles for certain digital music providers and copyright owners to facilitate this task by collecting and providing related data to the MLC.

1. Collection Efforts by Digital Music Providers

Digital music providers using the blanket license must ''engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings made available through the service of such digital music provider information concerning'': (1) Sound recording copyright owners, producers, International Standard Recording Codes (''ISRCs''), and other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody; and (2) the authorship and ownership of musical works, including songwriters, publisher names, ownership shares, and International Standard Musical Work Codes (''ISWCs'').[47]

This obligation is directly connected to the reports of usage discussed below, for which much of the statutorily enumerated information is only required ''to the extent acquired by the digital music provider in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to [this obligation].'' [48] Thus, it is important that digital music providers genuinely engage in appropriate efforts to obtain this information both from record labels and other licensors of sound recordings (*e.g.,* other distributors of sound recordings such as TuneCore, CD Baby, or DistroKid). The Office seeks public input as to whether it is necessary and appropriate for the Office to promulgate any regulations concerning this provision, including but not limited to what constitutes ''good-faith, commercially reasonable efforts.''

2. Collection Efforts by Copyright Owners

Relatedly, the MMA also obligates musical work copyright owners with works that are listed in the MLC's database to ''engage in commercially reasonable efforts'' to provide to the MLC for the database, if not already listed, ''information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.'' [49] The Office seeks

jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'') (citing *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984)); *see also* Conf. Rep. at 12 (acknowledging that ''it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations'').

[36] 17 U.S.C. 115(d)(2)(A), (e)(22).

[37] *Id.* at 115(d)(3)(F)(i); *see also id.* at (d)(2)(A)(ii)–(iv) (discussing rejection and cure of NOLs).

[38] *Id.* at 115(d)(2)(A)(i).

[39] The notice of use form is available at *https://www.copyright.gov/forms/form112-114nou.pdf.*

[40] 17 U.S.C. 115(d)(1)(C)(ii), (d)(6), (e)(31).

[41] *Id.* at 115(d)(6)(A).

[42] H.R. Rep. No. 115–651, at 12; S. Rep. No. 115–339, at 12; Conf. Rep. at 10.

[43] 17 U.S.C. 115(d)(6)(A)(i).

[44] *Id.* at 115(e)(23); *see also id.* at 115(d)(6)(A)(i) (requiring a copy to be made available to the DLC).

[45] *Id.* at 115(d)(3)(F)(ii).

[46] *Id.* at 115(d)(6)(A)(i).

[47] *Id.* at 115(d)(4)(B).

[48] *Id.* at 115(d)(4)(A)(ii).

[49] *Id.* at 115(d)(3)(E)(iv).

public input as to whether it is necessary and appropriate for the Office to promulgate any regulations concerning this provision, including but not limited to what types of efforts would be ''commercially reasonable efforts.''

C. Usage and Reporting Requirements

As noted, following the filing of a notice of license, a digital music provider making use of the blanket license must engage in efforts to collect information to assist in matching copyright owners to musical works made available through its service, and report usage of such works to the MLC. The digital music provider must also pay appropriate royalties to the MLC under the blanket license. Because the usage reports will convey a large quantity of data central to the MLC's core administrative duties of matching musical works to sound recordings, and copyright owners to musical works, as well as collecting and distributing accrued royalties for uses of these works under the blanket license, these usage reports may play a key role in the MMA's overall legal framework to provide for the matching of songs played on digital music services to copyright owners, locating the owners, and ensuring they are paid their earned royalties.

1. Reports of Usage and Payment—Digital Music Providers

Among other things, the blanket compulsory license is conditioned upon the digital music provider reporting and paying royalties to the MLC on a monthly basis, due forty-five calendar days after the end of the monthly reporting period.[50] The MMA requires that reporting and payment be done in accordance with both sections 115(c)(2)(I) and 115(d)(4)(A)(ii), which are discussed below.[51]

First, section 115(c)(2)(I) is the generally applicable reporting and payment provision for the compulsory license, augmented by section 115(d)(4)(A) with respect to the blanket compulsory license specifically. The former section predates the MMA and applies to both blanket and non-blanket compulsory licenses, except that statements are due within twenty days for non-blanket compulsory licenses rather than forty-five days.[52] ''Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation.'' [53] In addition, the Office must also ''prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license.'' [54] Section 115(c)(2)(I) further provides that ''[t]he regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.'' [55]

The Office's current statement of account regulations promulgated under section 115(c)(2)(I) are located in 37 CFR part 210, subpart B. After passage of the MMA, the Office made technical amendments to those regulations to conform them to the MMA with respect to non-blanket compulsory licenses.[56] The amendments made clear that those regulations will not apply to the blanket license.[57] While the Office plans to now establish separate regulations governing the blanket license, there may be existing provisions in the current regulations in part 210 that would also be relevant to the blanket license that commenters may wish to evaluate and identify for the Office to consider carrying over.

Second, section 115(d)(4)(A)(ii) addresses submissions made to the MLC by digital music providers under the blanket license, calling them ''reports of usage'' rather than ''statements of account.'' This provision contains additional requirements not listed in section 115(c)(2)(I). Reports of usage ''shall provide usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses and individual download licenses.'' [58] Reports must contain the following information: (1) Identifying information for the sound recording embodying a musical work, including sound recording name, featured artist, and, to the extent acquired by the digital music provider in connection with its engagement in covered activities, sound recording copyright owner, producer, ISRC, and other information commonly used to identify sound recordings and match them to musical works; (2) to the extent acquired by the digital music provider in the metadata provided by licensors of sound recordings in connection with its engagement in covered activities, information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording (including each songwriter, publisher name, and respective ownership share) and the ISWC; and (3) the number of DPDs of the sound recording, including limited downloads and interactive streams.[59] Legislative history contemplates that reports ''should be consistent with then-current industry practices regarding how such limited downloads and interactive streams are tracked and reported.'' [60] In addition, reports of usage must also identify and provide contact information for all musical work copyright owners for works embodied in sound recordings as to which a voluntary, rather than a blanket, license is in effect with respect to the uses being reported.[61]

In addition to the statutorily-prescribed categories, reports of usage must also contain ''such other information as the Register of Copyrights shall require by regulation.'' [62] These reports of usage must be ''in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective and meets the requirements of regulations adopted by the Register of Copyrights.'' [63]

The new blanket licensing framework was adopted against the widespread practice of voluntary or ''direct'' licensing of mechanical rights through an intermediary agency such as Harry Fox Agency or by the music publisher directly.[64] In responding to this notification, the Office welcomes information regarding how industry customs regarding voluntary licensing practices that vary from the prior compulsory licensing regulations may be relevant to establishing future rules for reports of usage, including suggestions regarding any additional data, beyond the statutorily required data discussed above, the Office should proscribe to be included in usage reports.[65]

Finally, the Office shall also adopt regulations ''regarding adjustments to reports of usage by digital music

[50] *Id.* at 115(d)(4)(A)(i).

[51] *Id.* at 115(d)(4)(A)(i).

[52] *See id.* at 115(c)(2)(I), (d)(4)(A)(i).

[53] *Id.* at 115(c)(2)(I).

[54] *Id.*

[55] *Id.*

[56] 84 FR 10685; 83 FR 63061.

[57] 37 CFR 210.11 (''[T]his subpart shall not apply where a digital music provider reports and pays royalties under a blanket license under 17 U.S.C. 115(d)(4)(A)(i).'').

[58] 17 U.S.C. 115(d)(4)(A)(ii).

[59] *Id.* at 115(d)(4)(A)(ii)(I).

[60] H.R. Rep. No. 115–651, at 12; S. Rep. No. 115–339, at 13; Conf. Rep. at 10.

[61] 17 U.S.C. 115(d)(4)(A)(ii)(II).

[62] *Id.* at 115(d)(4)(A)(ii)(III).

[63] *Id.* at 115(d)(4)(A)(iii).

[64] U.S. Copyright Office, Copyright and the Music Marketplace 30–31.

[65] *See, e.g., id.* (noting common practice for direct licenses to be reported on a quarterly rather than monthly basis).

providers, including mechanisms to account for overpayment and underpayment of royalties in prior periods.'' [66]

The Office seeks public input on any issues that should be considered relating to reports of usage and payment to be provided to the MLC by digital music providers under the blanket license, including specifically adjustments to these reports. These issues include specific information technology requirements for these reports, as well as any additional requirements relating to cumulative annual statements of account.[67]

2. Reports of Usage—SNBLs

SNBLs are also required to ''provide monthly reports of usage'' to the MLC within forty-five days after the end of the month being reported, ''contain[ing] the information described in [section 115(d)](4)(A)(ii)'' and ''accompanied by any required payment of the administrative assessment.'' [68] The Office seeks public input on any issues that should be considered relating to reports of usage to be provided to the MLC by SNBLs, including but not limited to how such reports may differ from the reports filed by digital music providers under the blanket license.

3. Records of Use Maintenance and Access

Relatedly, the MMA directs the Copyright Office to adopt regulations ''setting forth requirements under which records of use shall be maintained and made available to the mechanical licensing collective by digital music providers engaged in covered activities under a blanket license.'' [69] The Office seeks public input on any issues that should be considered relating to the maintenance and access of such records of use, which presumably could be used to substantiate and interpret the data included on usage reports.

D. Transfer and Reporting of Unclaimed Accrued Royalties to the MLC at the End of the Transition Period

A related topic concerns the historical reporting that digital music providers will provide to the MLC when transferring and reporting to the MLC any unclaimed accrued royalties remaining with digital music providers at the end of the transition period. As noted above, the Office previously engaged in a rulemaking to address the current transition period before the blanket license becomes available.[70] The MMA requires that within forty-five days after the license availability date, a digital music provider seeking to avail itself of the MMA's limitation on liability must transfer all accrued royalties for any unmatched musical works (or shares) to the MLC ''accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been serving monthly statements of account on the copyright owner from initial use of the work in accordance with [section 115] and applicable regulations.'' [71] The Office adopted regulations that follow the statute, specifying that digital music providers must pay royalties and provide cumulative statements of account to the MLC in compliance with the Office's preexisting monthly statement of account regulations in 37 CFR 210.16.[72] The Office further required that these statements include ''a clear identification of the total period covered by the cumulative statement and the total royalty payable for the period.'' [73]

While the Office enacted the rule pursuant to a public process, the Office did not receive any comments.[74] Throughout the transition period, including during the MLC designation proceeding, there has been persistent concern about the ''black box'' of unclaimed royalties, including its amount and treatment by digital music providers and the MLC. Consequently, the Office is providing another opportunity for the public to comment on whether there should be any adjustment to the current regulations governing the cumulative statements of account required by the statute to accompany unclaimed royalties that are to be transferred from digital music providers to the MLC within forty-five days of the license availability date. The Office seeks public input on any issues that should be considered relating to the transfer and reporting of unclaimed royalties by digital music providers to the MLC.

E. Musical Works Database Information

A core aspect of the MLC's responsibilities includes identifying musical works and copyright owners, matching them to sound recordings (and addressing disputes), and ensuring that songwriters and other copyright owners get paid the royalties they are due. To that end, the MLC will establish and maintain a free public database of musical work ownership information that also identifies the sound recordings in which the musical works are embodied.[75] As the legislative history explains:

> For far too long, it has been difficult to identify the copyright owner of most copyrighted works, especially in the music industry where works are routinely commercialized before all of the rights have been cleared and documented. This has led to significant challenges in ensuring fair and timely payment to all creators even when the licensee can identify the proper individuals to pay. With millions of songs now available to subscribers worldwide, technology also has a role to play through digital fingerprinting of a sound recording. However, there is no reliable, public database to link sound recordings with their underlying musical works. Unmatched works routinely occur as a result of different spellings of artist names and song titles. Even differing punctuation in the name of a work has been enough to create unmatched works. . . . Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on. . . . This situation must end so that all artists are paid for their creations and that so-called ''black box'' revenue is not a drain on the success of the entire industry.[76]

With respect to musical works that have been matched to copyright owners,[77] by statute, the MLC's database must include: (1) The title of the musical work; (2) the copyright owner of the work (or share thereof), and the ownership percentage of that owner; (3) contact information for such copyright owner; and (4) to the extent reasonably available to the MLC, (a) the ISWC for the work, and (b) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works.[78]

With respect to unmatched musical works,[79] by statute, the database must include, to the extent reasonably available to the MLC: (1) The title of the musical work; (2) the ownership percentage for which an owner has not been identified; (3) if a copyright owner

[66] 17 U.S.C. 115(d)(4)(A)(iv)(II).

[67] *See* S. Rep. No. 115–339, at 24–25 (''The Register shall specify information technology requirements of such reports along with the maintenance of the records of use.'').

[68] 17 U.S.C. 115(d)(6)(A)(ii).

[69] *Id.* at 115(d)(4)(A)(iii), (iv)(I).

[70] 84 FR 10685; 83 FR 63061.

[71] 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa).

[72] 37 CFR 210.20(b)(3)(i).

[73] *Id.*

[74] *See* 84 FR 10685; 83 FR 63061.

[75] 17 U.S.C. 115(d)(3)(E), (e)(20).

[76] S. Rep. No. 115–339, at 8; Conf. Rep. at 6; *see also* H.R. Rep. No. 115–651, at 7–8.

[77] *See* 17 U.S.C. 115(e)(17).

[78] *Id.* at 115(d)(3)(E)(ii).

[79] *See id.* at 115(e)(35).

has been identified but not located, the identity of such owner and the ownership percentage of that owner; (4) identifying information for sound recordings in which the work is embodied, including sound recording name, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works; and (5) any additional information reported to the MLC that may assist in identifying the work.[80]

For both categories (matched and unmatched works), the MLC's database must also include ''such other information'' ''as the Register of Copyrights may prescribe by regulation.'' [81] The legislative history provides that the Office ''shall use its judgement to determine what is an appropriate expansion of the required fields, but shall not adopt new fields that have not become reasonably accessible and used within the industry unless there is widespread support for the inclusion of such fields.'' [82] The legislative history also notes specifically that the Office ''may at some point wish to consider . . . whether standardized identifiers for individuals would be appropriate, or even audio fingerprints.'' [83]

Issues related to the information in the musical works database are closely connected, and equally important, to questions regarding the data collection efforts and reporting by digital music providers that will help populate the database. Much of the required data will likely come from, or at least be able to cohere with, the reports of usage submitted to the MLC by digital music providers, and so similar issues may be addressed in the promulgation of these related regulations, such as those concerning what information is considered standard or reasonably available. The Office seeks public input on any issues that should be considered relating to information to be included in the MLC's musical works database, including what, if any, specific additional categories of information might be appropriate to proscribe under these standards, keeping in mind the interrelationship between this information and the above-discussed data collection efforts and usage reporting.

F. Musical Works Database Usability, Interoperability, and Usage Restrictions

The MMA also directs the Copyright Office to ''establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the [MLC's] musical works database.'' [84] The statute provides that the database must ''be made available to members of the public in a searchable, online format, free of charge.'' [85] The MLC must make the data available ''in a bulk, machine-readable format, through a widely available software application,'' to digital music providers operating under valid NOLs, compliant SNBLs, authorized vendors of such digital music providers or SNBLs, and the Copyright Office, free of charge, and to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.'' [86] The legislative history adds that ''[i]ndividual lookups of works shall be free although the collective may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.'' [87] The legislative history also states that ''there shall be no requirement that a database user must register or otherwise turn over personal information in order to obtain the free access required by the legislation.'' [88]

During the MLC designation proceeding, Mechanical Licensing Collective, Inc. (''MLCI''), the entity designated as the MLC, noted the importance of compatibility with existing music industry standards, including communicating information in accordance with the Common Works Registration (''CWR'') format and DDEX standards, and a willingness to explore other relevant existing or emerging standards or open protocols.[89] MLCI stated that it ''strongly support[s] the adoption of standards, formats, and frameworks that allow information to be easily and accurately shared throughout the industry,'' and that ''good systems functioning and architectural practices instruct that components should have proper APIs.'' [90] MLCI also committed to establishing an information security management system that is certified with ISO/IEC 27001 and meets the EU General Data Protection Regulation requirements, and other applicable laws.[91]

The Office seeks public input on any issues that should be considered relating to the usability, interoperability, and usage restrictions of the MLC's musical works database, including but not limited to any technical or other specific language that might be helpful to consider in promulgating these regulations, discussion of the pros and cons of applicable standards, and whether historical snapshots of the database should be maintained to track ownership changes over time.

G. MLC Payments and Statements of Account

Next, the Office seeks comment regarding the MLC's payment and reporting obligations with respect to royalties that have been matched to copyright owners, both for works that are matched at the time the MLC receives payment from digital music providers and works that are matched later during the statutorily prescribed holding period for unmatched works. Historically, under the song-by-song statutory license, copyright owners or their authorized agents received royalty payments accompanied by statements of account from the licensee.[92] Under the MMA, digital music providers with blanket licenses will instead report and pay royalties to the MLC. The statute provides that ''[u]pon receiving reports of usage and payments of royalties from digital music providers for covered activities, the mechanical licensing collective shall'' ''distribute royalties to copyright owners in accordance with the usage and other information contained in such reports, as well as the ownership and other information contained in the records of the collective.'' [93] When a copyright owner who is owed unmatched royalties becomes identified and located, the MLC must pay applicable accrued royalties to the copyright owner, ''accompanied by a cumulative statement of account reflecting usage of such work and accrued royalties based on information provided by digital

[80] *Id.* at 115(d)(3)(E)(iii).

[81] *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

[82] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8; Conf. Rep. at 7.

[83] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8; Conf. Rep. at 7.

[84] 17 U.S.C. 115(d)(3)(E)(vi).

[85] *Id.* at 115(d)(3)(E)(v).

[86] *Id.* at 115(d)(3)(E)(v).

[87] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8–9; Conf. Rep. at 7.

[88] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 9; Conf. Rep. at 7.

[89] 84 FR at 32287 (citing Proposal of Mechanical Licensing Collective, Inc. Submitted in Response to U.S. Copyright Office's December 21, 2018, Notice of Inquiry, at 35, 38, 57–58 (Mar. 21, 2019) (''MLCI Proposal'').

[90] MLCI Proposal at 46–47.

[91] 84 FR at 32290 (citing MLCI Proposal at 50).

[92] *See* 37 CFR 210.16(g)(1), 210.17(g)(1) (2017); 17 U.S.C. 115(c)(6) (2017) (''If the *copyright owner* does not receive the monthly payment and the monthly and annual statements of account when due . . . .'') (emphasis added).

[93] 17 U.S.C. 115(d)(3)(G)(i)(II).

music providers to the mechanical licensing collective.'' [94]

The Office seeks public input as to potential regulations regarding what reporting should be required of the MLC when distributing royalties to matched copyright owners in the ordinary course under section 115(d)(3)(G)(i)(II), as well as input concerning the timing of such regular distributions. The Office also welcomes input on any issues that should be considered relating to the cumulative statements of account to be provided under section 115(d)(3)(I)(ii), relating to payments due to copyright owners of a previously unmatched work (or share thereof) who is later identified and located by the MLC, including what additional material, if any, may be required in these statements as compared to routine periodic distributions for already matched works.

H. Treatment of Confidential and Other Sensitive Information

The MMA broadly directs the Copyright Office to ''adopt regulations to provide for the appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and digital licensee coordinator is not improperly disclosed or used, including through any disclosure or use by the board of directors or personnel of either entity, and specifically including the unclaimed royalties oversight committee and the dispute resolution committee of the mechanical licensing collective.'' [95]

The MMA additionally makes several explicit references to the Office's regulations governing the treatment of confidential and other sensitive information in various circumstances, including with respect to: (1) ''all material records of the operations of the mechanical licensing collective''; [96] (2) steps the MLC must take to ''safeguard the confidentiality and security of usage, financial, and other sensitive data used to compute market shares'' when distributing unclaimed accrued royalties; [97] (3) steps the MLC and DLC must take to ''safeguard the confidentiality and security of financial and other sensitive data shared'' by the MLC to the DLC about SNBLs; [98] (4) voluntary licenses administered by the MLC; [99] (5) examination of the MLC's ''books, records, and data'' pursuant to audits by copyright owners; [100] and (6) examination of digital music providers' ''books, records, and data'' pursuant to audits by the MLC.[101]

The Office seeks public input on any issues that should be considered relating to the treatment of confidential and other sensitive information as it relates to the blanket license regime, including but not limited to the interplay between the Office's regulations and the use of nondisclosure agreements, confidential information relating to SNBLs, disclosure of information through the MLC's unclaimed royalties oversight committee and dispute resolution committee, and what information can be shared by and among board and committee members or with the general public.

I. Additional MLC Oversight

As discussed above, the statute and legislative history make plain that Congress expects the Copyright Office to oversee and regulate the MLC as necessary and appropriate. For example, the legislative history contemplates that the Office will exercise its authority to both ''thoroughly review[ ]'' policies and procedures established by the MLC and promulgate regulations that ''balance[ ] the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' [102] Moreover, the statute requires the MLC to ''ensure that [its] policies and practices . . . are transparent and accountable.'' [103]

In the MLC designation proceeding, some concerns raised by commenters with respect to oversight related to conflicts of interest, representation, and diversity. The Office observed that the designated MLC has ''pledged to operate under bylaws that will address conflicts of interest and appropriate disclosures in accordance with applicable state laws and professional duties of care.'' [104] The Office stated that it ''expects ongoing regulatory and other implementation efforts to . . . extenuate the risk of self-interest,'' and that ''the Register intends to exercise her oversight role as it pertains to matters of governance.'' [105] Additionally, the Office stated that it ''intends to work with the MLC to help it achieve the[ ] goals'' of ''engagement with a broad spectrum of musical work copyright owners, including from those communities'' and musical genres that some commenters in the designation proceeding asserted are underrepresented.[106]

The Office seeks public input on any issues that should be considered relating to the oversight of the MLC, including but not limited to conflicts of interest, representation of the entire musical works community, ensuring that board and committee member service complies with all relevant legal requirements, and the appropriate scope and manner for the Office's review of MLC policies and procedures (including its bylaws) and any subsequent modifications to such policies and procedures.

J. Public Notice and Distribution of Unclaimed Accrued Royalties

As discussed above, the Office is specifically required by the MMA to undertake a separate study and to provide a report by July 2021 recommending best practices for the MLC to identify and locate copyright owners with unclaimed royalties, encourage copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties.[107] The Office plans to commence that study this winter and looks forward to having broad industry participation, including by interested songwriters, regarding this important issue. Unlike most of the other subjects discussed above, which must be addressed before the January 1, 2021 license availability date, no unclaimed accrued royalties may be distributed until January 1, 2023, at the earliest.[108]

Accordingly, while the Office will accept information regarding whether and how to promulgate regulations regarding the MLC's obligation to distribute unclaimed accrued royalties (*e.g.,* rules pertaining to the requirement

[94] *Id.* at 115(d)(3)(I)(ii).

[95] *Id.* at 115(d)(12)(C).

[96] *Id.* at 115(d)(3)(M)(i) (''The mechanical licensing collective shall ensure that all material records of the operations of the mechanical licensing collective, including those relating to notices of license, the administration of the claims process of the mechanical licensing collective, reports of usage, royalty payments, receipt and maintenance of accrued royalties, royalty distribution processes, and legal matters, are preserved and maintained in a secure and reliable manner, with appropriate commercially reasonable safeguards against unauthorized access, copying, and disclosure, and subject to the confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C) for a period of not less than 7 years after the date of creation or receipt, whichever occurs later.'').

[97] *Id.* at 115(d)(3)(J)(i)(II)(bb); *see* H.R. Rep. No. 115–651, at 27 (''Unclaimed royalties are to be distributed based upon market share data that is confidentially provided to the collective by copyright owners.''); S. Rep. No. 115–339, at 24 (same); Conf. Rep. at 20 (same).

[98] 17 U.S.C. 115(d)(6)(B)(ii).

[99] *Id.* at 115(d)(11)(C)(iii).

[100] *Id.* at 115(d)(3)(L)(i)(II).

[101] *Id.* at 115(d)(4)(D)(i)(II).

[102] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12.

[103] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[104] 84 FR at 32280.

[105] *Id.*

[106] *Id.* at 32279.

[107] Pub. L. 115–264, sec. 102(f), 132 Stat. 3676, 3722–23.

[108] 84 FR at 32291 (citing 17 U.S.C. 115(d)(3)(H)(i), (J)(i)(I)).

that the MLC engage in good-faith efforts to publicize notice relating to pending distributions at least ninety days in advance),[109] commenters should be aware that the Office is tentatively inclined to wait until after the policy study is underway to finalize rules with respect to this important duty of the MLC. The Office anticipates that those seeking to comment on this issue will have ample opportunity to do so through the study and other future activities.

K. Other Subjects

The Copyright Office invites public comment on any other issues relevant to the blanket compulsory license regime that commenters believe are within and appropriate for the Office's regulatory authority.

Dated: September 16, 2019.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2019–20318 Filed 9–23–19; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 12, 13, 43, and 52

[FAR Case 2018–021; Docket FAR–2019–0031; Sequence 1]

RIN 9000–AN79

Federal Acquisition Regulation: Reserve Officer Training Corps and Military Recruiting on Campus

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the United States Code section that prohibits the award of certain Federal contracts to institutions of higher education that prohibit Reserve Officer Training Corps units or military recruiting on campus.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before November 25, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–021 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FAR Case 2018–021'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2018–021''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2018–021'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite ''FAR Case 2018–021'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 or at *cecelia.davis@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2018–021.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement 10 U.S.C. 983, which prohibits the award of certain Federal contracts to institutions of higher education that prohibit Reserve Officer Training Corps (ROTC) units or military recruiting on campus.

Both DoD and Department of Homeland Security (DHS) have previously implemented agency-specific clauses that prohibit the award of certain Federal contracts to institutions of higher education that prohibit ROTC units or military recruiting on campus.

DoD published an interim rule in the Defense Federal Acquisition Regulation Supplement (DFARS) on Institutions of Higher Education, 65 FR 2056, on January 13, 2000, to implement section 549 of the National Defense Authorization Act (NDAA) for Fiscal Year 2000. Section 549 amends 10 U.S.C. 983 to prohibit DoD from providing funds by contract or grant to an institution of higher education (including any subelement of that institution) if the Secretary of Defense determines that the institution (or any subelement of the institution) has a policy or practice that prohibits, or in effect prevents, Senior ROTC units or military recruiting on campus.

DoD then published a final rule on Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education, 73 FR 16525, on March 28, 2008, at 32 CFR part 216. The rule implemented 10 U.S.C. 983, as amended by the Ronald W. Reagan NDAA for Fiscal Year 2005 (Pub. L. 108–375, October 28, 2004). The DoD rule clarified access to campuses, access to students and access to directory information on students for the purposes of military recruiting, and that access to campuses and students on campuses shall be provided in a manner that is at least equal in quality and scope to that provided to any other employer. DoD later published a DFARS final rule in the **Federal Register**, 77 FR 19128, on March 30, 2012, to separate provisions and clauses that were previously combined in order to comply with DFARS drafting conventions. This final rule removed the representation from 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus, and added a new provision at 252.209–7003, Reserve Officer Training Corps and Military Recruiting on Campus—Representation.

Similar to DoD, DHS published a rule on December 4, 2003, 68 FR 67868 at 67891 to add a new clause in its supplement at Homeland Security Acquisition Regulation (HSAR) 3052.209–71, Reserve Officer Training Corps and Military Recruiting on Campus, to implement these requirements.

This proposed rule would implement 10 U.S.C. 983, which prohibits the award of certain Federal contracts with covered funds to institutions of higher education that prohibit ROTC units or military recruiting on campus. ''Covered funds'' is defined in 10 U.S.C. 983 to be any funds made available for DoD, Department of Transportation, DHS, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or for any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. None of these covered funds may be provided by contract or grant to an institution of higher education (including any subelement of such institution) that has a policy or practice (regardless of when implemented) that

[109] 17 U.S.C. 115(d)(3)(J).

either prohibits, or in effect prevents, the Secretary of Defense from establishing or operating a Senior ROTC at that institution (or any subelement of that institution); or that either prohibits, or in effect prevents, a student at that institution (or any subelement of that institution) from enrolling in a ROTC unit at another institution of higher education.

The statute has similar sanctions against these covered funds being provided to an institution of higher education (or any subelement of an institution) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting, where such policy or practice denies the military recruiter access that is at least equal in quality and scope to the access to campuses and students provided to any other employer; or access to information pertaining to the students' names, addresses, telephone listings, dates and places of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

The meaning and effect of the term ''equal in quality and scope'' was explained in the U.S. Supreme Court decision in *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297 (2006). The term means the same access to campus and students provided by the school to any other nonmilitary recruiters or employers receiving the most favorable access. The focus is not on the content of a school's recruiting policy, but instead on the result achieved by the policy and compares the access provided military recruiters to that provided other recruiters. Therefore, compliance with 10 U.S.C. 983 would be considered insufficient if the policy results in a greater level of access for other recruiters than for the military.

The statute provides an exception whereby any Federal funding provided to an institution of higher education or to an individual that is available solely for student financial assistance, related administrative costs, or costs associated with attendance may be used for the purpose for which the funding is provided.

This proposed rulemaking was initiated at the request of DoD's Regulatory Reform Task Force (RRTF). The RRTF was established under Executive Order 13777, titled ''Enforcing the Regulatory Reform Agenda,'' which requires agencies to evaluate existing regulations on whether they should be repealed, replaced, modified, or retained to reduce regulatory burden on the public. The RRTF recommended opening this rulemaking as the statute applies to multiple agencies identified in this rule as a ''covered agency.'' Elevating this policy in the FAR eliminates the need for the agency unique supplemental regulations mentioned above and ensures unified guidance among the affected agencies consistent with the purpose of the FAR system.

II. Discussion and Analysis

This rule proposes to add a new section FAR 9.110, Reserve Officer Training Corps and military recruiting on campus, that provides the policy and procedures for this prohibition and a new clause entitled the same. Revisions are made to FAR 9.405, 9.405–1, and 43.105 to address this prohibition. The clause explains what is expected of the institution of higher education and how an agency is to handle the situation when the institution of higher education is identified by the Secretary of Defense as having policies or practices in place that prevent the ROTC and military recruiting on campus. The covered agency is prohibited from providing funds through contract award to the institution of higher education. Administrative revisions are made to FAR 12.503 and FAR 13.005 to the order of the statutes for consistency.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

DoD, GSA, and NASA do not intend to apply the requirements of 10 U.S.C. 983 at or below the simplified acquisition threshold or to contracts for the acquisitions of commercial items.

A. Applicability to Contracts At or Below the Simplified Acquisition Threshold

Section 1905 of Title 41 of the United States Code governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. Section 1905 provides that if a provision of law contains criminal or civil penalties, specifically refers to section 1905 and provides that the law shall nevertheless be applicable to contracts or subcontracts below the simplified acquisition threshold, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them. Section 1983 of Title 10 does not contain criminal or civil penalties, nor expressly refer to section 1905 of Title 41, and the FAR Council does not intend to make the requisite determination. Therefore, this proposed rule does not apply at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

Section 1906 of Title 41 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if a provision of law contains criminal or civil penalties, specifically refers to section 1906 and provides that it shall nevertheless be applicable to contracts for the procurement of commercial items, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, and provides the same criteria for determining whether a provision of law applies to COTS items, except that the Administrator for Federal Procurement Policy is charged with making the decision whether it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. As noted above with respect to section 1905, section 983 of Title 10 does not impose civil or criminal penalties. Nor does it refer to sections 1906 or 1907 of Title 41. The FAR Council and the Administrator for Federal Procurement Policy do not intend to make the requisite determinations. Therefore, this proposed rule does not apply to the acquisition of commercial items, including COTS items. This rule proposes to add 10 U.S.C. 983 to the list at FAR 12.503 of laws inapplicable to contracts for the acquisition of commercial items. The law is not added to the lists at FAR 12.504 (subcontracts) and 12.505 (COTS items), because the clause does not flow down to subcontracts and is already inapplicable to the acquisition of COTS items, because the Federal Government does not buy COTS items from institutions of higher education.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Expected Impact of the Proposed Rule and Proposed Cost Savings

DoD, GSA, and NASA do not expect a cost impact on the public or institutions of higher learning or on the Government because covered agencies already have regulations in place to address their statutory responsibilities. These agencies will be required to comply with the same requirement, but the requirement will now be located in the FAR.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule has a *de minimis* impact on the public (see section V of this preamble).

This rule affects institutions of higher education that receive DoD monies but are planning to not allow DoD's ROTC and military recruiting on campus. However, the FAR Council is not aware of any institution that currently has such a prohibition in place.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule impacts only institutions of higher education with policies or practices in place that prohibit ROTC units or military recruiting on campus and currently no institutions have such practices. Nevertheless, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and summarized as follows:

In Fiscal Year 2017, the Federal Procurement Data System (FPDS) shows that there were 345 awards to small organizations, which are institutions of higher education, by the following covered agencies: DoD, Department of Labor, Department of Health and Human Services, Department of Education, Department of Transportation, and DHS. The National Nuclear Security Administration is not included in this number because the Department of Energy does not break out the information. The Central Intelligence Agency is not included because it does not report in FPDS. These small organizations are small entities under the Regulatory Flexibility Act but are not small business concerns. There will not be an impact on an institution of higher education as long as that institution has no policies or practices in place that prohibit ROTC units or military recruiting on campuses. No institution of higher education has been determined by the Secretary of Defense to be ineligible based on this policy (see 9.110).

There are no reporting or recordkeeping requirements. There is a compliance requirement; institutions of higher education that have contracts with covered agencies (defined in the FAR text) must not prohibit ROTC units or military recruiting on campus. This is not a new requirement. No increase in burden is intended.

The statute has previously been implemented at the FAR supplement level for DoD and DHS. This FAR case moves the implementation up into the FAR level.

There were no significant alternatives identified that would meet the objectives of the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained for the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2018–021), in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 9, 12, 13, 43, and 52

Government procurement.

William F. Clark

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 9, 12, 13, 43, and 52 as set forth below.

■ 1. The authority citation for 48 CFR parts 9, 12, 13, 43, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Add sections 9.110 and 9.110–1 thru 9.110–5 to read as follows:

9.110 Reserve Officer Training Corps and military recruiting on campus.

9.110–1 Definitions.

As used in this section—

''Covered agency'' means—

(1) The Department of Defense;

(2) Any department or agency for which regular appropriations are made in a Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act;

(3) The Department of Homeland Security;

(4) The National Nuclear Security Administration of the Department of Energy;

(5) The Department of Transportation; or

(6) The Central Intelligence Agency.

''Institution of higher education'' means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

9.110–2 Authority.

This section implements 10 U.S.C. 983.

9.110–3 Policy.

(a) Except as provided in paragraph (b) of this section, 10 U.S.C. 983 prohibits the covered agency from providing funds by contract to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(4) Military recruiters from accessing certain information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name, address, and telephone listings.

(ii) Date and place of birth, educational level, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(b) The prohibition in paragraph (a) of this section does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (a) of this section; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

9.110–4 Procedures.

If the Secretary of Defense determines, pursuant to the procedures at 32 CFR part 216, that an institution of higher education is ineligible to receive funds from a covered agency because of a policy or practice described in 9.110–3—

(a) The Secretary of Defense will create an active exclusion record for the institution in the System for Award Management; and

(b) A covered agency shall not solicit offers from, award contracts to, or consent to subcontracts with the institution.

9.110–5 Contract clause.

The contracting officer shall insert the clause at 52.209–XX, Reserve Officer Training Corps and Military Recruiting on Campus, in solicitations and contracts that are expected to exceed the simplified acquisition threshold, with institutions of higher education, when using funds from a covered agency. The clause is not prescribed for solicitations and contracts using FAR part 12 for the acquisition of commercial items.

9.405 [Amended]

■ 3. Amend 9.405(a) by removing from the first sentence ''*see* 9.405–1(b)'' and adding ''see 9.405–1(a)(2)'' in its place.

■ 4. Amend section 9.405–1 by—

■ a. Redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (2);

■ b. Adding a heading for paragraph (a);

■ c. Redesignating paragraphs (a)(2)(1) through (3) as paragraphs (a)(2)(i) through (iii); and

■ d. Adding new paragraph (b).

The additions read as follows:

9.405–1 Continuation of current contracts.

(a) *Contractors debarred, suspended, or proposed for debarment.* * * *

(b) *Ineligible contractors.* A covered agency, as defined in 9.110–1, shall terminate existing contracts and shall not place new orders or award new contracts with contractors that have been declared ineligible pursuant to 10 U.S.C. 983 (see 9.110, Reserve Officer Training Corps and military recruiting on campus), except for contracts at or below the simplified acquisition threshold or contracts for the acquisition of commercial items.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Amend section 12.503 by revising paragraphs (a)(1), (2), (4), and (5), adding paragraph (a)(6), and revising paragraphs (a)(7) through (9) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) * * *

(1) 10 U.S.C. 983, Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies (see 9.110).

(2) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see 22.1302).

* * * * *

(4) 41 U.S.C. 2303, Policy on Personal Conflicts of Interest by Contractor Employees (see subpart 3.11).

(5) 41 U.S.C. 3901(b) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).

(6) 41 U.S.C. 4706(d)(1) and 10 U.S.C. 2313(c)(1), GAO Access to Contractor Employees, Section 871 of Public Law 110–417 (see 52.214–26 and 52.215–2).

(7) 41 U.S.C. chapter 65, Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000 (see subpart 22.6).

(8) 41 U.S.C. chapter 81, Drug-Free Workplace (see 23.501).

(9) Section 806(a)(3) of Public Law 102–190, as amended by Sections 2091 and 8105 of Public Law 103–355, (10 U.S.C. 2302 note), Payment Protections for Subcontractors and Suppliers (see 28.106–6).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 6. Amend section 13.005 by—

■ a. Removing paragraphs (a)(1) through (5);

■ b. Adding new paragraph (a)(1);

■ c. Redesignating paragraphs (a)(6) through (9) as paragraphs (a)(2) through (5);

■ d. Adding new paragraphs (a)(6) through (9);

■ e. Revising paragraphs (a)(10) and (11); and

■ f. Adding paragraph (a)(12).

The additions and revisions read as follows:

13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

(a) * * *

(1) 10 U.S.C. 983, Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies (see 9.110).

* * * * *

(6) 22 U.S.C. 2593e (Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States). (The requirement at 22 U.S.C. 2593e(c)(3)(B) to provide a certification does not apply.)

(7) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see 22.1302).

(8) 40 U.S.C. 3131 (Bonds statute). (Although the Bonds statute does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see 28.102) are still required if the contract exceeds $35,000 (40 U.S.C. 3132).)

(9) 40 U.S.C. chapter 37 (Contract Work Hours and Safety Standards—Overtime Compensation).

(10) 41 U.S.C. 8102(a)(1) (Drug-Free Workplace), except for individuals.

(11) 41 U.S.C. 8703 (Kickbacks statute). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(12) 42 U.S.C. 6962 (Solid Waste Disposal Act). (The requirement to provide an estimate of recovered material utilized in contract performance does not apply unless the contract value exceeds $150,000.)

* * * * *

PART 43—CONTRACT MODIFICATIONS

■ 7. Amend section 43.105 by adding paragraph (c) to read as follows:

43.105 Availability of funds.

* * * * *

(c) In accordance with 10 U.S.C. 983, do not provide funds by contract or contract modification, or make contract payments, to an institution of higher education that has a policy or practice of hindering Senior Reserve Officer Training Corps units or military recruiting on campus as described at 9.110.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209–XX [Added]

■ 8. Add section 52.209–XX to read as follows:

52.209–XX Reserve Officer Training Corps and Military Recruiting on Campus.

As prescribed in 9.110–5, insert the following clause:

Reserve Officer Training Corps and Military Recruiting on Campus (Date)

(a) *Definitions.* As used in this clause—

''Institution of higher education'' means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

''Covered agency'' means—

(1) The Department of Defense;

(2) Any department or agency for which regular appropriations are made in a Department of Labor, Health and Human Services; and Education, and Related Agencies Appropriations Act;

(3) The Department of Homeland Security;

(4) The National Nuclear Security Administration of the Department of Energy;

(5) The Department of Transportation; or

(6) The Central Intelligence Agency.

(b) *Limitation on contract award.* Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution (or any subelement of that institution);

(2) A student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name, address, and telephone listings.

(ii) Date and place of birth, educational level, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(c) *Exception.* The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the institution has violated the contract in paragraph (b) of this clause—

(1) The institution will be ineligible for further payments under this and any other contracts with this agency and any other covered agency, except for contracts at or below the simplified acquisition threshold or contracts for the acquisition of commercial items; and

(2) The Government will terminate this contract for default for the institution's material failure to comply with the terms and conditions of award.

(End of clause)

[FR Doc. 2019–20045 Filed 9–23–19; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 84, No. 185
Tuesday, September 24, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 18, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by October 24, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Post-Decisional Administrative Review Process.

OMB Control Number: 0596–0231.

Summary of Collection: Under 36 CFR part 214, the Forest Service (FS), at its own discretion, provides a process by which holders, operators, and solicited applicants may appeal certain written decisions issued by a Responsible Official involving a written instrument authorizing the occupancy or use of National Forest System (NFS) lands and resources.

Need and use of the Information: Information is collected and submitted from individuals who are holders or operators of a valid written authorization to occupy or use NFS lands and resources. The appellant must provide name, mailing address, daytime telephone number, email address, signature, and statements of how appellant is adversely affected by decision being appealed; relevant facts underlying the decision; discussion of issues raised by the decision; attempts to resolve issues under appeal with the Responsible Official and a statement of the relief sought. The information is used to review an agency decision on a written authorization against the issues raised by the appellant and determine whether to affirm or reverse the decision.

Description of Respondents: Individuals or households.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 200.

Title: The Role of Local Communities in the Development of Agreement or Contract Plans Through Stewardship Contracting.

OMB Control Number: 0596–0201.

Summary of Collection: Section 8205 of Public Law 113–79, the Agricultural Act of 2014, requires the Forest Service (FS) to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting. To meet that requirement FS conducts an annual telephone survey to gather the necessary information for FS to develop its annual report to Congress.

Need and use of the Information: The survey will collect information on the role of local communities in the development of agreement or contract plans through stewardship contracting. The survey will provide information regarding the nature of the local community involved in developing agreement or contract plans, the nature of roles played by the entities involved in developing agreement or contract plans, the benefits to the community and agency by being involved in planning and development of contract plans, and the usefulness of stewardship contracting in helping meet the needs of local communities. FS posts the report on its web page for viewing by the public. Congress also makes the agency reports available for use by organizations both inside and outside the government.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 56.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–20581 Filed 9–23–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0017]

Availability of an Environmental Assessment and Finding of No Significant Impact for the Release of Cheilosia urbana for Biological Control of Invasive Hawkweeds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared an environmental assessment and finding of no significant impact relative to the release of the hoverfly *Cheilosia urbana* for the biological control of hawkweeds

(*Pilosella* species), a significant invasive weed, within the contiguous United States. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

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

SUPPLEMENTARY INFORMATION:

Hawkweeds are invasive weeds of moist pastures, forest meadows, and mountain rangelands with a moderate amount of moisture. Habitats most vulnerable to invasion include human-disturbed sites, such as roadsides and hayfields, and abandoned farmland. The following hawkweeds are considered noxious in many western States and are currently targets for biological control: *Pilosella flagellaris* (whiplash hawkweed), *Pilosella floribunda* (king devil hawkweed), *Pilosella glomerata* (queen devil or yellow devil hawkweed), *Pilosella officinarum* (mouse-ear hawkweed), and *Pilosella piloselloides* (tall hawkweed).

Cheilosia urbana is a very common and widespread hoverfly in Europe. The fly's potential range in North America is expected to match much of the distributions of the targeted *Pilosella* (hawkweed) species that occur in the northwestern United States and northeastern United States, including southwestern and southeastern Canada. Permitting the release of *Cheilosia urbana* is necessary to reduce the severity of invasive hawkweed infestations and economic losses since other alternatives are not effective or feasible.

On May 28, 2019, we published in the **Federal Register** (84 FR 24463, Docket No. APHIS–2019–0017) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the release of *Cheilosia urbana* for the biological control of invasive hawkweeds within the contiguous United States.

We solicited comments on the EA for 30 days ending June 27, 2019. We received eight comments by that date. Six of those comments were in favor of the release of the biological control agents. One comment was a general comment against the Animal and Plant Health Inspection Service (APHIS) but raised no substantive issues. One comment raised questions regarding impacts on native hawkweeds. This last comment is addressed in Appendix 6 of the final EA.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *Cheilosia urbana* for the biological control of invasive hawkweeds within the contiguous United States. The finding, which is based on the EA, reflects our determination that release of the *Cheilosia urbana* will not have a significant impact on the quality of the human environment. Concurrent with this announcement, we will issue a permit for the release of *Cheilosia urbana* for the biological control of invasive hawkweeds.

The EA and FONSI may be viewed on the *Regulations.gov* website (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20583 Filed 9–23–19; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0017.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0060]

Notice of Request for an Extension of Approval of an Information Collection; Interstate Movement of Certain Land Tortoises

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the interstate movement of certain land tortoises.

DATES: We will consider all comments that we receive on or before November 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0060.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0060, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0060* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the land tortoises program, contact Dr. Alicia Marston, Staff Veterinary Medical Officer, Strategy & Policy, Veterinary Services, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 851–3361. For more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Interstate Movement of Certain Land Tortoises.

OMB Control Number: 0579–0156.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination of animal diseases and pests within the United States.

The regulations in 9 CFR 93.701(c) prohibit the importation of the leopard tortoise, the African spurred tortoise, and the Bell's hingeback tortoise. APHIS implemented importation restrictions to prevent the introduction and spread of exotic ticks known to be vectors of heartwater disease, an acute, infectious disease of cattle and other ruminants. For leopard, African spurred, and Bell's hingeback tortoises already in the United States, the regulations in 9 CFR 74.1 allow for their interstate movement for sale, health care, adoption, or export to another country only if they are accompanied by a health certificate or certificate of veterinary inspection.

The health certificate or certificate of veterinary inspection must be signed by an accredited veterinarian, and must state that the tortoises have been examined by that veterinarian and found free of ticks within 30 days prior to movement. Animal owners may use one of several different types of health certificates that are issued at the State level. All documents request the same data, and any may be used and submitted to APHIS.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Accredited veterinarians, business owners, and individuals.

Estimated annual number of respondents: 50.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 375 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20576 Filed 9–23–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0059]

Notice of Request for Extension of Approval of an Information Collection; Importation of Pork-Filled Pasta Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of pork-filled pasta products into the United States.

DATES: We will consider all comments that we receive on or before November 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0059.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0059, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0059* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of pork-filled pasta products, contact Dr. Magde S. Elshafie, Senior Staff Veterinarian, Strategy & Policy, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 851–3332. For copies of more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Importation of Pork-Filled Pasta Products.

OMB Control Number: 0579–0214.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals, animal products, and other articles to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States under the regulations in 9 CFR parts 91 through 99.

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to prevent the introduction into the U.S. livestock population of certain contagious animal diseases, including swine vesicular disease (SVD). Section 94.12 of the regulations contains, among other things, specific processing, recordkeeping, and certification requirements for pork-filled pasta

products exported to the United States from regions affected with SVD. These requirements include information collection activities such as a certificate, recordkeeping, cooperative service agreement, and storage requirements.

The regulations require, among other things, that the pork-filled pasta products be accompanied by a certificate stating that the product has been handled and processed according to the requirements set forth in the regulations. This certificate must be issued and signed by an official of the national government of the region in which the pork-filled pasta products were processed.

In addition, the processing facility where the pork-filled pasta products are produced must maintain original records for a minimum of 2 years for each lot of pork or pork products used. The records must include the date the cooked or dry-cured pork product was received in the processing facility, the lot number or other identification marks, the health certificate that accompanied the cooked or dry-cured pork from the slaughter/processing facility to the meat-filled pasta product processing facility, and the date the pork or pork product used in the pasta either started dry-curing (if the product used is a dry-cured ham) or the date the product was cooked (if the product used is a cooked pork product). The records must also include the number of packages, the number of hams or cooked pork products per package, and the weight of each package. These records would provide important information in any trace-back investigation that may need to be conducted by officials of the region of origin of the pork-filled pasta product or by USDA officials.

The operator of a foreign processing establishment must enter into a cooperative service agreement with APHIS stating that: (1) The establishment agrees to process pork in accordance with the regulations; (2) the establishment will allow APHIS representatives unannounced entry into the establishment to inspect the facility, operations, and records of the establishment; and (3) the establishment will pay for the costs of the associated inspections and be current on the payments. Also, any storage room area reserved for pork or pork products eligible for export to the United States must, among other things, be marked by signs.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of Burden: The public burden for this collection of information is estimated to average 1 hour per response.

Respondents: Officials of the national government of the region in which the pork-filled pasta is processed and operators of pork-filled pasta product processing facilities.

Estimated Annual Number of Respondents: 2.

Estimated Annual Number of Responses per Respondent: 2.5.

Estimated Annual Number of Responses: 5.

Estimated Total Annual Burden on Respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–20578 Filed 9–23–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a public meeting on November 1, 2019. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 41st Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) of the Codex Alimentarius Commission, in Dusseldorf, Germany, November 24–29, 2019. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 41st Session of the CCNFSDU and to address items on the agenda.

DATES: The public meeting is scheduled for November 1, 2019, from 1:00–4:00 EDT.

ADDRESSES: The public meeting will take place in Meeting Room 1A003, The Wiley Auditorium of the U.S. Food and Drug Administration (FDA) Harvey H. Wiley Building, 5001 Campus Drive, College Park, MD 20740. Documents related to the 41st Session of the CCNFSDU will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings/en/.* Dr. Douglas Balentine, U.S. Delegate to the 41st Session of the CCNFSDU, invites U.S. interested parties to submit their comments electronically to the following email address: *douglas.balentine@fda.hhs.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 41st Session of the CCNFSDU by conference call, please register by emailing *uscodex@usda.gov* to receive the call-in number and participant code.

Registration: Attendees may register to attend the public meeting by emailing *uscodex@usda.gov* by October 30, 2019. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone, as discussed above.

For Further Information about the 41st Session of the CCNFSDU, contact U.S. Delegate, Dr. Douglas Balentine, Director, Office of Nutrition and Food Labelling, Center for Food Safety and

Applied Nutrition, U.S. Food and Drug Administration, 5001 Campus Drive (HFS–830), College Park, MD 20740; phone: +1 (240) 402–2375; email: *douglas.balentine@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone 202–720–7760, Fax: (202) 720–3157, Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) are:

(a) To study specific nutritional problems assigned to it by the Commission and advise the Commission on general nutrition issues;

(b) To draft general provisions, as appropriate, concerning the nutritional aspects of all foods;

(c) To develop standards, guidelines, or related texts for foods for special dietary uses, in cooperation with other committees where necessary;

(d) To consider, amend if necessary, and endorse provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts.

The CCNFSDU is hosted by Germany. The United States attends the CCNFSDU as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 41st Session of the CCNFSDU will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or other subsidiary bodies
- Matters of interest arising from FAO and WHO
- Review of the *Standard for Follow-up Formula* (CXS 156–1987)
  - Draft scope, description, and labelling for follow-up formula for older infants
  - Essential composition requirements for follow-up formula for older infants and [product] for young children
  - Proposed draft product definition and labelling for [product] for young children
  - Proposed draft standard for follow-up formula for older infants and [product] for young children
- Ready-to-use Therapeutic Foods
  - Proposed draft guidelines for Ready-to-use Therapeutic Foods
  - Section 5.2.2 (food additives) and Section 6.2 (proteins)
- Trans-fatty acids (TFAs)
  - Proposed draft claim for ''free'' of trans fatty acids

Public Meeting

At the November 1, 2019 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Douglas Balentine, U.S. Delegate for the 41st Session of the CCNFSDU (see **ADDRESSES**). Written comments should state that they relate to activities of the 41st Session of the CCNFSDU.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *http://www.usda.gov/codex/,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on September 18, 2019.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2019–20606 Filed 9–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau, Commerce.

Title: 2020 Census Post-Enumeration Survey Initial and Final Housing Unit Follow-up.

OMB Control Number: 0607–XXXX.

Form Number(s): D–1303, D–1303PR, D–1340, D–1340PR, D–1380, D–1380PR, D–1325, D–1325PR, D–1303.Ref, D–1303.Ref(PR), D–1340.Ref, D–1340.Ref(PR), D–26(E/S), D–26PR, D–31 (E/S), D–31PR, D–1028(PES), D–1028(PES)(PR).

Type of Request: Regular submission.

Number of Respondents: 216,200. This includes 180,000 housing units for Initial Housing Unit Follow-up, 8,000 housing units for Final Housing Unit Follow-up, 27,000 housing units for Initial Housing Unit Follow-up Quality Control, and 1,200 housing units for Final Housing Unit Follow-up Quality Control.

Average Hours per Response: 5 minutes.

Burden Hours: 18,017 hours.

Needs and Uses: The Post-Enumeration Survey for the 2020 Census will be conducted to provide estimates of census net coverage error and components of census coverage (such as correct enumerations, omissions, and erroneous enumerations, including duplicates) for housing units and people living in housing units to

improve future censuses. The primary sampling unit is the Basic Collection Unit, which is the smallest unit of collection geography for 2020 Census listing operations, usually a block. In addition, a Basic Collection Unit is the building block for field area delineations and other geographic delineations. As in the past, including the 2010 Census Coverage Measurement program, the Post-Enumeration Survey operations and activities must be conducted separate from and independent of the other 2020 Census operations.

During the Independent Listing operation, field staff, referred to as ''listers,'' will canvass in their assigned Basic Collection Units every street, road, or other place where people might live and construct a list of housing units from scratch. Once the listing for each Basic Collection Unit is complete, the addresses are computer and clerically matched to the 2020 Census addresses in the Initial Housing Unit Matching operation. Addresses that remain unmatched or have unresolved address status after matching will be sent to the Initial Housing Unit Follow-up operation, during which listers collect additional information that might allow a resolution of any differences between the Independent Listing and the preliminary census address list results. Matching to a preliminary census file of housing units allows the Post-Enumeration Survey to conduct person interviews close to census day (April 1, 2020), rather than waiting until the final census list is available, after the delivery of apportionment data in December 2020. In the Final Housing Unit Matching operation, addresses collected in the Independent Listing operation are matched to the final census list of housing units. The Initial Housing Unit Follow-up field operation seeks to answer questions needed to resolve the match or enumeration status of addresses identified in the Initial Housing Unit matching operation, while the Final Housing Unit Follow-up field operation seeks to answer similar questions identified in the Final Housing Unit matching operation.

Addresses identified for both Initial and Final Housing Unit Follow-ups will generally need additional information to determine housing unit status (for example, to clarify if the addresses refer to a housing unit or commercial building and to identify duplicate addresses) or to resolve inconsistencies between the Post-Enumeration Survey and census addresses. Using paper questionnaires tailored to capture information needed to resolve each specific status question or discrepancy, listers will contact a member of each housing unit and ask questions to resolve housing unit status or to clarify discrepancies. If the listers do not find anyone at home after several attempts, they will try to collect the information from a proxy or by observation as a last resort. Proxies are respondents who are not members of the household.

The Initial and Final Housing Unit Follow-up operations will also have separate quality control operations. The first quality control operation is the Initial Housing Unit Follow-up Quality Control, which contains 15 percent of the Initial Housing Unit Follow-up workload. The second quality control operation is the Final Housing Unit Follow-up Quality Control, which contains 15 percent of the Final Housing Unit Follow-up workload. These operations are implemented to ensure that the work performed is of acceptable quality.

Affected Public: Individuals or Households.

Frequency: One Time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Sections 141 and 193.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202)395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–20615 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2019]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Authorization of Production Activity; Bristol-Myers Squibb Holdings Pharma, Ltd.; (Pharmaceuticals); Manati, Puerto Rico

On May 13, 2019, Bristol-Myers Squibb Holdings Pharma, Ltd. submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 7, in Manati, Puerto Rico.

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 23759—23760, May 23, 2019). On September 10, 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: September 16, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–20638 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–824]

Acetone From the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that acetone from the Republic of South Africa (South Africa) is being, or is likely to be, sold in the United States at less than fair value. The period of investigation (POI) is January 1, 2018 through December 31, 2018.

DATES: Applicable September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 11, 2019.[1] On July 15, 2019, Commerce postponed the deadline for the preliminary determination of this

[1] *See Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 9755 (March 18, 2019) (*Initiation Notice*).

investigation.[2] As a result, the revised deadline for the preliminary determination of this investigation is now September 17, 2019.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The merchandise covered by this investigation is acetone from South Africa. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] After evaluating the comments, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to clarify certain provisions and include a minimum acetone component of five percent. *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for Sasol South Africa, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Sasol South Africa is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period January 1, 2018 through December 31, 2018:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Sasol South Africa Limited	45.85
All Others	45.85

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a

[2] *See Acetone from Belgium, the Republic of Korea, and the Republic of South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 33739 (July 15, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Acetone from the Republic of South Africa,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 84 FR at 9756–57.

[6] *See* Memorandum, ''Acetone from Belgium, Korea, Singapore, South Africa, and Spain: Scope Comments Preliminary Decision Memorandum,'' dated July 29, 2019 (Preliminary Scope Decision Memorandum).

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of the provisional measures from a four-month period to a period not more than six months in duration.

On August 21, 2019, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), Sasol South Africa requested that Commerce postpone the final determination until 135 days after the publication of this notice.[8] Sasol South Africa also requested that Commerce extend the provisional measures to a period not more than 6 months.[9] On August 22, 2019, the petitioner consented to postponement of the final determination, subject to fulfillment of the requirements of 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2).[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.[11]

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. In addition to the IUPAC name, acetone is also referred to as ß-ketopropane (or beta-ketopropane), ketone propane, methyl ketone, dimethyl ketone, DMK, dimethyl carbonyl, propanone, 2-propanone, dimethyl formaldehyde, pyroacetic acid, pyroacetic ether, and pyroacetic spirit. Acetone is an isomer of the chemical formula C_3H_6O, with a specific molecular formula of CH_3COCH_3 or $(CH_3)_2CO$.

The scope covers both pure acetone (with or without impurities) and acetone that is combined or mixed with other products, including, but not limited to, isopropyl alcohol, benzene, diethyl ether, methanol, chloroform, and ethanol. Acetone that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

The scope also includes acetone that is commingled with acetone from sources not subject to this investigation.

For combined and commingled products, only the acetone component is covered by the scope of this investigation. However, when acetone is combined with acetone components from sources not subject to this investigation, those third country acetone components may still be subject to other acetone investigations.

Notwithstanding the foregoing language, an acetone combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the acetone can no longer be separated from the other products through a distillation process (*e.g.,* methyl methacrylate (MMA) or Bisphenol A (BPA)), is excluded from this investigation.

A combination or mixture is excluded from these investigations if the total acetone component (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

The Chemical Abstracts Service (CAS) registry number for acetone is 67–64–1.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Combinations or mixtures of acetone may enter under subheadings in Chapter 38 of the HTSUS, including, but not limited to, those under heading 3814.00.1000, 3814.00.2000, 3814.00.5010, and 3814.00.5090. The list of items found under these HTSUS subheadings is non-exhaustive. Although these HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–20563 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* Sasol South Africa's Letter, ''Acetone from the Republic of South Africa: Request to Postpone Final Determination,'' dated August 21, 2019.

[9] *Id.*

[10] *See* Petitioner's Letter, ''Acetone from Belgium, Korea, and South Africa: Petitioner's Consent to Postponement of the Final Determination,'' dated August 22, 2019.

[11] *See* section 735(b)(2) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico: Suspension of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable September 19, 2019.

SUMMARY: The Department of Commerce (Commerce) has suspended the antidumping duty (AD) investigation on fresh tomatoes from Mexico. The basis for this action is an agreement between Commerce and signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico that eliminates completely the injurious effects of exports of the subject merchandise to the United States.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell at (202) 482–0162 or (202) 482–0408, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1996, Commerce initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the Act), to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV).[1] On May 16, 1996, the United States International Trade Commission (ITC) notified Commerce of its affirmative preliminary injury determination.

On October 10, 1996, Commerce and certain tomato growers/exporters from Mexico initialed a proposed agreement to suspend the AD investigation. On October 28, 1996, Commerce issued its *1996 Preliminary Determination* and found imports of fresh tomatoes from Mexico were being sold at LTFV in the United States.[2] On the same day, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed an agreement to suspend the investigation (1996 Agreement).[3]

On May 31, 2002, certain tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to Commerce of their withdrawal from the 1996 Agreement, effective July 30, 2002. Because the 1996 Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, effective July 30, 2002, Commerce terminated the 1996 Agreement, terminated the sunset review of the suspended investigation, and resumed the AD investigation.[4]

On November 8, 2002, Commerce and certain tomato growers/exporters from Mexico initialed a proposed agreement suspending the resumed AD investigation on imports of fresh tomatoes from Mexico. On December 4, 2002, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed a new suspension agreement (2002 Agreement).[5]

On November 26, 2007, certain tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States provided written notice to Commerce of their withdrawal from the 2002 Agreement, effective 90 days from the date of their withdrawal letter (*i.e.,* February 24, 2008), or earlier, at Commerce's discretion.

On November 28, 2007, Commerce and certain tomato growers/exporters from Mexico initialed a new proposed agreement to suspend the AD investigation on imports of fresh tomatoes from Mexico. On December 3, 2007, Commerce released the initialed agreement to interested parties for comment. On December 17 and 18, 2007, several interested parties filed comments in support of the initialed agreement.

Because the 2002 Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, Commerce published a notice of intent to terminate the 2002 Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the AD investigation.[6] On January 16, 2008, Commerce published a notice of termination of the 2002 Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the AD investigation, effective January 18, 2008.[7] On January 22, 2008, Commerce signed a new suspension agreement (2008 Agreement) with producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico.[8]

On August 15, 2012, certain growers/exporters of fresh tomatoes from Mexico filed a letter with Commerce requesting consultations under Section IV.G[9] of the 2008 Agreement, and Commerce agreed to consult. As a result of these consultations, on February 2, 2013, Commerce and tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico initialed a draft agreement that would suspend a resumed AD investigation on fresh tomatoes from Mexico. On February 8, 2013, Commerce published a notice of intent to terminate the 2008 Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the AD investigation.[10] On March 1, 2013, Commerce issued a notice of termination of the 2008 Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the AD investigation.[11] On March 4, 2013, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed a

[1] *See Initiation of Antidumping Duty Investigation: Fresh Tomatoes from Mexico,* 61 FR 18377 (April 25, 1996).

[2] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico,* 61 FR 56608 (November 1, 1996) (*1996 Preliminary Determination*).

[3] *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 61 FR 56618 (November 1, 1996).

[4] *See Notice of Termination of Suspension Agreement, Termination of Sunset Review, and Resumption of Antidumping Investigation: Fresh Tomatoes from Mexico,* 67 FR 50858 (August 6, 2002).

[5] *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 67 FR 77044 (December 16, 2002).

[6] *See Fresh Tomatoes from Mexico: Notice of Intent to Terminate Suspension Agreement, Intent to Terminate the Five-Year Sunset Review, and Intent to Resume Antidumping Investigation,* 72 FR 70820 (December 13, 2007).

[7] *See Fresh Tomatoes from Mexico: Notice of Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation,* 73 FR 2887 (January 16, 2008).

[8] *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 73 FR 4831 (January 28, 2008).

[9] Section IV.G of the 2008 Agreement stated that Commerce would consult with signatory producers/exporters regarding the operations of the 2008 Agreement. A party could request such consultations in any April or September (*i.e.,* prior to the beginning of each season) following the first year of the signing of the 2008 Agreement.

[10] *See Fresh Tomatoes from Mexico: Intent To Terminate Suspension Agreement and Resume Antidumping Investigation and Intent To Terminate Sunset Review,* 78 FR 9366 (February 8, 2013).

[11] *See Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation,* 78 FR 14771 (March 7, 2013).

new suspension agreement (2013 Agreement).[12]

On January 9, 2018, Commerce issued a letter that formally opened consultations with CAADES *et al.,*[13] the Mexican growers' associations, to negotiate possible revisions to the 2013 Agreement.[14] Since that time, Commerce has continued to negotiate with representatives of the Mexican producers/exporters and, in parallel, has continually consulted with representatives the Florida Tomato Exchange (FTE), a member of the U.S. petitioning industry, as well as other interested parties.

On February 1, 2018, Commerce initiated a five-year sunset review of the suspended investigation.[15] On March 29, 2018, the FTE filed a request that Commerce conduct an administrative review of producers/exporters of fresh tomatoes from Mexico covered by the 2013 Agreement. On May 2, 2018, Commerce initiated the administrative review of the 2013 Agreement.[16] On August 27, 2018, Commerce published in the **Federal Register** the preliminary results of the five-year sunset review of the suspended investigation.[17]

On November 14, 2018, the FTE filed a request that Commerce terminate the 2013 Agreement and resume the AD investigation under Section VI.B of the 2013 Agreement.[18] Section VI.B of the 2013 Agreement stated that ''the signatories or the Department may withdraw from this Agreement upon ninety days written notice to the other party.'' On November 27, 2018, the Fresh Produce Association of the Americas filed a rebuttal to FTE's request to terminate.[19] On November 26, 2018 and November 28, 2018, respectively, CAADES *et al.* submitted responses to FTE's previous request for Commerce to terminate the 2013 Agreement.[20] [21] On December 18, 2018, NS Brands, Ltd (NatureSweet), a signatory to the 2013 Agreement, filed a letter in support of the November 28, 2018 response by the CAADES *et al.*[22] On December 27, 2018, Commerce published in the **Federal Register** the final results of the five-year sunset review of the suspended investigation on fresh tomatoes from Mexico, finding that termination of the suspended investigation would be likely to lead to continuation or recurrence of dumping.[23]

On February 6, 2019, in accordance with Section VI.B of the 2013 Agreement, Commerce notified Mexican signatories that Commerce intended to withdraw from the 2013 Agreement, rescind the sunset and administrative reviews, and resume the AD duty investigation.[24] Since the notification, as noted above, Commerce has held consultations with representatives of CAADES *et al.* and the domestic industry to discuss a possible suspension agreement.

On May 7, 2019, because a new suspension agreement had not been signed, Commerce withdrew from and terminated the 2013 Agreement, rescinded the administrative review of that agreement, and continued the antidumping duty investigation.[25] The original period of investigation was March 1, 1995, through February 29, 1996. Due to the unusual procedural posture of this proceeding, in which we terminated a suspension agreement and continued an investigation that covers a period of investigation that dates back more than 23 years, Commerce determined to request information corresponding to the most recent four full quarters, *i.e.,* April 1, 2018 through March 31, 2019.[26] Based on the unusual procedural posture, we also found it appropriate to reconsider respondent selection.[27] On May 24, 2019, we selected Bioparques de Occidente, S.A. de C.V. (Bioparques), Ceuta Produce, S.A. de C.V. (Ceuta), and Negocio Agricola San Enrique, S.A. de C.V. (San Enrique) for individual examination in this continued investigation.[28] On July 23, 2019, Commerce issued a post-preliminary decision based on the information requested from, and provided by, Bioparques, Ceuta, and San Enrique.[29]

On August 20, 2019, Commerce and a representative of CAADES *et al.* initialed a draft agreement to suspend the antidumping investigation on fresh tomatoes from Mexico. Consistent with section 734(e) of the Act, Commerce notified the FTE and the other parties, released the initialed draft agreement to the interested parties, and invited interested parties to provide written comments on the draft suspension agreement by no later than the close of business on September 9, 2019.[30] Consistent with 734(e)(1) of the Act, Commerce consulted with the FTE concerning its intention to suspend the antidumping investigation on fresh tomatoes from Mexico. Commerce also notified the ITC of the proposed agreement,[31] consistent with 734(e)(1) of the Act, and released draft statutory memoranda explaining how the agreement will be carried out and enforced, and how the agreement will meet the applicable statutory requirements, consistent with section 734(e)(2) of the Act.[32] Commerce received comments from numerous

[12] *See* Fresh Tomatoes from Mexico: Suspension of Antidumping Investigation, 78 FR 14967 (March 8, 2013).

[13] *I.e.,* Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociación Mexicana de Horticultura Protegida, A.C., Asociación de Productores de Hortalizas del Yaqui y Mayo, and Sistema Producto Tomate.

[14] *See* Letter from Commerce to CAADES *et al.,* ''Consultations on the 2013 Agreement Suspending the Antidumping Investigation on Fresh Tomatoes from Mexico,'' dated January 9, 2018.

[15] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 4641 (February 1, 2018).

[16] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews* (Initiation of Administrative Review), 83 FR 19215 (May 2, 2018).

[17] *See Fresh Tomatoes from Mexico: Preliminary Results of the Five-Year Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico,* 83 FR 43642 (August 27, 2018).

[18] *See* Letter to Wilbur Ross, Secretary of Commerce, from FTE, ''Fresh Tomatoes from Mexico: Request to Terminate Antidumping Suspension Agreement,'' dated November 14, 2018.

[19] *See* Letter to Wilbur Ross, Secretary of Commerce, from the Fresh Produce Association of the Americas, ''Re: Fresh Tomatoes from Mexico: FTE's Misleading Request to Terminate Agreement,'' dated November 27, 2018.

[20] *See* Letter to Wilbur Ross, Secretary of Commerce, from CAADES *et al.,* ''2013 Suspension Agreement on Fresh Tomatoes from Mexico,'' dated November 26, 2018.

[21] *See* Letter to Wilbur Ross, Secretary of Commerce, from CAADES *et al.,* ''2013 Suspension Agreement on Fresh Tomatoes from Mexico,'' dated November 28, 2018.

[22] *See* Letter to Wilbur Ross, Secretary of Commerce, from NatureSweet, ''2013 Suspension Agreement on Fresh Tomatoes from Mexico: NS Brands' Response to Petitions Request to Terminate 2013 Suspension Agreement,'' dated December 18, 2018.

[23] *See Fresh Tomatoes from Mexico: Final Results of the Full Sunset Review of the Suspended Antidumping Duty Investigation,* 83 FR 66680 (December 27, 2018).

[24] *See Fresh Tomatoes from Mexico: Intent To Terminate Suspension Agreement, Rescind the Sunset and Administrative Reviews, and Resume the Antidumping Duty Investigation,* 84 FR 7872 (March 5, 2019).

[25] *See Fresh Tomatoes From Mexico: Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of the Antidumping Duty Investigation,* 84 FR 20858 (May 12, 2019) (*Continuation Notice*).

[26] *See Continuation Notice,* 84 FR at 20860–61.

[27] *Id.,* 84 FR at 20861.

[28] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Fresh Tomatoes from Mexico: Respondent Selection'' (May 24, 2019).

[29] *See* Memorandum to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, ''Post-Preliminary Decision Memorandum in the Less-Than-Fair-Value Investigation of Fresh Tomatoes from Mexico'' (July 23, 2019).

[30] *See* Letter to All Interested Parties, ''Draft Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes,'' (August 20, 2019).

[31] *See* Letter to Ms. Nannette Christ, Director for Office of Investigations, U.S. ITC, ''Fresh Tomatoes from Mexico: Initialed Draft Agreement,'' (August 21, 2019).

[32] *See* Letter to All Interested Parties, ''Draft Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico: Draft Statutory Memoranda,'' (August 21, 2019).

parties by the September 9, 2019 deadline.[33]

On September 19, 2019, Commerce and representatives of the signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement), attached hereto.

Scope of Agreement

See Section I, Product Coverage, of the 2019 Agreement.

Suspension of Investigation

Commerce consulted with the Mexican fresh tomato producers/exporters and the FTE and has considered the comments submitted by interested parties with respect to the proposal to suspend the antidumping investigation. In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act.

The 2019 Agreement provides, in accordance with 734(c)(1) of the Act, that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. We have determined that the 2019 Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic fresh tomatoes by imports of that merchandise from Mexico, as required by section 734(c)(1) of the Act.

We have also determined that the 2019 Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act.

For the reasons outlined above, we find that the 2019 Agreement meets the criteria of section 734(c) and (d) of the Act.

The 2019 Agreement, signed September 19, 2019, is attached to this notice.

International Trade Commission

In accordance with section 734(f) of the Act, Commerce has notified the ITC of the 2019 Agreement.

Suspension of Liquidation

The suspension of liquidation ordered following the May 7, 2019 continuation of the investigation shall continue to be in effect, subject to section 734(h)(3) of the Act.[34] Section 734(f)(2)(B) of the Act provides that Commerce may adjust the security required to reflect the effect of the 2019 Agreement. Commerce has found that the 2019 Agreement eliminates completely the injurious effects of imports and, thus, Commerce is adjusting the security required from signatory producers/exporters to zero. The security rates in effect for imports from any non-signatory producers/exporters, which are based on the preliminary dumping margins, remain as published in the *Continuation Notice.* If there is no request for review of suspension under section 734(h) of the Act, or if the ITC conducts a review and finds that the injurious effect of imports of the subject merchandise is eliminated completely by the 2019 Agreement, Commerce will terminate the suspension of liquidation of all entries of fresh tomatoes from Mexico, and refund any cash deposits collected on entries of fresh tomatoes from Mexico consistent with section 734(h)(3) of the Act.

Notwithstanding the 2019 Agreement, Commerce will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register**, in accordance with section 734(g) of the Act.

Administrative Protective Order Access

The Administrative Protective Order (APO) Commerce granted in the investigation segment of this proceeding remains in place. While the investigation is suspended, parties subject to the APO may retain, but may not use, information received under that APO. All parties wishing access to business proprietary information submitted during the administration of the 2019 Agreement must submit new APO applications in accordance with Commerce's regulations currently in effect.[35] An APO for the administration of the 2019 Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register**.

We are issuing and publishing this notice in accordance with section 734(f)(1)(A) of the Act.

Dated: September 19, 2019.

Jeffrey I. Kessler

Assistant Secretary for Enforcement and Compliance.

Attachment

Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673c(c)), and 19 CFR 351.208 (2018),[36] the U.S. Department of Commerce (Commerce) and the Signatory producers/exporters of fresh tomatoes from Mexico (individually, Signatory; collectively, Signatories) enter into this Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (Agreement).

I. Product Coverage

The merchandise subject to this Agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this Agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. In Appendix F of this Agreement, Commerce has outlined the procedure that Signatories must follow for selling subject merchandise for processing. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), are covered by this Agreement.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this Agreement.

Tomatoes imported from Mexico covered by this Agreement are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. Although this HTSUS number is provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

[33] The following parties submitted comments: CAADES *et al.;* FTE; the Government of Mexico; the Tomato Division of the Fresh Produce Association of the Americas; NatureSweet; Red Sun Farms; Otay Mesa Chamber of Commerce; the Border Trade Alliance; the American Trucking Association; and Walmart Inc.

[34] *See Continuation Notice,* 84 FR at 20861.

[35] *See* Section 777(c)(1) of the Act; *see also* 19 CFR 351.103, 351.304, 351.305, and 351.306.

[36] The resumption of the investigation and negotiation of a new suspension agreement were conducted in accordance with Commerce's regulations in effect at the time of the original investigation, 19 CFR 353.18 (1996). Because this Agreement constitutes a new segment of the proceeding, the Agreement is governed by the regulations currently in effect. 19 CFR 351.701; *see also San Vicente Camalu SPR de Ri* v. *United States,* 491 F. Supp. 2d 1186 (CIT 2007).

II. Definitions

For purposes of the Agreement, the following definitions apply:

A. ''Anniversary Month'' means the month in which the Agreement becomes effective.

B. ''Buyer'' means the first unaffiliated customer in the United States that takes title of the subject merchandise.

C. ''Effective Date'' means the date on which Commerce and the Signatories sign the Agreement.

D. ''Fresh Tomatoes'' means the product described under section I, ''Product Coverage,'' of the Agreement.

E. ''Grower Association'' means a Mexican grower association whose members produce and/or export Fresh Tomatoes from Mexico and are also Signatories to this Agreement, *e.g.,* Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C.; Consejo Agrícola de Baja California, A.C.; Asociación Mexicana de Horticultura Protegida, A.C.; Asociación de Productores de Hortalizas del Yaqui y Mayo, and Sistema Producto Tomate.

F. ''Interested Party'' means any person or entity that meets the definitions provided in section 771(9) of the Act.

G. ''Mexico'' means the customs territory of the United Mexican States and foreign trade zones within the territory of Mexico.

H. ''Organic Tomatoes'' means Fresh Tomatoes produced by a production system that has been certified ''organic'' by the U.S. Department of Agriculture, is labeled as ''organic,'' and may include Round, Roma, Specialty, Stem On, and Tomatoes on the Vine Fresh Tomatoes (*see, respectively,* sections II.K, II.L, II.N, II.Q, and II.S).

I. ''PACA'' means the Perishable Agricultural Commodities Act of 1930, as amended (7 U.S.C. 499a *et seq.*).

J. ''Reference Price'' means the minimum price at which merchandise subject to this Agreement can be sold in the United States.

K. ''Round'' means round Fresh Tomatoes, whether mature green or vine ripe, not including any Stem On tomatoes, regardless of growing method or type of packing.

L. ''Roma'' means roma or plum Fresh Tomatoes, whether mature green or vine ripe, not including any Stem On tomatoes, regardless of growing method or type of packing.

M. ''Selling Agent'' means any entity (*e.g.,* importer, agent, distributor, or entity meeting the definition of ''commission merchant,'' ''dealer,'' or ''broker,'' as those terms are defined in section 1(b) of the PACA (7 U.S.C. 499a(b))) that facilitates the sale to the Buyer.

N. ''Specialty'' means grape, cherry, heirloom, cocktail Fresh Tomatoes, or any other tomato varietal, other than Round and Roma tomatoes, with or without stem.

O. ''Specialty—Loose'' means Specialty Fresh Tomatoes not in packaging.

P. ''Specialty—Packed'' means Specialty Fresh Tomatoes in packaging.

Q. ''Stem On'' means any type of Fresh Tomato, except Specialty and Tomatoes on the Vine, with some or all of the stem attached.

R. ''Substantially all'' of the subject merchandise means not less than 85 percent by value or volume of the imports of subject merchandise.

S. ''Tomatoes on the Vine'' means any type of Fresh Tomato, except Specialty, in which there are two or more tomatoes, typically in a cluster, with the vine attached; such tomatoes include single tomatoes of the same type that are found in the same package with the tomato clusters herein defined.

T. ''United States'' means the customs territory of the United States of America (the 50 States, the District of Columbia, and Puerto Rico) and foreign trade zones located within the territory of the United States.

U. ''USDA'' means the United States Department of Agriculture.

V. ''Violation'' means noncompliance with the terms of the Agreement, whether through an act or omission, except for noncompliance that is inconsequential or inadvertent, and does not materially frustrate the purposes of the Agreement. *See* section VIII for examples of activities that may be deemed by Commerce to be Violations.

W. ''Working Group'' means the joint working group established on August 23, 2013 between the Mexican tomato industry and the Government of Mexico for purposes of regularly monitoring and reconciling Fresh Tomatoes from Mexico export data and identifying and addressing any inconsistencies or irregularities.

Any term or phrase not defined by this section shall be defined using either a definition provided in the Act for that term or phrase, or the plain meaning of that term, as appropriate.

III. Suspension of Investigation

As of the Effective Date, in accordance with section 734(c) of the Act and 19 CFR 351.208, Commerce will suspend its antidumping duty investigation on Fresh Tomatoes from Mexico initiated on April 18, 1996.[37]

IV. U.S. Import Coverage

In accordance with section 734(c)(1) of the Act, the Signatories are the producers and/or exporters in Mexico which account for substantially all of the subject merchandise imported into the United States. Commerce may at any time during the period of the Agreement require additional producers/exporters in Mexico to sign the Agreement in order to ensure that not less than substantially all imports into the United States are subject to the Agreement.

V. Statutory Conditions for the Agreement

In accordance with section 734(c) of the Act, Commerce has determined that extraordinary circumstances are present in this investigation because the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation and that the investigation is complex.

In accordance with section 734(d) of the Act, Commerce determines that the suspension of the investigation is in the public interest and that effective monitoring of the Agreement by the United States is practicable. Section 734(a)(2)(B) of the Act provides that the public interest includes the availability of supplies of the merchandise and the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry. Accordingly, if a domestic producer requests an administrative review of the status of, and compliance with, the Agreement, Commerce will take these factors into account in conducting that review. If Commerce finds that the Agreement is not working as intended in this regard, Commerce will explore all appropriate measures, including renegotiation of the terms of the Agreement to resolve the problem or measures under section 751(d)(1) of the Act.

VI. Price Undertaking

In order to satisfy the requirements of section 734(c)(1)(A) of the Act, each Signatory individually agrees that, to prevent price suppression or undercutting, it will not sell in the United States, on and after the Effective Date of the Agreement, merchandise subject to the Agreement at prices that are less than the Reference Prices established in Appendix A.

In order to satisfy the requirements of section 734(c)(1)(B) of the Act, each Signatory individually agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the Act and Commerce's regulations and procedures, including but not limited to the calculation methodologies described in Appendix B.

VII. Monitoring of the Agreement

A. Import Monitoring

1. The Signatories will maintain the Working Group, which will regularly monitor and reconcile Mexican export data and identify and address any inconsistencies or irregularities. The Working Group will refer any alleged Violations (either those discovered during its monitoring exercises or those reported by Commerce) to the Mexican Government for appropriate action. For further information, please see information provided at: *https://enforcement.trade.gov/tomato.*

2. Commerce will monitor entries of Fresh Tomatoes from Mexico to ensure compliance with section VI of this Agreement.

3. Commerce will review, and place on the official record, publicly available data and other official import data, including, as appropriate, records maintained by U.S. Customs and Border Protection (CBP), to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

4. Commerce will review, as appropriate, data it receives from the Working Group and through any data exchange program between U.S. and Mexican government agencies, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

[37] *See Initiation of Antidumping Duty Investigation: Fresh Tomatoes From Mexico,* 61 FR 18377 (April 25, 1996).

5. An interagency task force between Commerce, USDA, and CBP will review data and information, as appropriate, and coordinate enforcement action, as necessary.

B. Compliance Monitoring

1. Commerce may require, and each Signatory agrees to provide, confirmation, through documentation provided to Commerce, that the price received on any sale subject to this Agreement was not less than the established Reference Price. Commerce may require that such documentation be provided and be subject to verification.

2. Commerce may require, and each Signatory agrees to report in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, made either directly or indirectly to Buyers in the United States, including each adjustment applicable to each sale, as specified by Commerce. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by Commerce to verify the reported information.

3. Commerce may initiate administrative reviews under section 751(a) of the Act in the month immediately following the Anniversary Month, upon request or upon its own initiative, to ensure that exports of Fresh Tomatoes from Mexico satisfy the requirements of section 734(c)(1)(A) and (B) of the Act. Commerce may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. At any time it deems appropriate, and without prior notice, Commerce shall conduct verifications of parties handling Signatory merchandise (*e.g.,* Signatory producers and/or exporters and Selling Agents) to determine whether they are selling Signatory merchandise in accordance with the terms of this Agreement. Commerce shall also conduct verifications at the Grower Association level at locations and times it deems appropriate to ensure compliance with the terms of the Agreement. Commerce may conduct periodic verifications, in Mexico, at border-crossing locations, or through questionnaires issued by Commerce, to spot check compliance.

5. The Working Group shall provide to Commerce a quarterly report on all issues submitted by Commerce to the Working Group for investigation under the Agreement. In addition, the Working Group shall provide to Commerce an annual report on all activities undertaken, to include information on any allegation of a Violation of the Agreement, information uncovered during investigations, and the results of/resolution to the issue. Commerce shall place such reports on the official record of the Agreement.

6. Commerce and the Signatory producers/exporters shall hold periodic meetings, as necessary, *e.g.,* more frequently during the peak season, to discuss monitoring and enforcement matters.

7. Commerce shall sample up to 40 Signatories on a quarterly basis, within 30 days of the end of each quarter, from which to request detailed information related to each sale of any type of subject tomato. With good cause, to include any issues identified pursuant to inspection under section VII.C, Commerce may sample more than 40 Signatories under this paragraph. Commerce shall request information including: Date on which it entered into a contract for the sale of Signatory tomatoes with each Selling Agent during that quarter; name of the Selling Agent; quantity of tomatoes to be supplied under that contract; and price of the tomatoes sold under each contract. Further, the sampled Signatories shall submit to Commerce the following information: Export license number, quantity exported under that license; price of such tomatoes; importer of record for each shipment, Selling Agent(s), if any, involved in the sale; the Buyer (if known); USDA inspection reports for the required inspections under section VII.C, if applicable; and records to support any return or destruction of tomato lots [38] pursuant to those inspections. All information must be submitted to Commerce in electronic format, including Microsoft Excel reporting of all data contained therein. Signatories selected for sampling pursuant to this paragraph shall be given at least 30 days to submit the information requested by Commerce.

8. Through a contractual arrangement, Signatories shall require their Selling Agents to respond to Commerce's requests for information concerning sales of any type of Signatory tomatoes. Commerce shall sample up to 40 Selling Agents on a quarterly basis, within 30 days of the end of each quarter, from which to request information. With good cause, to include any issues identified pursuant to inspections under section VII.C, Commerce can sample more than 40 Selling Agents under this paragraph. Commerce shall request information including: The date during the quarter on which it entered into a contract for sale of Signatory tomatoes, the name of that Signatory, the quantity of tomatoes to be supplied under that contract and the price, and the pre-season letter sent by the Selling Agent to the Buyer. The sampled Selling Agent shall submit to Commerce each quarter the quantity of Signatory tomatoes it imports from each Signatory and the quantity of Signatory tomatoes it sells on behalf of each Signatory, and, as applicable, USDA inspection reports for the required inspections under section VII.C, if applicable; and records to support any return or destruction of tomato lots pursuant to those inspections. Each sampled Selling Agent shall also submit to Commerce a listing of each sale of Signatory tomatoes it makes to a Buyer during the quarter, including the name of the Buyer, quantity sold by category of tomato, and the price. All information must be submitted to Commerce in electronic format, including Microsoft Excel reporting of all data contained therein. Selling Agents selected for sampling pursuant to this paragraph shall be given at least 30 days to submit the information requested by Commerce.

[38] For purposes of the Agreement, a lot is defined as a grouping of tomatoes in a particular shipment that is distinguishable by packing type.

C. Inspection of Subject Merchandise

1. Beginning approximately (and no less than) six months from the Effective Date of the Agreement, all loads of subject merchandise, as specified in paragraph 2 of this section, shall be subject to a USDA inspection for quality and condition defects near the border after entering the United States.[39] Commerce will consult with USDA on the development and implementation of the inspection program. The trade community will have at least 60 days' advance notice prior to implementation of the inspection program. For avoidance of doubt, all loads of Fresh Tomatoes from Mexico that are inspected pursuant to a USDA marketing order are not required to also be inspected pursuant to the inspection program under this section VII.C.

2. USDA shall inspect the following loads of Fresh Tomatoes from Mexico: All Round and Roma tomatoes (including Stem On) and grape tomatoes in bulk. The following Fresh Tomatoes are excluded from the inspection requirement: Tomatoes on the Vine, Specialty tomatoes, and grape tomatoes in retail packages of 2 pounds or less. When the load is available for inspection, the importer [40] must request the USDA inspection and pay the associated USDA fees. Inspections will be performed in a timely manner. A USDA inspector will normally arrive and complete the inspection within 48 hours of receiving an importer's official request for inspection. At locations that normally have USDA inspectors in the area, a USDA inspector will normally arrive and complete the inspection within 24 hours of the official request for inspection by the importer.

3. USDA will perform inspections (an unrestricted certification) in accordance with its normal practice to determine quality, condition, and grade pursuant to the appropriate USDA standard covering fresh tomatoes and greenhouse tomatoes and using shipping point tolerances. All tomatoes must grade to at least U.S. No. 2. The current, applicable USDA standards are as follows:

a. U.S. No. 1, U.S. Combination, or U.S. No. 2 of the U.S. Standards for Grades of Fresh Tomatoes (for shipping point tolerances see 51.1861 of the aforementioned U.S. Standards).

b. U.S. No. 1 or U.S. No. 2 of the U.S. Standards for Grades of Greenhouse Tomatoes (for tolerances see 51.3348 of the aforementioned U.S. Standards).

4. After the USDA inspection, the importer will receive an inspection certificate, which must be maintained by the importer and is subject to submission to, and verification by, Commerce, consistent with the importer's contractual obligation with the Signatory. If a lot of Signatory tomatoes has more defects than the tolerances established in the USDA standards, then the importer may opt either to recondition and re-inspect the lot, or return it to Mexico. In the event of reconditioning and re-inspection, any culls

[39] The timelines specified in section VII.C.1 will be tolled per any Commerce tolling instituted during the relevant periods.

[40] As defined in 19 CFR 101.1 of CBP's regulations.

must be destroyed under USDA supervision. Proof of reconditioning and re-inspection must be maintained by the importer and is subject to submission to, and verification by, Commerce, consistent with the importer's contractual obligation with the Signatory. Alternatively, in the event of return to Mexico, the entire lot must be returned to Mexico or destroyed under USDA oversight, with a USDA certificate provided to the importer as proof of destruction. The Signatory will be responsible for paying all expenses related to the return of the entire lot to Mexico or its destruction. Proof of such return or destruction must be maintained by the importer and is subject to submission to, and verification by, Commerce, consistent with the importer's contractual obligation with the Signatory.

5. Upon implementation of the inspection program, each Signatory must ensure, through a contractual arrangement with the appropriate party, that the importer for all imports of Fresh Tomatoes from Mexico from the Signatory requests the USDA inspection, as indicated above in section VII.C.2, and maintains the documentation specified in section VII.C.4. Similarly, upon implementation of the inspection program, Signatories must ensure, through a contractual arrangement with the appropriate party, that all lots of tomatoes that do not pass the USDA inspection are either reconditioned and re-inspected, or returned to Mexico, as indicated above. Signatories must maintain proof of these contractual arrangements, provide such records to Commerce upon request, and make them available for verification by Commerce at any time.

6. Signatories and Selling Agents, as applicable, must maintain a copy of the Mexican export license, USDA inspection reports, and entry documents associated with each entry of Signatory tomatoes into the United States, as well as records to support any return or destruction of tomato lots under section VII.C.4. Signatories and Selling Agents, as applicable, must provide these records to Commerce upon request and make them available for verification by Commerce at any time.

D. Shipping and Other Arrangements

1. All Reference Prices will be expressed in U.S. Dollars ($) per pound (lb.) in accordance with Appendix A. All Reference Prices are FOB U.S. shipping point, *i.e.,* to the U.S. side of the U.S.-Mexico border. The Reference Price includes all palletizing and cooling charges incurred prior to shipment from the Mexican shipping point, *i.e.,* from the Mexican side of the U.S.-Mexico border. The delivered sales price to a Buyer for all Fresh Tomatoes from Mexico exported directly, or indirectly through a third country, to the United States shall include all movement and handling expenses beyond the point of entry into the United States (*e.g.,* McAllen, Nogales, or Otay Mesa) and in excess of the Reference Price, *i.e.,* the FOB U.S. shipping point price.

2. The parties to this Agreement acknowledge that, in accordance with Mexican regulations, Mexican tomato producers and non-producer exporters exporting to the United States will become Signatories to the Agreement. Signatories will fully comply with all requirements of Mexican regulations concerning identification, tracking, verification and inspection by the relevant Mexican authorities including the Ministry of Economy (SECON), the Ministry of Agriculture (SAGARPA), SAGARPA's National Food Health, Safety and Quality Service (SENASICA) and Customs. Signatory producers will be required to formally assign volumes, through SECON, sold in Mexico to another party as a condition for that party to obtain an export notice (*i.e.,* an *aviso automático*). In accordance with Mexican regulations, non-compliance will result in the revocation of export privileges. In addition, exporting Fresh Tomatoes to the United States under a Signatory number different than one's own Signatory number may result in revocation of a Signatory's export license in Mexico. For further information, please see information provided at: *https://enforcement.trade.gov/tomato.*

3. Signatories agree not to take any action that would circumvent or otherwise evade, or defeat the purpose of, this Agreement. Signatories agree to undertake any measures that will help to prevent circumvention. For example, each Signatory will take the following actions:

a. It is the responsibility of each Signatory to ensure that each sale of its merchandise is made consistent with the requirements of this Agreement and all its Appendices. To that end, each Signatory shall enter into a contract with the Selling Agent(s), if the sale is made indirectly to the Buyer, or with the Buyer, if the sale is made directly to the Buyer, that incorporates the terms of this Agreement. This contractual arrangement must establish that the Selling Agent maintain documentation demonstrating that sales of subject merchandise are made consistent with the requirements of this Agreement. Further, if the Signatory's sale to the Buyer is made through a Selling Agent, the Selling Agent shall incorporate the terms of this Agreement into its contract with the Buyer. It is the responsibility of each Signatory to confirm and ensure any such Selling Agent(s) and Buyer(s) hold a valid and effective license issued pursuant to the PACA, to the extent required by the PACA.[41] All contractual arrangements will specify that parties in the distribution chain from the Signatory to the Buyer will maintain documentation as required by the PACA and as consistent with the requirements of the Agreement.

b. Each Signatory will label its boxes of subject merchandise that are exported to the United States with its name, Signatory identification number, and a statement that ''These Tomatoes Were Grown/Exported By a Signatory of the 2019 Suspension Agreement.'' [42] Alternatively, if the Signatory that exports the subject merchandise is different from the entity that produced the subject merchandise, it will label the boxes with its name and its Signatory identification number. Each Signatory also will label its boxes with the type of tomato being shipped in the box, *i.e.,* Round, Roma, Specialty, Stem On, or Tomatoes on the Vine.

c. Each Signatory will label its boxes of fresh tomatoes sold in Mexico with its name, Signatory number, and the statement ''Prohibida Su Exportacion a los EUA/Not for Export to the United States.''

4. Not later than 30 days after the end of each quarter,[43] each Signatory must submit a certification to Commerce. Through a contractual arrangement, Signatories shall require their Selling Agents to provide information necessary for inclusion in the Signatories' quarterly certification. Each Signatory agrees to permit full verification of its certification as Commerce deems necessary. Signatories can obtain a copy of the suggested forms for submitting the quarterly certification information from Commerce's website at: *https://enforcement.trade.gov/tomato.* Quarterly certifications must be submitted to Commerce in electronic format, including Microsoft Excel reporting of all data contained therein. The certification must include:

a. A written statement to Commerce certifying that the invoice price for all sales of its Fresh Tomatoes made during the most recently completed quarter (after rebates, backbilling, discounts for quality, and other claims) were at or above the Reference Prices in effect, were not part of or related to any act or practice which would have the effect of hiding the real price of the Fresh Tomatoes being sold (*e.g.,* a bundling arrangement, on-site processing arrangement, commingling tomato products, discounts/free goods/financing package, end-of-year rebates, free freight, and/or a swap or other exchange), and were otherwise consistent with the terms of the Agreement.

b. The total quantity and value of tomatoes by tomato type sold during the most recently completed quarter (whether directly or via a Selling Agent), and the total quality and condition defect sales adjustments granted, as applicable, pursuant to Appendix D. For any sales adjustments, the Signatory must report the number of lots on which claims for quality and condition defects were granted, the total volume of tomatoes destroyed, the total value of claims granted, and the total value of payments made to the Buyer by the Signatory and/or Selling Agent.

c. All USDA-issued certifications showing destruction of any defective tomatoes pursuant to Appendix D.

d. Documentation of any return of rejected lots to Mexico, pursuant to Appendix D, and a written statement that there were no additional rejections beyond those being provided.

e. The volume of a Signatory producer's registered production that is assigned to any

[41] This may be done by using ''PACA SEARCH'' on the PACA website at *www.usda.gov/paca,* or by calling the PACA National License Center Customer Service line at 1–800–495–7222, ext #1.

[42] Signatories may continue to use boxes with markings from the 2013 Suspension Agreement through three months from the Effective Date, but they must add the type of tomato being shipped to the existing labeling on the box, *i.e.,* Round, Roma, Specialty, Stem On, or Tomatoes on the Vine.

[43] The quarters are December 1–February 28, March 1–May 31, June 1–August 30, and September 1–November 30.

other party for export to the United States and the name of that party.

f. The volume of each Signatory exporter's (*e.g.,* a non-producer exporter) registered production assigned to it for export to the United States by a Signatory producer(s) and the name of the Signatory producer(s).

g. A statement acknowledging the Signatory's understanding that intentional Violations of the Agreement are subject to additional civil penalties per section VIII.B of the Agreement.

h. Alternatively, a written statement to Commerce, if the Signatory did not export Fresh Tomatoes to the United States, certifying that it made no sales to the United States during the most recently completed quarter.

E. Rejection of Submissions

Commerce may reject: (1) Any information submitted after the deadlines set forth in this Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 CFR 351.303; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 CFR 351.304; (4) submissions that do not comply with any other applicable regulations, as appropriate, or any information that it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, Commerce may use facts otherwise available for the basis of its decision, as it determines appropriate, consistent with section 776 of the Act.

F. Compliance Consultations

1. When Commerce identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with section VI of this Agreement, Commerce will notify each Signatory which it believes is responsible through their Grower Associations' counsel or directly, in the event that the Signatory is not represented by counsel. Commerce will consult with each such party for a period of up to 60 days to establish a factual basis regarding sales that may be inconsistent with section VI of this Agreement.

2. During the consultation period, Commerce will examine any information that it develops or which is submitted, including information requested by Commerce under any provision of this Agreement.

3. If Commerce is not satisfied at the conclusion of the consultation period that sales by such Signatory are being made in compliance with this Agreement, Commerce may evaluate under section 751 of the Act, or section 19 CFR 351.209, whether this Agreement is being violated, as defined in section VIII.E of this Agreement, by such Signatory. Without prejudice to the provisions of section XI of this Agreement, in no event will Commerce terminate the Agreement under this provision outside of the scope of a review under section 751.

G. Operations Consultations

Commerce will consult with the Signatories regarding the operations of this Agreement. The Signatories or Commerce may request such consultations, as necessary.

The Signatories and Commerce may agree to revise the Reference Prices subject to consultations.

VIII. Violations of the Agreement

A. If Commerce determines that there has been a Violation of the Agreement or that the Agreement no longer meets the requirements of sections 734(c) or (d) of the Act, Commerce shall take action it determines appropriate under section 734(i) of the Act and Commerce's regulations.

B. Pursuant to section 734(i) of the Act, Commerce will refer any intentional Violations of the Agreement to CBP. Any person who intentionally commits a Violation of the Agreement shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures as the penalty imposed for a fraudulent violation of section 592(a) of the Act. A fraudulent violation of section 592(a) of the Act is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise. For purposes of the Agreement, the domestic value of the merchandise will be deemed to be not less than the Reference Price, as the Signatories agree not to sell the subject merchandise at prices that are less than the Reference Price or to ensure that sales of the subject merchandise are made consistent with the terms of the Agreement.

C. In addition, Commerce will examine the activities of Signatories, Selling Agents, and any other party to a sale subject to the Agreement to determine whether any activities conducted by any party aided or abetted another party's Violation of the Agreement. If any such parties are found to have aided or abetted another party's Violation of the Agreement, they shall be subject to the same civil penalties described in section VIII.B above.

Signatories to this Agreement consent to the release of all information presented to or obtained by Commerce during the conduct of verifications to CBP and/or USDA. Further, through a contractual arrangement, Signatories shall require that the Selling Agent(s) consent to the release of all information presented to or obtained by Commerce during the conduct of verifications to CBP and/or USDA.

D. Any Violation of the terms of this Agreement by a PACA licensee may be deemed by the PACA Division as ''unfair conduct'' in accordance with the PACA.[44] Commerce, a Signatory, or any other interested person may file with the Secretary of Agriculture a written notification of any alleged violation of the PACA pursuant to section 6(b) of the PACA (7 U.S.C. 499f(b)). Upon receipt of a written notification, the PACA Division will examine the allegation and determine whether further investigation, issuance of a letter of warning, or administrative complaint is warranted. Failure of a PACA licensee to cooperate with an ongoing investigation can lead to suspension of license and publication thereof. When an administrative complaint is filed, a finding by an administrative law judge that a PACA licensee or an entity operating subject to license has engaged in repeated and flagrant violations of the PACA can result in the assessment of a civil penalty, or suspension or revocation of the PACA license and/or publication thereof. Ensuing licensing and employment restrictions are mandated by the PACA Division. Notice of disciplinary actions taken against a licensee or an entity subject to license is released to the public.

E. Examples of activities which Commerce may deem to be Violations of the Agreement include:

1. Sales in which the invoice prices of subject merchandise (after rebates, backbilling, discounts for quality, and other claims) are below the Reference Price.

2. Any act or practice which would have the effect of hiding the real price of the Fresh Tomatoes from Mexico being sold (*e.g.,* a bundling arrangement, on-site processing, commingling tomato products, discounts/free goods financing package, end-of-year rebates, free freight, or a swap or other exchange).

3. Failure to request a USDA inspection on a load in accordance with section VII.C.2.

4. Failure to comply with the requirements of sections VII.C.4, VII.C.5, or VII.C.6.

5. Labeling boxes in a manner that is inconsistent with the labeling provisions of section VII.D.3.b above to circumvent this Agreement.

6. Sales of exports that were not properly assigned by a Signatory producer to a non-producer Signatory through SECON and are therefore inconsistent with section VII.D.2.

7. Failure to provide a quarterly certification in accordance with section VII.D.4.

8. Repeated or routine over filling of boxes beyond reasonable variations in weights for the apparent purpose of circumventing this Agreement.

9. A Signatory's failure to notify Commerce of intended shipments of Fresh Tomatoes from Mexico in boxes for which there is no average weight on the box weight chart in accordance with Appendix C.

10. Sales that are not in accordance with the terms and conditions applied by Commerce when calculating net sales prices for transactions involving adjustments due to changes in quality and condition after shipment as detailed in Appendix D of this Agreement.

11. Selling Signatory tomatoes to Canada in a manner that is not consistent with the requirements of Appendix E of this Agreement.

12. Selling Signatory tomatoes for processing in the United States in a manner that is not consistent with the requirements of Appendix F of this Agreement.

13. Exporting Fresh Tomatoes from Mexico to the United States under a Signatory number different than one's own Signatory number.

14. Failure to comply with the terms of this Agreement.

15. Any other act or practice that Commerce finds is in violation of this Agreement.

[44] Although not a party to this Agreement, the actions of a Buyer who is a PACA licensee or is operating subject to license that aid or abet a Violation of the Agreement may constitute an unfair trade practice that violates the PACA.

IX. Other Provisions

A. In entering into this Agreement, the Signatories do not admit that any exports of Fresh Tomatoes from Mexico are having or have had an injurious effect on fresh tomato producers in the United States, have caused the suppression or undercutting of prices, or have been sold at less than fair value.

B. Upon request, Commerce will advise any Signatory of Commerce's methodology for calculating its export price (or constructed export price) and normal value in accordance with the Act and Commerce's regulations and procedures, including but not limited to, the calculation methodologies described in Appendix B of this Agreement.

X. Disclosure and Comment

This section provides the terms for disclosure and comment following consultations or during segments of the proceeding not involving a review under section 751 of the Act.

A. If Commerce proposes to revise the Reference Price(s) as a result of agreement between the parties pursuant to consultations under section VII.G of this Agreement, Commerce will disclose the preliminary Reference Price(s), including calculation methodology and all information or data from which that methodology is derived, not less than 30 days before the date on which the price(s) would become final and effective.

B. Not later than seven days after the date of disclosure under paragraph X.A, Interested Parties may submit written comments concerning the proposed Reference Price(s) to Commerce, not to exceed fifteen pages. After reviewing these submissions and after consultations with the Signatories, Commerce will establish the final Reference Price(s).

C. Interested Parties shall file all communications and other submissions made pursuant to section VII or other sections of the Agreement via Commerce's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *https://access.trade.gov* and to all parties at the following address:

U.S. Department of Commerce, Central Records Unit, Room B8024, 1401 Constitution Ave. NW, Washington, DC 20230

Such communications and submissions shall be filed consistent with the requirements provided in 19 CFR 351.303.

D. Commerce may make available to representatives of each Interested Party, pursuant to and consistent with 19 CFR 351.304–351.306, any business proprietary information submitted to and/or collected by Commerce pursuant to section VII of this Agreement, as well as the results of Commerce's analysis of that information.

XI. Duration of the Agreement

A. This Agreement has no scheduled termination date. Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 751(c) of the Act and 19 CFR 351.218.

B. An individual Signatory, or Signatories, collectively, or Commerce may withdraw from this Agreement upon 90 days' written notice to Commerce or the Signatories, respectively.

Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
U.S. Department of Commerce

Date

The following parties hereby certify that the members of their organization agree to abide by all terms of the Agreement:

Lic. Gustavo Rojo Plascencia
President
Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C.

Date

Ing Rosario Antonio Beltran Ureta
President
Sistema Producto Tomate

Date

Oscar Woltman De Vries
President
Asociación Mexicana de Horticultura Protegida, A.C.

Date

Antonio Roberto Gandara Gonzalez
President
Asociación de Productores de Hortalizas del Yaqui y Mayo

Date

Salvador Garcia Valdez
President
Consejo Agrícola de Baja California, A.C.

Date

Andrew Jaxa-Debicki
Arent Fox, LLP—Counsel
For NS Brands, Ltd.

Date

Appendix A—Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico—Reference Prices

Consistent with the requirements of section 734(c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Reference Prices are as follows:

REFERENCE PRICE IN U.S. DOLLARS PER POUND (LB.)

[FOB U.S. shipping point, *i.e.,* U.S. side of the U.S.-Mexico border] [45]

Fresh Tomatoes Other Than Organic Tomatoes	Round and Roma	0.31
	Stem On	0.46
	Tomatoes on the Vine	0.50
	Specialty—Loose	0.49
	Specialty—Packed	0.59
Organic Tomatoes	Round and Roma	0.434
	Stem On	0.644
	Tomatoes on the Vine	0.70
	Specialty—Loose	0.686
	Specialty—Packed	0.826

The Reference Price for each type of box shall be determined based on the average weights stated in the chart contained in Appendix C of the Agreement. The delivered sales price to a Buyer for all Fresh Tomatoes from Mexico exported directly, or indirectly through a third country, to the United States shall include all movement and handling expenses beyond the point of entry into the United States (*e.g.,* McAllen, Nogales, or Otay Mesa) and in excess of the Reference Price, *i.e.,* the FOB U.S. shipping point price.

[45] The Reference Prices will remain in effect until changed. In accordance with section VII.G of the Agreement, the Reference Prices may be revised. No revision will be considered before one year from the Effective Date.

Appendix B—Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico—Analysis of Prices at Less Than Fair Value

A. Normal Value

The cost or price information reported to Commerce that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in

nature and based on a reliable accounting system (*e.g.,* a system based on well-established standards and can be tied either to the audited financial statements or to the tax return filed with the Mexican government).

1. Based on Sales Prices in the Comparison Market

When Commerce bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade. Also, to the extent practicable, the comparison shall be made at the same level of trade as the export price (EP) or constructed export price (CEP).

Calculation of NV:
Gross Unit Price
+/− Billing Adjustments
− Movement Expenses
− Discounts and Rebates
− Direct Selling Expenses
− Commissions
− Home Market Packing Expenses
= Normal Value (NV)

2. Constructed Value

When normal value is based on constructed value, Commerce will compute constructed values (CVs) for each growing season, as appropriate, based on the sum of each respondent's growing and harvesting costs for each type of tomato, plus amounts for selling, general and administrative expenses (SG&A), U.S. packing costs, and profit. Commerce will collect this cost data for an entire growing season in order to determine the accurate per-unit CV of that growing season.

Calculation of CV:
+ Direct Materials
+ Direct Labor
+ Factory overhead
= Cost of Manufacturing
+ Home Market SG&A*
= Cost of Production
+ U.S. Packing
+ Profit*
= Constructed Value (CV)
* SG&A and profit are based on home-market sales of the foreign like product made in the ordinary course of trade. SG&A includes financing but not movement expenses.

B. Export Price and Constructed Export Price

EP and CEP refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

Calculation of EP:
Gross Unit Price
− Movement Expenses
− Discounts and Rebates
+/− Billing Adjustments
+Packing Expenses
+Rebated Import Duties
= Export Price (EP)

Calculation of CEP:
Gross Unit Price
− Movement Expenses
− Discounts and Rebates
+/− Billing Adjustments
− Direct Selling Expenses
− Indirect Selling Expenses that relate to commercial activity in the United States
− The cost of any further manufacture or assembly incurred in the United States
− CEP Profit
+ Rebated Import Duties
− Commissions
= Constructed Export Price (CEP)

C. Fair Comparisons

To ensure that a fair comparison with EP or CEP is made, Commerce will make adjustments to normal value. Commerce will adjust for physical differences between the merchandise sold in the United States and the merchandise sold in the home market. For EP sales, Commerce will add in U.S. direct selling expenses, U.S. commissions [46] and packing expenses. For CEP sales, Commerce will subtract the amount of the CEP offset, if warranted, and add in U.S. packing expenses.

Appendix C—Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico—Box Weights

Commerce has the sole authority to make revisions to the Box Weight Charts used to apply the applicable reference price to particular box configurations. The Reference Prices for each pack style or box configuration shall be determined based on the average net weights stated in the Box Weight Charts below.

Commerce shall commence and complete a box weighing exercise within 12 months following the signature of this Agreement, and thereafter, at such times as considered appropriate by Commerce. From the Effective Date, until such time as the box weight exercise is completed, the box weights from the previous 2013 suspension agreement will be incorporated into this current agreement, with necessary additions or modifications.

All weighing exercises may occur at a U.S. Customs and Border Protection (CBP) port facility, at U.S. Selling Agent facilities, in bonded compounds, or at Signatory packhouses, at the sole discretion of Commerce. For weighing exercises conducted at a CBP port facility, Commerce will coordinate with CBP in its collection and review of data for calculating and monitoring box-specific average weights, as appropriate.

Commerce will provide 14 hours advance notice to the Signatories (through the Grower Associations' counsel or directly to the Signatories, in the event that they are not represented by counsel) of the commencement of any box weighing exercise. Subject to approval by Commerce and CBP, as appropriate, Commerce will undertake best efforts to ensure that at least two, but no more than four representatives of the Signatories are permitted access to a port or other facility to observe the box weighing exercise. Observers will be chosen by the Grower Associations. Any requests for additional observers from Signatories not represented by the Grower Associations' counsel will be considered by Commerce. In the event that no otherwise qualified observers are permitted by CBP to enter a port facility, Commerce will either delay the exercise until at least one qualified observer is present or, at its discretion, will conduct the box weighing exercise at an alternate location.[47]

To derive representative average net weights [48] for each box type in the charts below, and any configurations that may be added, Commerce will weigh twenty sample boxes from ten shippers for high-volume pack types,[49] a minimum of two shippers for low-volume pack types, and five shippers for all other pack types. All shippers will be randomly chosen, without notice to the specific shippers.

Observers may raise bona fide challenges to the recording of the weight of a particular box at the time it is weighed and must specify the nature of the challenge.[50] The parties will endeavor to resolve any such challenges immediately at the time of the weighing. A box weight will not be recorded if a bona fide challenge is not resolved. No challenges to the weight of a box will be considered once its weight has been recorded.

If Commerce determines to revise an average weight figure based upon information that an average weight on the chart is no longer accurate or to provide an average weight for a box configuration not currently on the chart, Commerce will provide at least fifteen days' notice to Signatories (through the Grower Associations' counsel or directly to the Signatories, in the event that they are not represented by counsel) prior to the effective date of such revised average weights for purposes of this Agreement. Commerce will determine the revised average weight in accordance with the procedure described above.

In the event that a Signatory intends to export subject merchandise to the United States in a box for which there is no average weight on the chart, the Signatory shall notify Commerce in writing no later than five business days prior to the date of the first exportation of such boxes to the United States. Signatories can obtain a copy of the suggested form for submitting this

[46] If there are not commissions in both markets, then Commerce will apply a commission offset.

[47] Assuming proper notice is provided and necessary government approval is granted, it is the Signatories' responsibility to ensure that their representatives observe the box weighing exercise, or the right to observe is waived.

[48] Average net weights are calculated by deducting the tare weight from the average gross box weight. For each twenty-box sample, the tare weight will be calculated by weighing a minimum of two empty boxes. If the differences in the weights of the boxes exceed two-hundredths of a pound, additional boxes will be weighed to establish the tare. Irrespective of any deviation, the average weight of five boxes will be sufficient to establish the tare.

[49] The 25-pound box configuration is an example of a high-volume pack type.

[50] Examples of bona fide challenges may include the non-random selection of trucks, loads or boxes, or selection of wet, damaged, or compromised boxes or pallets.

information from Commerce's website at: *https://enforcement.trade.gov/tomato.* This information must be submitted to Commerce in accordance with the filing instructions set forth in Commerce's regulations. Commerce shall allow any Interested Party to submit written comments, not to exceed ten pages, on the appropriate average weight for the box within seven days after the filing of the written notification by the Signatory, and Commerce shall inform the Signatory or its representative of the average weight for the box no later than thirty days after filing of the written notification by the Signatory. A Signatory's failure to notify Commerce of intended shipments of tomatoes in boxes for which there is no average weight on the box weight chart may constitute a Violation of the Agreement in accordance with section VIII.E.9.

Box-Weight Chart—Round and Roma Suspension of Antidumping Investigation on Fresh Tomatoes From Mexico

TBD

Box-Weight Chart—Stem on Suspension of Antidumping Investigation on Fresh Tomatoes From Mexico

TBD

Box-Weight Chart—Tomatoes on the Vine Suspension of Antidumping Investigation on Fresh Tomatoes From Mexico

TBD

Box-Weight Chart—Specialty—Loose Suspension of Antidumping Investigation on Fresh Tomatoes From Mexico

TBD

Box-Weight Chart—Specialty—Packed Suspension of Antidumping Investigation on Fresh Tomatoes From Mexico

TBD

Appendix D—Agreement Suspending The Antidumping Duty Investigation On Fresh Tomatoes From Mexico—Procedures for Making Adjustments to the Sales Price Due to Certain Changes in Condition After Shipment

The purpose of this appendix is to explain the procedures for making adjustments to the sales price of Signatory tomatoes due to certain changes in condition after shipment following USDA inspections at destination points (*e.g.,* receiver facilities). Where a partial lot is being rejected, the net sales price of all accepted tomatoes in the lot shall result in a unit price that is not less than 100 percent of the applicable Reference Price established in Appendix A minus the per-unit USDA inspection fees and per-unit freight expenses attributable to the defective tomatoes. In such cases, the following formula shall be satisfied: [51]

$$\left(\begin{matrix}Total\ Invoice\ Quanity\ *\\ Invoice\ Unit\ Price\end{matrix}\right)-\left(\begin{matrix}Total\ Rejected\ Quantity\ *\\ Invoice\ Unit\ Price\end{matrix}\right)\geq\left(\begin{matrix}Reference\ Price\\ per\ Unit\end{matrix}\right)-\left(\left(\begin{matrix}USDA\ Inspection\ Fee+\\ Freight\ Expense\end{matrix}\right)*\left(\frac{Total\ Rejected\ Quanity}{Total\ Invoice\ Quanity}\right)\right)$$

[51] Note that: Net Per-Unit Sales Price of Accepted Tomatoes $=\left(\begin{matrix}Total\ Invoice\ Quantity\ *\\ Invoice\ Unit\ Price\end{matrix}\right)-\left(\begin{matrix}Total\ Rejected\ Quantity\ *\\ Invoice\ Unit\ Price\end{matrix}\right)$

Appendix G of the Agreement outlines specific actions that Signatories should take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to USDA under PACA.

To facilitate the verification of claims for changes in condition after shipment, the contracts between the Signatory and the Buyer (if no Selling Agent(s) is included in the distribution chain) or between the Signatory, Selling Agent(s), and the Buyer must establish that all documentation be completed within 15 business days after the USDA inspection, and that claims be resolved within 15 business days after the USDA inspection, unless the claim is referred to PACA for mediation. Failure to complete this documentation in a timely manner may constitute a Violation of the Agreement in accordance with section VIII.E.10. When filing quarterly certifications with Commerce in accordance with section VII.D.4, Signatories must report the number of lots on which claims for quality and condition defects were granted, the total volume of tomatoes destroyed, the total value of claims granted, and the total value of payments made to the Buyer by the Signatory and/or Selling Agent.

Upon request from Commerce at any time, whether for sales made directly, or indirectly through a Selling Agent, to the Buyer, Signatories must provide a worksheet detailing all adjustments, expenses, and payments to the Buyer by the Signatory or Selling Agent related to such reported claims for quality and condition defects in a given quarter, with a reconciliation to the invoice price and supporting documentation to include the CBP entry packet (if available), USDA inspection certificates, Commerce's Accounting Sales and Cost form, bills of lading, invoices, credit memos, freight invoices, reconditioning/repacking invoices, inspection fees, as well as destruction receipts, donation certificates, and or/proof of return.

A. USDA Inspection and Adjustments

1. No adjustments will be made for failure to meet suitable shipping conditions unless supported by an unrestricted USDA inspection. A USDA inspection certificate reflecting the unrestricted USDA inspection must be provided to support claims for rejection of full or partial lots. The USDA inspection certificate should identify all quality and condition defects identified in paragraph 5 that are found in the inspection.

2. If the USDA inspection indicates that the lot has: (1) Over 8% soft/decay condition defects; (2) over 15% of any one quality or condition defect; or (3) greater than 20% total quality and/or condition defects, the receiver may reject the lot or may accept a portion of the lot and reject the quantity of tomatoes lost during the salvaging process. In those instances, price adjustments will be calculated as described below. For purposes of this Agreement, a quality or condition defect is any defect listed in the charts in part A.5 below. When a lot of tomatoes has quality and condition defects in excess of those outlined above as documented on a USDA inspection certificate, the documented percentage of the tomatoes with quality and condition defects are considered DEFECTIVE tomatoes.

3. No adjustments will be made for failure to meet suitable shipping conditions if the USDA inspection certificate does not indicate one of the quality or condition thresholds outlined above.

4. The USDA inspection must be requested no more than eight hours from the time of arrival at the destination specified by the receiver and be performed in a timely fashion thereafter. If there is more than one USDA inspection on a given lot, the inspection certificate corresponding to the first inspection is the one that will be used for making any adjustment to the sales price. However, if an appeal inspection is conducted which reverses the original inspection, it will supersede the first inspection, as long as the appeal inspection

is requested within a reasonable amount of time not to exceed 12 hours from the first inspection.

The first receiver of the product, regardless of whether that receiver is acting on behalf of a Buyer or whether the receiver is the Buyer acting on its own right, must specify the city/metropolitan area of the destination of the product. The inspection will take place at the destination of delivery as specified prior to shipment.

No adjustments will be granted for a USDA inspection at a destination which is different from the destination specified by the first receiver of the product. In the event that the first receiver does not specify the city/metropolitan area of the destination of the product, the eight-hour period within which an inspection may be requested will begin to run at such time as title to the product transfers to the unrelated purchaser, for example, upon loading of the product at the first handler's (importer's) warehouse in an FOB transaction and upon delivery of the product to the Buyer's warehouse in a delivered sale.

A person or company shall be considered a broker for a Buyer: (1) When that person or company falls within the description of types of broker operations set forth in 7 CFR 46.27; or (2) has provided a broker's memorandum of sale as set forth in 7 CFR 46.28(a). The following paragraphs apply if a broker or dealer is involved in the transaction.

A broker, unlike a dealer, does not take ownership or control of the tomatoes but arranges for delivery directly to the vendor or purchaser. Because a broker never takes ownership or control over, or title to, the tomatoes, the Buyer and not the broker may request an inspection, and only the Buyer is entitled to any resulting adjustments. The inspection would take place at the Buyer's destination, as specified in the broker's contract with the Selling Agent.

When a dealer is involved in the sale, the destination of delivery stated in the contract is where the inspection is to take place. If the dealer does not specify the destination of delivery, the default destination of delivery is the warehouse of the Selling Agent. With respect to a lot of tomatoes that is owned or controlled by a dealer, it is the responsibility of the dealer to request an inspection of the tomatoes in his possession in a timely manner, if he deems it necessary. If the dealer does not request an inspection in a timely manner (*i.e.,* within eight hours from the time of arrival at the destination specified by the dealer) and resells the tomatoes to a third party, which does request an inspection, the dealer is then responsible for all costs and adjustments pertaining to the inspection and the condition or quality of the tomatoes.

5. Under this Agreement, adjustments to the sales price of Signatory tomatoes will be permitted for all condition defects as well as the quality defect noted below. The term ''condition defect'' is intended to have the same definition recognized by USDA's Specialty Crops Inspection Division and, therefore, covers the following items:

Condition defects
(1) Abnormal Coloring
(2) Abnormally Soft and Watery Fruit
(3) Blossom End Discoloration
(4) Bruises
(5) Chilling Injury
(6) Cuts and Broken Skins (unhealed)
(7) Discolored Seed Areas
(8) Freezing and Freezing Injury
(9) Insect/Worm Injury (alive when present)
(10) Internal Discoloration
(11) Moldy and/or Decayed Stems
(12) Nailhead Spot
(13) Shriveling
(14) Skin Checks
(15) Soft/Decay
(16) Soil Spot
(17) Surface Discoloration (Silvery-White and Gold Fleck)
(18) Sunburn
(19) Sunken Discolored Areas
(20) Waxy Blister
(21) White Core

The term ''quality defects'' is intended to have the same definition recognized by USDA's Specialty Crops Inspection Division and covers the following subset of such items:

Quality defects
(1) Puffiness

6. In calculating the transaction price for lots subject to an adjustment claim for quality and condition defects, as defined above, the tomatoes classified as DEFECTIVE will be treated as rejected and as not having been sold.

B. Contractual Terms for Rejection of Partial Lots

If the lot contains quality and condition defects greater than those outlined above and the receiver does not reject the entire lot of tomatoes, Commerce will factor certain adjustments into the transaction price. Specifically, the Signatory or Selling agent, as applicable, may reimburse the Buyer for the inspection fees listed on the USDA inspection certificate and the freight expenses attributable to the defective tomatoes.

1. The per-unit price invoiced to and paid by the Buyer for the accepted tomatoes must not fall below the Reference Price minus the per-unit USDA inspection fees and per-unit freight expenses attributable to the defective tomatoes, in accordance with the above-specified formula.

2. The Signatory or Selling Agent, as applicable, may reimburse the Buyer for the portion of freight expenses allocated to the DEFECTIVE tomatoes.

3. The Signatory or Selling Agent, as applicable, may reimburse the Buyer for the inspection fees attributable to the DEFECTIVE tomatoes and listed on the USDA inspection certificate.

4. Any reimbursements from, by, or on behalf of the Signatory or Selling Agent, as applicable, that are not specifically mentioned in item B.2 and B.3 above, or that are not properly documented, will be not be allowed to be factored into the calculation of the price for the accepted tomatoes.

5. The Buyer may not keep or resell the DEFECTIVE tomatoes either directly or through third parties.[2] Such tomatoes must be destroyed under USDA oversight, with a USDA certificate provided to the Buyer, Signatory, or Selling Agent as proof of destruction. Proof of such destruction must be maintained by the Buyer, Signatory, or Selling Agent and is subject to submission to, and verification by, Commerce.

6. In addition, for each transaction involving adjustments due to changes in condition after shipment the Signatory or Selling Agent, as applicable, must obtain/maintain the following documents/information:

—Shipper name;
—Shipping manifest;
—Details of the shipper invoice, including invoice number, date, brand, tomato type, quantity (boxes), and value;
—Documentation supporting the freight expenses incurred for the original shipment;
—USDA inspection certificate;
—Detailed listing of the expenses incurred in salvaging the non-DEFECTIVE tomatoes and documentation supporting the expenses;
—Description of the destruction process and documentation from the landfill;
—USDA destruction certificate;
—Proof-of-payment documentation for any destruction costs;
—A statement that ''No monies or other compensation were received for the destroyed tomatoes;''
—Signature of a responsible official at the receiver.

C. Contractual Terms for Rejection of Full Lots

In cases where the Buyer has rejected the full lot of tomatoes based on quality and condition defects, the Signatory or Selling Agent, as applicable, may choose to have the entire lot destroyed or returned. If the entire lot is destroyed, the Signatory or Selling Agent, as applicable, will require the receiver to provide the documentation noted above under B.5 for partial-lot rejections. Further, the Signatory or Selling Agent, as applicable, may reimburse the Buyer for ordinary and customary freight and USDA inspection expenses that the Buyer incurred with respect to the lot as long as the Signatory or Selling Agent, as applicable, obtains the support documentation specified above under B.5. Commerce will treat such transactions as ''non-sales'' provided that adequate support documentation is available.

Alternatively, the Signatory or Selling Agent, as applicable, may sell the entire rejected lot to another Buyer (the ''Final Buyer''). In that case, the price paid must be not less than the Reference Price plus all costs incurred (*e.g.,* transportation, commissions, etc.) from the FOB U.S. shipping point, *i.e.,* U.S. side of the U.S.-Mexico border to the Final Buyer. If the Final

[2] Tomatoes for processing must be handled in accordance with the guidelines set forth in Appendix F of the Agreement.

Buyer finds that the lot contains quality and condition defects greater than those outlined above, it shall follow the directions stated above with respect to rejection of partial lots.

The Buyer may reject the full lot of tomatoes if the lot contains more than 35 percent quality and condition defects, as listed in the charts in part A.5, based on a USDA inspection certificate. Additionally, the Signatory (both in cases of direct sales as well as in cases of indirect sales through a Selling Agent(s)) must pay all expenses related to the return of the entire lot to Mexico. Such rejected lots may not be sold, donated, or destroyed in the United States. Commerce may request at any time, and Signatories agree to provide, any and all documentation related to such rejections.

D. Contractual Terms for Partial vs. Unrestricted Lot Inspections

As explained in part A.1 above, Commerce will only allow adjustments to the transaction price for quality and condition defects if the USDA inspection is unrestricted. During the time between the call for inspection and the arrival of the USDA inspector, the Buyer might sell part of the lot and, therefore, by the time the USDA inspector arrives, that part is not available for inspection. If the USDA inspector is allowed full access to the partial lot, Commerce will consider this an unrestricted partial-lot inspection. Alternatively, if the USDA inspector is not allowed full access to the partial lot, Commerce will deem it a restricted inspection. No adjustments will be made for failure to meet suitable shipping conditions or for quality defects if the USDA inspection is restricted. For purposes of this Agreement, when calculating an adjustment for failure to meet suitable shipping conditions where an unrestricted partial-lot inspection has taken place, only the portion of the lot inspected is eligible for adjustment. The portion of the lot that the Buyer sold prior to the inspection will not be eligible for an adjustment based on the USDA inspection.

For example, before the USDA inspector arrives, the Buyer sells 140 boxes of 5x5s from a lot identified as 160 5x5s on the invoice. When the USDA inspector arrives, the Buyer requesting the inspection provides full access to the partial lot within its possession. The inspector finds that the partial lot of 20 5x5s has soft/decay condition defects of 25 percent and notes this on this inspection certificate. Under the Agreement, only the 20 5x5s are eligible for an adjustment for failure to meet suitable shipping conditions, and the 140 5x5s that the Buyer already sold will not be eligible for an adjustment based on the USDA inspection.

Appendix E—Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico—Contractual Arrangement for Documenting Sales of Signatory Merchandise to Canada

Where a Signatory or Selling Agent enters Fresh Tomatoes into the United States for consumption and then re-exports the subject merchandise to Canada, this appendix applies. The purpose of this appendix is to: (1) Outline the process that each Signatory to this Agreement must follow to ensure that the Signatory or Selling Agent properly documents sales to Canada as such and (2) ensure that the Signatory notifies the Canadian customer that any resales of its merchandise from Canada into the United States must be in accordance with the terms of this Agreement.

To document sales of Mexican tomatoes to Canada properly, this Agreement requires that such transactions be made pursuant to a contractual arrangement where each Signatory maintains, or requires that the Selling Agent that facilitates the sale to Canada maintains, the following information in its files:

1. Signatory name and Signatory number;
2. Shipping manifest;
3. An invoice identifying sale date, brand, tomato type, quantity (boxes), and value; and
4. Entry documentation from Canadian Customs (*i.e.,* Landing Form (Form B3) or the Canada Customs Coding Form).

If a Signatory to the Agreement or its Selling Agent does not document a sale to Canada in accordance with the procedures outlined above, Commerce will consider the transaction a U.S. sale. Failure to properly document a sale to Canada may constitute a Violation of the Agreement in accordance with section VIII.E.11.

Signatories must ensure that the Canadian customer is notified that any resale of the Signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement, including the box labeling requirements in section VII.D.3.b, and that any movement or handling expenses beyond the point of entry into the United States must be added to the Reference Price, *i.e.,* the FOB U.S. shipping point price, and must reflect the actual cost for an arm's-length transaction. Signatories can obtain from Commerce's website a copy of the suggested form for providing such notification. See ''Form for Notifying Canadian Customer That Resales of Signatory Merchandise Into the United States Are Covered by the Terms of the 2019 Suspension Agreement'' at *https://enforcement.trade.gov/tomato.* Further, through contractual arrangement each Signatory must maintain, or require that the Selling Agent maintains, evidence in its files to document that the Canadian customer was notified that any resales of the Signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement.

Appendix F—Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico—Procedure Signatories Must Follow for Selling Subject Merchandise for Processing

Sales to the United States of Signatory tomatoes for processing must be:

1. Sold directly to a processor (in other words, the first purchaser in the United States of tomatoes for processing must be an actual processor);

2. Accompanied by an ''Importer's Exempt Commodity Form''—Form FV–6, within the meaning of 7 CFR 980.501(a)(2) and 980.212(i), should be used for all tomatoes for processing that are covered by the Federal Marketing Order 966 (Marketing Order); tomatoes for processing that are not covered by the Marketing Order (*e.g.,* romas, grape tomatoes, greenhouse tomatoes, and any tomatoes that are entered during the part of the year that the Marketing Order is not in effect) must be accompanied by the ''2019 Suspension Agreement—Tomatoes for Processing Exemption Form''. The exempt commodity form must be maintained by the importer and presented to CBP upon request and both the Signatory or Selling Agent, as applicable, and the processor must maintain a copy of the form.

3. Shipped in a packing form that is not typical of tomatoes for the fresh market (*e.g.,* bulk containers in excess of 50 lbs.)—examples of typical fresh-market packing forms are identified in the Box-Weight Chart in Appendix C of the Agreement; and

4. Clearly labeled on the packaging as ''Tomatoes for Processing.''

Signatories can obtain from Commerce's website an example of the ''2019 Suspension Agreement—Tomatoes for Processing Exemption Form.'' See *https://enforcement.trade.gov/tomato.* If a party in the United States facilitates the transaction, through contractual arrangement each Signatory must require that the party follow the procedures outlined above. Failure to properly document sales to processors may constitute a Violation of the Agreement in accordance with section VIII.E.12.

Sales of Signatory merchandise to a processor after importation into the United States are a Violation of the Agreement in accordance with section VIII.E.12.

Appendix G—Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico—Specific Actions That Signatories Should Take To Ensure That Their Efforts To Abide by the Agreement Are Upheld in Any Claims Taken to the U.S. Department of Agriculture Under The Perishable Agricultural Commodities Act

This appendix provides guidance on the specific actions Signatories can take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to USDA under PACA.

Payment disputes arising under the Agreement are actionable and/or able to be resolved under the PACA dispute resolution procedure. The PACA Division will uphold actions taken by a Signatory or a Signatory's representative (collectively, Signatory) to comply with the Agreement to the extent that the sales contract for the transaction at issue establishes that the sale is subject to the terms of the Agreement.

In other words, if, prior to making the sale, the Signatory, or the Selling Agent acting on behalf of the Signatory through a contractual arrangement, informs the customer (*i.e.,* the Buyer) that the sale is subject to the terms of the Agreement and identifies those terms, the PACA Division will recognize the identified terms of the Agreement as integral to the sales contract. In particular, Signatories

should inform their customers that their contractual agreement to allow defect claim adjustments is limited in accordance with the Agreement, including:

* Claims for adjustments must be supported by an unrestricted USDA inspection called for no more than eight hours from the time of arrival at the receiver and performed in a timely fashion thereafter.

* The USDA inspection must find that the quality and/or condition defects exceed the thresholds outlined in Appendix D above.

* Any price adjustments will be limited to the actual percentage of quality and/or condition defects as documented by a USDA inspection certificate.

* The price adjustments will be limited to USDA inspection fees and the allocated freight expense attributable to the defective tomatoes calculated in accordance with Appendix D above.

* The customer may not resell any DEFECTIVE tomatoes. Instead, they must be destroyed or returned. Signatories should provide a copy of the Agreement to any customer which may be unfamiliar with its terms or which has questions about those terms.

The process by which a Signatory could provide evidence to the PACA Division that its sales contracts were made subject to the terms of the Agreement including, in particular, those terms listed above is outlined below.

* The Signatory should maintain written documentation demonstrating that it had informed its customers, and the customers accepted, that the sales were subject to the terms of the Agreement prior to issuing the invoice. A signed contract to that effect would be the best evidence of that fact; however, a purchase by the customer after being informed of the relevance of the Agreement is evidence of acceptance.

* The Signatory should send letters to its customers via registered mail, return receipt requested, overnight mail, or email with a confirmation received from the recipient, informing the customers that, as a Signatory to the Agreement, all of the Signatory's sales are subject to the terms of the Agreement and that, by purchasing from them, the Buyer agrees to those terms. The letter should also indicate that the Signatory's sales personnel do not have authority to alter the terms of the Agreement.

* In addition, the Signatory should include a statement on its order confirmation sheets that its contract with the buyer is subject to the terms of the Agreement as detailed in the Signatory's ''pre-season'' letter and maintain a copy of the order confirmations and fax receipts demonstrating that they were sent to the customer prior to making the sale. If the sale is to a first-time purchaser that did not receive a ''pre-season'' letter, a letter should be supplied to the buyer prior to making a sale.

PACA does not require any one particular form of written documentation but USDA officials have confirmed that, if Signatories maintain written evidence demonstrating that their customers were informed that their sales were made subject to the terms of the Agreement prior to sale, PACA will recognize those terms as part of the sales contract.

Appendix H—Agreement Suspending The Antidumping Duty Investigation on Fresh Tomatoes From Mexico—Procedures for Reporting Alleged Violations or Circumvention of the Agreement

Appendix H enables persons with knowledge of suspected Violations [52] of the Agreement to inform Commerce by emailing the below form to Commerce officials. The form and any factual information provided will be placed on the record of the proceeding by Commerce officials. The person submitting the form and factual information to Commerce is, pursuant to 19 CFR 351.303(g), required to include a certification of factual information, and should use the applicable certification formats provided therein. All submissions, if business proprietary treatment for certain information is claimed under Commerce's regulations, must be accompanied by a public version, in accordance with the requirements of 19 CFR 351.304.

NAME OF PERSON MAKING REPORT:
COMPANY AFFILIATION:
PHONE NUMBER:
E–MAIL ADDRESS:

ALLEGED VIOLATION:
(Please attach any documents to this report and add blank pages if needed)

[FR Doc. 2019–20813 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–DS–P

[52] *See* sections II.V and VIII.E of the Agreement.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–814]

Acetone From Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that acetone from Belgium is being, or is likely to be, sold in the United States at less than fair value. The period of investigation is January 1, 2018 through December 31, 2018.

DATES: Applicable September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 11, 2019.[1] On July 15, 2019, Commerce postponed the deadline for the preliminary determination of this investigation.[2] As a result, the revised deadline for the preliminary determination of this investigation is now September 17, 2019.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The merchandise covered by this investigation is acetone from Belgium. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product

[1] *See Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 9766 (March 18, 2019) (*Initiation Notice*).

[2] *See Acetone from Belgium, the Republic of Korea, and the Republic of South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 33739 (July 15, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Acetone from Belgium,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

coverage (*i.e.,* scope).[5] For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. After evaluating the comments, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to clarify certain provisions and include a minimum acetone component of five percent. *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated constructed export prices in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for INEOS Phenol Belgium NV and INEOS Europe AG (collectively, INEOS Europe, which we preliminarily determine to be a single entity), the only individually examined exporter/producer in this investigation.[6] Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for INEOS Europe is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
INEOS Europe AG/INEOS Phenol Belgium NV (collectively, INEOS Europe)	28.17
All Others	28.17

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On August 22, 2019, pursuant to 19 CFR 351.210(e), the petitioner requested that Commerce postpone the final determination until not later than 135 days after the publication of this preliminary determination.[8] On August 23, 2019, INEOS Europe requested that

[5] *See Initiation Notice.*

[6] *See* Preliminary Decision Memorandum at 6–7.

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See* Petitioner's Letter, ''Acetone from Belgium, Korea, and South Africa: Petitioner's Consent to Postponement of Final Determination,'' dated August 22, 2019.

Commerce postpone the final determination until not later than 135 days after the publication of this notice.[9] INEOS Europe also requested that Commerce extend provisional measures to a period not more than 6 months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. In addition to the IUPAC name, acetone is also referred to as ß-ketopropane (or beta-ketopropane), ketone propane, methyl ketone, dimethyl ketone, DMK, dimethyl carbonyl, propanone, 2-propanone, dimethyl formaldehyde, pyroacetic acid, pyroacetic ether, and pyroacetic spirit. Acetone is an isomer of the chemical formula C_3H_6O, with a specific molecular formula of CH_3COCH_3 or $(CH_3)_2CO$.

The scope covers both pure acetone (with or without impurities) and acetone that is combined or mixed with other products, including, but not limited to, isopropyl alcohol, benzene, diethyl ether, methanol, chloroform, and ethanol. Acetone that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

The scope also includes acetone that is commingled with acetone from sources not subject to this investigation.

For combined and commingled products, only the acetone component is covered by the scope of this investigation. However, when acetone is combined with acetone components from sources not subject to this investigation, those third country acetone components may still be subject to other acetone investigations.

Notwithstanding the foregoing language, an acetone combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the acetone can no longer be separated from the other products through a distillation process (*e.g.,* methyl methacrylate (MMA) or Bisphenol A (BPA)), is excluded from this investigation.

A combination or mixture is excluded from these investigations if the total acetone component (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

The Chemical Abstracts Service (CAS) registry number for acetone is 67–64–1.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Combinations or mixtures of acetone may enter under subheadings in Chapter 38 of the HTSUS, including, but not limited to, those under heading 3814.00.1000, 3814.00.2000, 3814.00.5010, and 3814.00.5090. The list of items found under these HTSUS subheadings is non-exhaustive. Although these HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–20562 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See* INEOS Europe's Letter, ''Acetone from Belgium: Request for Postponement of Final Determination and Provisional Measures Period,'' dated August 23, 2019.

[10] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–858]

Oil Country Tubular Goods From India: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the countervailing duty order on oil country tubular goods (OCTG) from India would be likely to lead to continuation or recurrence of countervailable subsidies as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2019, Commerce published the initiation of the five-year (sunset) review of the countervailing duty order on OCTG from India, pursuant to section 751(c) of the Tariff Act of 1930 (the Act), as amended.[1] Commerce received notices of intent to participate in this sunset review from United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City, Inc., Benteler Steel/Tube, Boomerang Tube, LLC, IPSCO Tubulars, Inc., Vallourec Star, LP, and Welded Tube USA Inc. (collectively, the domestic interested parties), within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product.

Commerce received adequate substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i). Commerce received no substantive

[1] *See Initiation of Five-Year (Sunset) Review,* 84 FR 41967 (June 4, 2019) (*Notice of Initiation*).

response from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the countervailing duty order on OCTG from India.[2]

Scope of the Order

The merchandise covered by the order is OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of countervailable subsidies and the net countervailable subsidy likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit in Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/index.html.* A list of the issues discussed in the decision memorandum is attached at the Appendix to this notice. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Commerce determines that revocation of the countervailing duty order on OCTG from India would be likely to lead to continuation or recurrence of countervailable subsidies at the following rates: Jindal SAW: 26.60 percent; GVN/MSL/JPL: 13.13 percent; all others: 19.87 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: September 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

[FR Doc. 2019–20639 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Upcoming Secretary-Led Business Development Mission to Thailand, Indonesia, and Vietnam, November 3–8, 2019

AGENCY: International Trade Administration, Department of Commerce.

The United States Department of Commerce, International Trade Administration (ITA) is announcing an upcoming trade missions that will be recruited, organized, and implemented by ITA. The mission is:

- Secretary-Led Business Development Mission to Thailand, Indonesia, and Vietnam, November 3–8, 2019.

A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *http://www.export.gov/IndoPacific2019.*

For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the

[2] *See Certain Oil Country Tubular Goods from India and the Republic of Turkey: Countervailing Duty Orders and Amended Final Countervailing Duty Determination for India,* 79 FR 53688 (September 10, 2014).

Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

The Following Conditions for Participation Will Be Used for This Mission

An applicant must sign and submit a completed application and supplemental application materials, including adequate information on the represented company's, or trade association members', products and/or services, primary market objectives, and goals for participation. If an incomplete application form is submitted or the information and material submitted does not demonstrate how the applicant satisfies the participation criteria, the Department of Commerce may reject the application, request additional information, or take the lack of information into account when evaluating the application.

Each applicant must:

- Identify whether the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content. In cases where the U.S. content does not exceed 50 percent, especially where the applicant intends to pursue investment in major project opportunities, the following factors, may be considered in determining whether the applicant's participation in the Mission is in the U.S. national interest:
  - U.S. materials and equipment content;
  - U.S. labor content;
  - Contribution to the U.S. technology base, including conduct of research and development in the United States;
  - Repatriation of profits to the U.S. economy;
  - Potential for follow-on business that would benefit the U.S. economy;
- Certify that the export of their products and services is in compliance with U.S. export controls and regulations;
- Certify that it has identified to the Department of Commerce any business matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Departments of Commerce; and
- Certify that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association, the applicant must certify that each firm or service provider to be represented by the association can make the above certifications.

The Following Selection Criteria Will Be Used for This Mission

Selection will be based on the following criteria, listed in decreasing order of importance:

- Suitability of the company's products or services to the target markets and the likelihood of a participating company's increased exports or business interests in the target markets as a result of this mission;
- Consistency of the company's products or services with the scope and desired outcome of the mission's goals;
- Rank/seniority of the designated company representative;
- Current or pending major project/transaction/agreement/investment within the target markets and capacity to increase U.S. exports to the Indo-Pacific region; and
- Demonstrated export experience in the target markets and/or other foreign markets.

Trade association applicants will be evaluated based on how well the companies being represented by the organization satisfy the mission selection criteria.

The balance of entities participating in the mission with respect to type, size, location, sector or subsector may also be considered during the review process.

Referrals from political organizations and any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Definition of Small and Medium Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

Secretary-Led Business Development Mission to Thailand, Indonesia, and Vietnam

DATES: November 3–8, 2019.

United States Secretary of Commerce Wilbur Ross will lead a Business Delegation to the Indo-Pacific Business Forum in Bangkok, Thailand and subsequently to Indonesia and Vietnam from November 3–8, 2019. This mission supports President Trump's goals of accelerating U.S. commercial activity in the region, supporting job-creating export opportunities for U.S companies, and meeting the region's needs for economic growth and development.

President Trump and the Administration remain committed to a free and open Indo-Pacific in which all nations are sovereign, strong, and prosperous. So too, this mission reflects the Secretary's strong commitment to catalyze United States private sector support of market-driven and sustainable infrastructure development around the world. The Secretary-Led Business Development Mission will promote a robust U.S. commercial presence in the Indo-Pacific region and will focus on supporting U.S. companies in the energy, infrastructure and digital economy sectors to launch or expand their business in the target markets.

In addition to the commercial goals, the delegation will also focus on advancing the President's Indo-Pacific Transparency Initiative to help partner countries combat corruption, promote rule of law, and strengthen governance institutions. Key elements of the mission will include business-to-government and business-to-business meetings, market briefings, and networking events.

Delegation members will also have the opportunity to participate in the 2nd Indo-Pacific Business Forum (IPBF) [1] in Bangkok, Thailand on November 4, 2019. The IPBF is being organized by the U.S. Government, the U.S. Chamber of Commerce, the U.S.-ASEAN Business Council, the Royal Thai Government, and the Thai Chamber of Commerce. It will be held on the sidelines of the annual U.S.-ASEAN and East Asia Summits, which draw leaders from throughout the Indo-Pacific region. The IPBF will provide a unique opportunity to interact with senior U.S. and Indo-Pacific business and government

[1] For additional information about the 2nd Indo-Pacific Business Forum, please visit *www.uschamber.com/event/indo-pacific-business-forum.*

leaders. The event will provide a venue to showcase major deal signings, new initiatives, and innovative American-made products and solutions. The IPBF will also highlight the United States private sector's continued profile as the partner of choice for trade and investment with this dynamic region.

Representatives of the Export-Import Bank of the United States (Ex-Im), the U.S. International Development Finance Corporation (DFC, formerly OPIC) and the U.S. Trade and Development Agency (USTDA) will participate in and support senior-level U.S. representation at the IPBF, and will provide information and counseling regarding their suites of programs and services on federal trade promotion and financing capabilities in these markets. This collaborative interagency approach highlights the shared interest among U.S. Government agencies in promoting Southeast Asia as a critical overseas market for U.S. products and services.

The business delegation will be composed of CEOs and senior executives from 12–25 U.S. firms, representing the mission's target sectors: energy, infrastructure and digital. Trade Associations with significant involvement or interests in the region will be considered.

PROPOSED TIME TABLE

Saturday, November 2	Travel to BANGKOK	• Welcome Dinner.
Sunday, November 3	Bangkok, Thailand	• Business Development Mission Orientation.
Monday, November 4	Bangkok, Thailand	• Indo-Pacific Business Forum. • Individual Company Business Appointments. • VIP Roundtable.
Tuesday, November 5	Bangkok, Thailand Travel to JAKARTA	• Government Meetings.
Wednesday, November 6	Jakarta, Indonesia	• Government Meetings. • Individual Company Business Appointments. • VIP Reception.
Thursday, November 7	Jakarta, Indonesia Travel to HANOI.	
Friday, November 8	Hanoi, Vietnam	• Government Meetings. • Individual Company Business Appointments. • Closing Dinner.

Participation Requirements

All companies interested in participating in the Secretarial Trade Mission to the Indo-Pacific must complete and submit an application package for consideration to the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 12 and a maximum of 25 companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required.

The fee schedule for the mission is below:

- $12,700 for large firms or trade associations
- $10,200 for a small or medium-sized enterprises (SMEs) [2]
- $1,500 additional representative (large firm, SME, or trade association—limit one additional representative per company)

[2] An applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards [*https://www.sba.gov/document/support--table-size-standards*], which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Costs for participation in the 2nd IPBF in Bangkok, Thailand are not included in the trade mission fees. Interpreter and driver services for individual meetings and appointments can be arranged for additional costs. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms. More detailed travel information and recommended providers will be provided once a company has confirmed participation.

Exclusions

The mission fee does not include any personal travel expenses such as lodging, most meals, local ground transportation, and air transportation from the United States to the mission sites, between mission sites, and return to the United States. Business visas may be required. Government fees and processing expenses to obtain such visas are also not included in the mission costs. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

Trade Mission members participate in the trade mission and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** (*http://www.gpoaccess.gov/fr*), posting on ITA's business development mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment will begin immediately and conclude no later than October 1, 2019. Applications should be completed online at the Mission website at *https://www.export.gov/IndoPacific2019* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *BusinessLiaison@doc.gov*).

The application deadline is Tuesday, October 1, 2019. Applications received after Tuesday, October 1, 2019, will be

considered only if space and scheduling constraints permit. The Department of Commerce will evaluate all applications and inform applicants of selection decisions no later than October 16, 2019.

How To Apply

Applications can be downloaded from the business development mission website (*http://www.export.gov/IndoPacific2019*) or can be obtained by contacting the Office of Business Liaison (see below).

Contacts

General Information and Applications:

United States Department of Commerce, Office of Business Liaison, 1401 Constitution Avenue NW, Room 5062, Washington, DC 20230, Tel: 202–482–1360, Fax: 202–482–4054, Email: *BusinessLiaison@doc.gov*

International Trade Administration, Office of Southeast Asia, Ian Clements, Acting Director, Southeast Asia, Email: *ian.clements@trade.gov*

Tiara Hampton-Diggs,

Program Specialist, Trade Promotion Programs.

[FR Doc. 2019–20664 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–899]

Acetone From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that acetone from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value. The period of investigation is January 1, 2018 through December 31, 2018.

DATES: Applicable September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this investigation on March 11, 2019.[1] On July 15, 2019, Commerce postponed the deadline for the preliminary determination of this investigation.[2] As a result, the revised deadline for the preliminary determination of this investigation is now September 17, 2019.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The merchandise covered by this investigation is acetone from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] After evaluating the comments, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to clarify certain provisions and include a minimum acetone component of five percent. *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated weighted-average dumping margin for all other exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated individual estimated weighted-average dumping margins of 47.70 percent for Kumho P&B Chemicals, Inc. (KPB) and 7.67 percent for LG Chem, Ltd. (LG Chem), the two individually examined companies in this investigation. Commerce calculated the rate for the companies not selected for individual examination using a weighted-average of the estimated weighted-average dumping margins calculated for KPB and LG Chem, and each company's publicly-ranged U.S. sale quantities for the merchandise under consideration.[7] This margin was

[1] *See Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 9755 (March 18, 2019) (*Initiation Notice*).

[2] *See Acetone from Belgium, the Republic of Korea, and the Republic of South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 33739 (July 15, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Acetone from the Republic of Korea'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Acetone from Belgium, Korea, Singapore, South Africa, and Spain: Scope Comments Preliminary Decision Memorandum,'' dated July 29, 2019.

[7] With two respondents under examination, Commerce normally calculates (A) a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents (as directed by the statute); (B) a simple average of the estimated weighted-average dumping margins

Continued

assigned to all other producers or exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period of investigation:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Kumho P&B Chemicals, Inc	47.70
LG Chem, Ltd	7.67
All Others	21.80

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the exporter or producer listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers or exporters will be equal to the all-others estimated weighted-average dumping margin.

calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Because the calculation in (A) includes business proprietary information (BPI), Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers or exporters not subject to individual examination. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). For a complete analysis including the BPI data, *see* the Memorandum to the File, ''Preliminary Determination Calculation for the 'All-Others' Rate'' dated concurrently with this notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of the provisional measures from a four-month period to a period not more than six months in duration.

On August 22, 2019, pursuant to 19 CFR 351.210(e), the petitioner requested that Commerce postpone the final determination until not later than 135 days after the publication of this preliminary determination.[9] On August 22, 2019, LG Chem requested that Commerce postpone the final determination until not later than 135 days after the publication of this notice, and to extend the provisional measures to a period not more than six months.[10] KPB made the same request to Commerce to postpone the final determination on August 26, 2019.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* Petitioner's Letter, ''Acetone from Belgium, Korea, and South Africa: Petitioner's Consent to Postponement of Final Determinations,'' dated August 22, 2019.

[10] *See* LG Chem's Letter, ''LG Chem's Request for Postponement of the Final Determination,'' dated August 22, 2019.

[11] *See* KPB's Letter, ''Request to Extend the Deadline for the Final Determination,'' dated August 26, 2019.

these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Importers

This notice also serves as an initial reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. In addition to the IUPAC name, acetone is also referred to as ß-ketopropane (or beta-ketopropane), ketone propane, methyl ketone, dimethyl ketone, DMK, dimethyl carbonyl, propanone, 2-propanone, dimethyl formaldehyde, pyroacetic acid, pyroacetic ether, and pyroacetic spirit. Acetone is an isomer of the chemical formula C_3H_6O, with a specific molecular formula of CH_3COCH_3 or $(CH_3)_2CO$.

The scope covers both pure acetone (with or without impurities) and acetone that is combined or mixed with other products, including, but not limited to, isopropyl alcohol, benzene, diethyl ether, methanol, chloroform, and ethanol. Acetone that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

The scope also includes acetone that is commingled with acetone from sources not subject to this investigation.

For combined and commingled products, only the acetone component is covered by the scope of this investigation. However, when acetone is combined with acetone components from sources not subject to this investigation, those third country acetone components may still be subject to other acetone investigations.

Notwithstanding the foregoing language, an acetone combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the acetone can no longer be separated from the other products through a distillation process (*e.g.,* methyl methacrylate (MMA) or Bisphenol A (BPA)), is excluded from this investigation.

A combination or mixture is excluded from these investigations if the total acetone component (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

The Chemical Abstracts Service (CAS) registry number for acetone is 67–64–1.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Combinations or mixtures of acetone may enter under subheadings in Chapter 38 of the HTSUS, including, but not limited to, those under heading 3814.00.1000, 3814.00.2000, 3814.00.5010, and 3814.00.5090. The list of items found under these HTSUS subheadings is non-exhaustive. Although these HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–20561 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–DS–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; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Office of Naval Research (ONR) to incidentally harass, by Level B harassment only, marine mammals during Arctic Research Activities in the Beaufort and Chukchi Seas. ONR's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

DATES: This Authorization is effective from September 10, 2019 through September 9, 2020.

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 has been 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 action constitutes a military readiness activity because these 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 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.

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 was 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 IHA covers 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. 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 Activity

Overview

ONR's Arctic Research Activities include scientific experiments to be conducted in support of 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. The study area for the Arctic Research Activities is located in the U.S. Exclusive Economic Zone (EEZ) and the high seas north of Alaska (see Figure 1–1 in the IHA application). The total area of the study area is 835,860 square kilometers (km^2) (322,727 square miles (mi^2)).

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. CGC HEALY will perform a research cruise for up to 60 days in September and October 2019 to deploy acoustic sources. A second, non-icebreaking ship may also 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 are anticipated within the effective dates of this IHA to deploy and/or retrieve the northernmost sources. A subsequent research cruise of up to 60 days beginning in August 2020 to deploy and retrieve sources.

A detailed description of the planned Arctic Research Activities is provided in the **Federal Register** notice of the proposed IHA (84 FR 37240; July 31, 2019). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to ONR was published in the **Federal Register** on July 31, 2019 (84 FR 37240). That notice described, in detail, ONR'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 a comment from the Marine Mammal Commission (Commission).

Comment 1: The Commission noted that the Navy used cutoff distances instead of relying on Bayesian biphasic dose response functions (BRFs) to inform take estimates. The Commission asserted that the cutoff distances used by the Navy are unsubstantiated and that the Navy arbitrarily set a cutoff distance of 10 kilometers (km) for pinnipeds, which could effectively eliminate a large portion of the estimated number of takes. The Commission, therefore, recommended that the Navy refrain from using cut-off distances in conjunction with the Bayesian BRFs.

Response: We disagree with the Commission's recommendation. The derivation of the behavioral response functions and associated cutoff distances is provided in the Navy's Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) technical report (Navy 2017a). The consideration of proximity (distance cutoff) was part of criteria developed in consultation with NMFS and was applied within the Navy's BRF. Distance cutoffs beyond which the potential of significant behavioral responses were considered to be unlikely were used in conducting analysis for ONR's Arctic Research Activities. The Navy's BRF applied within these distances is an appropriate method for providing a realistic (but still conservative where some uncertainties exist) estimate of impact and potential take for these activities.

Comment 2: The Commission informally noted that the potential for marine mammals to become entangled in the weather balloon parachutes was not addressed in the **Federal Register** notice of proposed IHA and should have been discounted appropriately.

Response: The weather balloons being released could introduce the potential for entanglement following their descent; these balloons would consist of shredded debris from bursting balloons, a parachute used to slow the descent of the radiosonde, and all of the ropes and twine used to keep all of the components together (the radiosonde would be suspended 82–115 ft (25–35 m) below the balloon). The components from the weather balloons present the highest risk of entanglement. Balloon fragments would temporarily be deposited on the ice, until the ice melts and the materials would sink to the seafloor.

Although there is a potential for entanglement from an expended material, the amount of materials expended will be low. Additionally, marine mammals are very mobile within the water column and are capable of avoiding debris. Although it is unknown whether animals will avoid this debris, a recent stranding report found that out of the 21 reported seal strandings that occurred from human interaction in the Arctic regions, none were documented to be from entanglement (Savage 2017). Therefore, based on the lack of evidence of previous pinniped entanglements in

this region and the very low amount of project materials capable of resulting in entanglement, the probability of marine mammals becoming entangled in project-related materials is extremely small, and thus take from entanglement in balloon materials is unlikely to occur.

Comment 3: The Commission questioned whether the public notice provisions for IHA renewals fully satisfy the public notice and comment provision in the MMPA and discussed the potential burden on reviewers of reviewing key documents and developing comments quickly. Additionally, the Commission recommended that NMFS use the IHA Renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: NMFS has responded to this comment in full in our **Federal Register** notice announcing the issuance of an IHA to Avangrid Renewables, and we refer the reader to that response (84 FR 31035; June 28, 2019).

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 1 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 1 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 1—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 survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-/-; N	26960 (0.05, 25,849, 2016).	801	135
Family Balaenidae:						
Bowhead whale	*Balaena mysticetus*	Western Arctic	E/D; Y	16,820 (0.052, 16,100, 2011).	161	46
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	*Delphinapterus leucas*	Beaufort Sea	-/-; N	39,258 (0.229, N/A, 1992).	[4] Undet.	139
Beluga whale	*Delphinapterus leucas*	Eastern Chukchi Sea	-/-; N	20,752 (0.70, 12.194, 2012).	244	67
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Bearded seal [5]	*Erignathus barbatus*	Alaska	T/D; Y	299,174 (-, 273,676, 2013).	8,210	557
Ribbon seal	*Histriophoca fasciata*	Alaska	-/-; N	184,697 (-, 163,086, 2013).	9,785	3.9
Ringed seal [5]	*Pusa hispida hispida*	Alaska	T/D; Y	170,000 (-, 170,000, 2013).	5,100	1,054
Spotted seal	*Phoca largha*	Alaska	-/-; N	461,625 (-, 423,237, 2013).	12,697	329

[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 and take is not authorized.*

A detailed description of the species likely to be affected by the Arctic Research Activities, including brief information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 37240; July 31, 2019). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for those descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

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 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	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 planned survey activities. Please refer to Table 1. Beluga whales are classified as mid-frequency cetaceans.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the deployed acoustic sources, as well as icebreaking, have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHA 84 FR 37240; July 31, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (84 FR 37240; July 31, 2019) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized 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 are 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 authorized.

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). For this 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 authorized take.

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 planned 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) 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). 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 µPa 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 µPa to a maximum of 198–214 re 1 µPa 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 µPa (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 µPa. 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 µPa. 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 adopted 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 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling, icebreaking) and above 160 dB re 1 µPa (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 µPa (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 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 3—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) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1 µPa^{2}s. 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 planned 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 planned 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 4). 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 4—MODELED BINS FOR ICEBREAKING IN 8/10 ICE COVERAGE ON CGC HEALY

Frequency (Hz)	Source level (dB)
25	189
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 5 provides range to effects for non-impulsive sources and icebreaking noise planned 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 5 provide realistic maximum distances over which the specific effects from the use of non-impulsive sources during the planned action would be possible.

TABLE 5—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 cetacean	Pinniped	MF cetacean	Pinniped	MF cetacean	Pinniped
Navigation and real-time sensing sources	[a] 20,000	[a] 10,000	0	6	0	0
Spiral Wave Beacon source	[a] 20,000	[a] 10,000	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 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 µPa 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 Arctic Research Activities (Navy 2017a).

NMFS and the Navy conservatively implemented 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 authorized.

As discussed above, within NAEMO animats 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 planned 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 6 shows the exposures expected for the beluga whale, bearded seal, and ringed seal based on NAEMO modeled results.

TABLE 6—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 authorized 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 planned action. The permitted sources would be placed outside of the range for subsistence hunting and the study plans have been communicated to communities and tribes in the area, including the Alaska Eskimo Whaling Commission (AEWC) and the Arctic Waterways Safety Committee (AWSC). 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 planned 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 planned action.

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 must 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 must 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 must 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 must monitor the surrounding area for marine mammals. Transmission must cease if a marine mammal enters a 55-m (180 ft) exclusion zone. Transmission 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 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 must 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/drifting 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 it is 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 ships are required to coordinate with the AEWC using established check-in and communication procedures when vessels approach subsistence hunting areas.

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.

NMFS has determined that the 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.

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 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 must 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 is required to 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 must 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 is required to provide NMFS with a draft exercise monitoring report within 90 days of the conclusion of the planned activity. The draft exercise monitoring report must include data regarding acoustic source use, the number of shutdowns during monitoring, any marine mammal sightings (including the marine mammal's location (latitude and longitude)), and the number of individuals of each species observed during source deployment and operation, their behavior and distance from project activities (including icebreaking), and estimates of the total number of marine mammals taken, by species (including takes that occurred beyond the observable area). 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 5). 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, which is expected here, given the anticipated magnitude and duration of any potential exposures. 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 μPa), 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 planned 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. The planned project and associated impacts do not occur in any known Biologically Important Areas (BIAs). 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 (Chapskii 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 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 low level behavioral disturbance over a short duration;
- The project and associated impacts are not occurring in any known BIAs; 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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned 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 planned 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 determined that there will be no unmitigable adverse impact on subsistence uses from ONR's planned activities.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508), ONR prepared an Overseas Environmental Assessment (OEA) to consider the direct, indirect, and cumulative effects to the human environment resulting from the Arctic Research Activities. NMFS made ONR's OEA available to the public for review and comment, concurrently with the publication of the proposed IHA, on the NMFS website (at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*), in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to ONR. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed ONR's OEA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) on September 9, 2019.

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.

The AKR issued a Biological Opinion on August 27, 2019, which concluded that ONR's Arctic Research Activities and NMFS's issuance of an IHA for those activities are not likely to jeopardize the continued existence of the Beringia DPS bearded seal or Arctic ringed seal or adversely modify any designated critical habitat.

Authorization

As a result of these determinations, NMFS has issued an IHA to the U.S. Navy's ONR for conducting Arctic Research Activities in the Beaufort and Chukchi Seas, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 18, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–20605 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF801

Endangered Species; File No. 20610

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

ACTION: Notice; receipt of application for permit modification.

SUMMARY: Notice is hereby given that David Portnoy, Ph.D., Texas A&M University, Corpus Christi, TX 78412, has requested a modification to scientific research Permit No. 20610–01.

DATES: Written, telefaxed, or email comments must be received on or before October 24, 2019.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20610–02 from the list of available applications. These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 20610 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on the application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Erin Markin (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 20610–01 is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 20610, issued on February 27, 2018 (83 FR 13731; March 30, 2018), authorizes the permit holder to import scalloped hammerhead shark (*Sphyrna lewini*) tissues for genetic analysis at Texas A&M University in Corpus Christi. The permit was modified on June 27, 2019 (84 FR 34371; July 18, 2019) adding Cabo Verde as an additional country from which samples may be imported. The permit holder is requesting authorization to import additional samples from up to 100 animals from the eastern

Pacific Distinct Population Segment (DPS) and up to 50 animals from the eastern Atlantic DPS. All other aspects of the permitted activities would not change. The permit would expire on February 28, 2023.

Dated: September 18, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–20603 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY008

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of application for exempted fishing permit.

SUMMARY: This notice announces receipt of an exempted fishing permit (EFP) application from United Catcher Boats for pollock catcher vessels (CVs) using pelagic trawl gear in the eastern Bering Sea (BS) and Gulf of Alaska (GOA) to evaluate the efficacy of electronic monitoring (EM) systems in lieu of observers for at-sea monitoring of vessels for compliance with fishery management regulations. If granted, this EFP would allow approximately 49 pollock CVs and nine tender vessels to participate in the proposed EFP to evaluate whether the use of EM systems is a cost and operationally effective means for monitoring vessel compliance with catch and discard requirements. If issued, the EFP would be in effect during 2020 and 2021 for the pollock fishing seasons (both A and B seasons in the BS and A/B and C/D seasons in the GOA). Results from this proposed EFP are intended to inform future North Pacific Fishery Management Council (Council) analyses in consideration of a regulatory program to implement EM systems aboard pollock CVs using pelagic trawl gear in the BS and GOA as a compliance monitoring tool in these fisheries. This proposed project has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments on this EFP application must be submitted to NMFS on or before October 9, 2019. The Council will consider the application at its meeting from September 30, 2019, through October 9, 2019, in Homer, AK.

ADDRESSES: The Council meeting will be held at the Land's End Resort, 4786 Homer Spit Rd, Homer, AK 99603. The agenda for the Council meeting is available at *https://www.npfmc.org.* In addition to submitting comments at the Council meeting, you may submit comments on this document, identified by NOAA–NMFS–2019–0100, by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2019–0100,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) 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).

Electronic copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act prepared for this action are available from *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) and GOA under the Fishery Management Plan (FMP) for Groundfish of the BSAI Management Area (BSAI FMP) and the

FMP for Groundfish of the GOA (GOA FMP), respectively. The Council prepared the BSAI and GOA FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing the BSAI and GOA groundfish fisheries appear at 50 CFR parts 600 and 679. The FMPs and the EFP-implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

Background

The Council has been actively pursuing the development and implementation of EM technology in lieu of onboard observers for at-sea fishery monitoring for several years. In 2017, the final rule implementing Amendments 114 to the BSAI FMP and 104 to the GOA FMP established (1) a process for owners or operators of vessels using nontrawl gear, such as hook-and-line and pots, to request to participate in the EM selection pool and (2) the requirements for vessel owners or operators while in the EM selection pool (82 FR 36991, August 8, 2017). That program has demonstrated the ability of EM systems to improve cost efficiencies and provide more precise accounting for CVs that deliver to both shoreside processing facilities and to tender vessels. The Council is interested in attaining more precise estimates of bycatch in trawl fisheries. To achieve that, the Council's Trawl EM Committee, with approval from the Council, developed a Cooperative Research Plan for moving toward a regulated EM program for pollock CVs in the North Pacific. The Council's long-term vision of using EM more widely in the management of the BS and GOA pollock fisheries does not align with the current fishery regulations, thereby necessitating the need for an EFP to evaluate operational details of such a management program. The proposed EFP was developed specifically to evaluate the potential use of EM as a monitoring tool for compliance with fishery management regulations in the pollock pelagic trawl CV fleet. The expected results of the proposed EFP would provide valuable operational and cost information in evaluating their efficacy for the future implementation of such a program.

Pollock Fishery Sectors That Would Participate in the EFP

Three sectors of pollock catcher vessels, the BS shoreside, GOA shoreside, and Western GOA tendering sectors, would participate in the proposed EFP. These groups are distinguished by area of operation, fishery management program, existing monitoring requirements, and delivery disposition.

BS Shoreside Sector: Pollock CVs using pelagic trawl gear in the BS operate as a cooperative catch share program under the American Fisheries Act (AFA). The AFA is a limited access program for BS pollock implemented by statute in 1998 (Public Law 105–277, 16 U.S.C. 1851 statutory note). Under provisions of the AFA individual vessel and cooperative allocations of both pollock and Chinook salmon can be transferred among fishery participants. CV operation types in the BS pollock fishery include CVs that deliver sorted catch to a shoreside processor or deliver unsorted codends to a mothership. CVs delivering unsorted codends to a mothership are exempt from observer coverage requirements and are not part of this EFP. The BS shoreside pollock fleet is comprised of approximately 81 CVs. CVs operating in this sector are in the full coverage category under the Observer Program, and are required to carry an observer on 100 percent of fishing trips. Of these CVs, approximately 24 also operate in the pollock fishery in the GOA. The BS pollock TAC is divided into two seasons: the A season (January 20 to June 10), with 45 percent of the sector's allocation, and the B season (June 10 to November 1), with 55 percent of the sector's allocation. There is no vessel trip limit in the BS and discards are considered to be limited.

GOA Shoreside Sector: Pollock CVs using pelagic trawl gear in the GOA deliver catch to shoreside processors, and are managed on an area-wide basis, rather than an individual vessel basis, within a limited access, derby-style fishery. CVs participating in the pollock fishery in the GOA are in the partial coverage category under the Observer Program, and observers are randomly deployed on selected trips at a specified coverage rate. Since 2013, the observer coverage rate for the GOA pollock fleet has ranged from 20–28 percent. The shoreside pollock fleet in the GOA is comprised of approximately 85 CVs, 30 of which operate in both the Central (NMFS Areas 620 and 630) and Western Gulf (NMFS Area 610). Currently, the Western and Central GOA pollock TAC is divided into four seasons: A season (January 20 to March 10); B season (March 10 to May 31); C season (August 25 to October 1); and D season (October 1 to November 1) with 25 percent of the TAC allocated to each of the four seasons. Pollock CVs in the GOA are subject to a 300,000-lb trip limit and any pollock harvested in excess of the trip limit must be discarded at sea.

Western GOA Tendering Sector: A portion of the pollock CV trawl fleet in the Western GOA (WGOA) utilizes tender vessels to facilitate deliveries to shoreside processors. A tender vessel means a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor. Therefore, tender vessels receive unprocessed and unsorted catch from a CV and transport that catch to a shoreside processor for processing. This operation reduces delivery time for CVs and reduces cost associated with traveling between the fishing grounds and port. One tender vessel usually serves multiple CVs. For pollock in the GOA, there is a tender trip limit of 272 mt (600,000 lb) and tendering is prohibited east of 157°00' W longitude. Tendering occurs primarily in Area 610, where the pollock fishery is prosecuted mainly by smaller CVs (<60 feet), which benefit greatly from the efficiency offered by tenders. The tender vessels in this area primarily deliver to Sand Point and King Cove. To a lesser degree, tendering also occurs in the western portion of Area 620 for transport to Sand Point, King Cove, or Akutan and occasionally to Dutch Harbor.

Recordkeeping and Reporting

Recordkeeping and reporting regulations are found at 50 CFR 679.5. These regulations outline landed catch and at-sea discard reporting requirements for shoreside processors, tender vessels, and CVs using trawl gear as well as requirements for vessel logbooks (paper or electronic). Under the current management program, a vessel's catch (landed harvest) is determined by the NMFS Alaska Regional Office using data collected through fish tickets (landing reports) generated at the shoreside plant or tender where the delivery is made (eLandings reports for CV deliveries to plants and tLandings reports for vessel deliveries to tenders). At-sea discards for CVs are estimated using observer data. Trawl CVs less than 60 feet are exempt from logbook requirements.

Retention and Discard Requirements of the BS and GOA Pollock Pelagic Trawl CV Fisheries

Pollock CVs using pelagic trawl gear operating in the BS and GOA represent a substantial portion of Alaska's Federal fisheries, comprising over 100 CVs (ranging in length from 58 feet to 200 feet, with BS CVs generally being larger with greater hold capacity than GOA

CVs). Improved retention/improved utilization (IRIU) regulations require that all pollock be retained when open to directed fishing and up to the maximum retainable amount (MRA) when closed to directed fishing, except in the GOA when the CV pollock trip limit of 300,000 lb (600,000 lb for tender vessels) is exceeded. Incidental catches of other groundfish species *(e.g.,* rockfish) may be retained (or discarded if the operator chooses) by a vessel up to an MRA, which is species-specific and outlined in regulation. Incidental catches in excess of a specified MRA must be discarded. Where they do occur, the majority of discards in the BS and GOA pollock fisheries are a result of regulatory requirements related to incidental groundfish species MRAs, prohibited species catch (PSC), or the GOA pollock trip limit. MRAs themselves do not require a vessel to retain a species or lower discard rates, but instead lead to a discard requirement when incidental catches of species subject to MRAs exceed the allowable amount at a given time. With the exception of salmon, BS and GOA trawl CVs are required to discard all prohibited species, with minimal harm to these species. Prohibited species are identified as such, because they are the target of other fully utilized domestic fisheries. Prohibited species include Pacific halibut, salmon, crab, and Pacific herring caught incidentally during their pollock operations. For other incidental groundfish species, when the total harvest amount (from all directed fishing and incidental catch) approaches or reaches the annual TAC or allocation of a TAC for that species, regulations at 50 CFR 679.20(d)(2) prohibit retention of that species when they are placed on prohibited species status (for the fisheries with incidental take) and any catch must be discarded at sea. This is done to avoid overfishing. Because CV operations make it difficult to sort out and discard every single prohibited species at sea, these species will occasionally end up in a vessel's fish hold and be delivered to a shoreside processor. For pollock CVs using pelagic trawl gear, all retention and discard requirements are currently monitored and recorded by observers; however, the BS and GOA have different onboard observer coverage requirements. These requirements can be found at subpart E of 50 CFR part 679.

National Fish and Wildlife Funded EM Pilot Projects

Beginning in 2019, two projects funded through the National Fish and Wildlife Foundation (NFWF), initiated a Pilot Study of deploying EM aboard vessels in the pollock pelagic trawl fisheries that simultaneously carried observers. Vessels participating in the project include BS-only and GOA-only CVs delivering to shoreside processors, CVs that fish in both the BS and GOA and deliver shoreside, WGOA CVs delivering to tenders and shoreside processors, and WGOA tender vessels. The work from these two projects has allowed for initial feasibility testing of EM systems aboard pollock CVs using pelagic trawl gear and tender vessels in the BS and GOA. The projects provide the opportunity to collect baseline EM data for comparison of discard estimates from onboard observers versus EM systems. The applicants for the proposed EFP would compare the baseline EM data results from the two NFWF projects to data collected under this proposed EFP, with emphasis on the accuracy of EM capturing discard events and identifying discarded species.

Preliminary video review data for the BS and GOA shoreside component indicate that discard estimates (all species combined) generated from EM systems are higher when compared to discard estimates from both vessel observers and vessel logbooks (the WGOA tendering component has not received enough video data to draw a preliminary conclusion about discard estimate comparisons to logbooks). The NFWF projects have also highlighted that one of the primary issues facing the use of EM in the BS and GOA shoreside sector is the inability to estimate discard weights by species.

Exempted Fishing Permit

On July 26, 2019, United Catcher Boats submitted an application for an EFP to evaluate the use of EM systems in the BS and GOA on pollock CVs using pelagic trawl gear. The application includes a proposal to assess the efficacy of EM for monitoring compliance with a full salmon PSC retention requirement and of identifying key decisions related to successfully making EM operational for compliance monitoring. The objective of the EFP is to determine whether utilizing camera systems in lieu of onboard observers proves both cost effective and operationally effective for monitoring of catch and discards. To this end, the proposed EFP seeks to achieve the following specific objectives, derived from the Council's EM Cooperative Research Plan:

- Demonstrate that maximized retention can be achieved in pollock trawl CV fisheries.
- Demonstrate that at-sea observers can be replaced with observers at shoreside processing plants such that data needs and data streams for effective fisheries management are maintained.
- Demonstrate that EM camera systems can adequately capture discard events and that video data can be used to verify vessel logbook discard information for compliance monitoring purposes.
- Improve salmon bycatch accounting for CVs, especially for those delivering to tender vessels, through the use of EM camera systems that will enable shoreside observers to collect salmon bycatch census data.

Results from this EFP are intended to inform the Council's Trawl EM Committee and future Council analyses in consideration of implementing EM aboard pelagic pollock CVs in the BS and GOA as a compliance monitoring tool in these fisheries.

Proposed Exempted Fishing Operations

Study Area, Timing, and Participants

The proposed EFP would apply to the BS and the GOA (NMFS areas 610, 620, 630 and 640). The proposed EFP would be issued for two years, covering the full 2020 and 2021 pollock fishing years (both A and B seasons in the BS and A/B and C/D seasons in the GOA). In the BS, all pelagic pollock fishing under all seasons by participating vessels would be considered EFP fishing (*i.e.,* no specific trips would be identified as EFP trips and vessels would not need to notify NMFS that they are beginning or ending an EFP trip). For the GOA, vessels would select EFP and non-EFP trips through the Observer Deploy and Declare System (ODDS); EFP trips would only be allowed for Federal pelagic pollock trips.

For 2020, 49 pollock CVs (28 BS/GOA component and 21 WGOA component) and nine tender vessels would be expected to participate on a voluntary basis in the proposed EFP. These numbers are subject to change and would be confirmed prior to final submission of the EFP. An expansion of participating vessels would be considered for 2021 based upon information learned during the first year of the proposed EFP. Catcher/processors and CVs that deliver to motherships are not eligible to participate.

Observer Coverage

For the BS and GOA shoreside component of the proposed EFP, specified pollock CVs in the BS would be exempted from the 100 percent requirement for at-sea observer coverage (full coverage category). For any non-pollock directed fishing trips (*e.g.,* Pacific cod), these BS CVs would either

log trips in ODDS for the partial coverage sector or opt into the voluntary 100 percent observer coverage system. In the GOA, CVs fishing under the EFP would be placed in a zero selection pool under ODDS established for partial coverage fisheries, such that these vessels will continue to pay the 1.25 percent observer coverage fee, but would not be selected for observer coverage. These two approaches would apply as necessary to those CVs that operate in both areas, depending upon which area they are fishing in. Under ODDS, these vessels would be able to log an EFP trip (for pollock) or a non-EFP trip (for other target fisheries) and would be able to log up to three trips (any combination of EFP or non-EFP), as well as cancel trips when necessary. While these vessels would be allowed to simultaneously carry both pelagic and non-pelagic trawl gear, they would not be allowed to deploy or use the non-pelagic trawl gear for fishing trips logged as part of the EFP. All participating BS and GOA CVs would be exempted from the area-specific discard requirements while conducting fishing under the EFP.

For the WGOA tendering sector, CVs directed fishing for pollock under the EFP would be placed in a zero selection pool under the ODDS system established for partial coverage fisheries, such that these CVs would continue to pay the 1.25 percent observer coverage fee but would not be selected for observer coverage. Under ODDS, these CVs would log an EFP trip (for pollock) or a non-EFP trip (for other target fisheries) and would be able to log up to three trips (any combination of EFP or non-EFP) as well as cancel trips when necessary. While these vessels would be allowed to simultaneously carry both pelagic and non-pelagic trawl gear, they would not be allowed to deploy or use the non-pelagic trawl gear for fishing trips logged as part of the EFP. All participating CVs in the WGOA would be exempted from the area-specific discard requirements while fishing under the EFP. Tender deliveries received from CVs with EM under the proposed EFP would not be mixed Pacific cod and pollock catch (*i.e.,* the EFP tender vessel must receive only deliveries from CVs directed fishing for pollock using pelagic trawl gear) and all shoreside deliveries of EFP catch made by participating tender vessels would be delivered to shoreside plants with an observer.

Tender Provisions

In order to accurately track catch delivered by a tender and to estimate salmon bycatch in the tender sector, all participants utilizing tenders would be required to adhere to the following provisions:

1. If an EM CV selects an EFP trip in ODDS, they must deliver to an EM EFP tender.
2. EFP tenders that accept EFP catch cannot also accept non-EFP catch during the same trip, until EFP catch has been offloaded shoreside.
3. Tenders cannot mix EFP catch from different NMFS reporting areas in the same trip.
4. EFP tenders (and EFP shoreside CVs) must completely offload EFP catch at a single processing plant (no partial offloads).

Electronic Monitoring Systems

All participating vessels would carry an EM system (cameras and associated sensors) for compliance monitoring purposes and would be required to comply with catch handling and species retention requirements, reporting requirements, and other conditions of the permit as identified. In order to test the feasibility of employing EM for compliance monitoring, full camera and recording systems would be deployed upon participating CVs and tender vessels. EM is intended to accurately capture discard events (*i.e.,* whether a discard has occurred), the amount of discard (*i.e.,* estimated volume in weight), and any rare events (*e.g.,* large animals, gear failure) that may occur. Camera placement would be customized for each vessel to ensure recording of such discard. The EM camera systems would be strategically placed at key locations aboard a vessel to ensure all catch can be seen within camera view from the time the catch reaches the vessel until it is either put into the vessel's hold, transported aboard a tender vessel, returned to the water, or offloaded to a shoreside processing facility. Hydraulic sensor pressures will be used to turn the camera video recording on and off in conjunction with fishing activity. The EM system would be turned on as soon as the vessel unties from the dock, but video recording would not be required to be initiated while the vessel is initially transiting to the fishing grounds. Once the first set is initiated the video recording would be initiated and remain on throughout the entirety of the offload for CVs delivering to tenders and shoreside processors in the WGOA component. For CVs delivering to shoreside processors in the BS and GOA component, video recording would also be initiated with the first set and remain on for the entire trip until two hours after the vessel enters the pre-defined port area.

Catch Accounting

Under the proposed EFP, EM would not be directly utilized for catch accounting purposes; accounting of a vessel's catch would be done via fish tickets (eLandings reports), and a census of the Chinook salmon PSC would be completed at the shoreside processing facility via a shoreside plant observer. Fish tickets and observer data from all EFP fishing would be incorporated into NMFS's catch accounting system.

Vessel Monitoring Plans (VMPs)

A vessel-specific VMP would be developed for each vessel participating in the EFP, outlining EFP requirements and vessel operator responsibilities, documents the location and purpose of all installed EM camera system components, and describes specific catch handling and discard locations. Camera function and logbook requirements would also be detailed. Malfunction Protocols would be included detailing the specific steps a vessel must take if an equipment malfunction were to occur at the dock or at sea. These Malfunction Protocols would also designate how long a vessel will be expected to remain in port to facilitate a repair that needs to occur if a repair cannot be completed within the designated time frame.

Vessel Participation and Responsibilities

Participating vessels would be required under the provisions of the EFP to agree to requirements of the EFP prior to participation and to maintain regular contact and communication with the EFP permit holders, EM service providers, EM reviewers, and NMFS staff as necessary. Participating vessels would be required to have a functioning EM system to participate in the proposed EFP and would be required to adhere to the VMP. For pre-trip preparation, participating vessels would work with the EM provider to develop a written plan that includes detailed information on the placement of all cameras on the vessel and the criteria the EM system must meet per its VMP and pre-season function test (required test to demonstrate an EM system is collecting proper data). The vessel would be responsible for completing a system function test and ensuring all critical systems are operational before leaving port. The vessel would be required to immediately report EM System issues and critical malfunctions to the service provider. Service providers would work with the vessel to resolve any critical issues while the vessel is at sea, and if the issue could

not be resolved at sea, the service provider would work directly with the vessel to schedule service in port. All service issues and communications would be reported to the EFP permit holders. NMFS and the EFP applicants would work to develop specific provisions detailing circumstances under which cessation of pollock fishing under this EFP would be required. This would be included as a component of each participating vessel's VMP. Any egregious violations of the proposed EFP, as specified under the terms of the EFP, would result in the permanent exclusion from participating in the EFP by the vessel in question.

VMPs would include detailed requirements for post-trip EM data transmission and review. Upon the completion and delivery of EFP pollock fishing trips, vessel captains would mail video hard drives and provide copies of their logbook pages to the designated video reviewer. After review, fisheries discard data would be transmitted through the AKFIN database to the NMFS Alaska Regional Office through a modified data channel stream that is currently being utilized for the Alaska fixed gear EM fishery. Transmission of this fisheries discard data would allow NMFS to determine discrepancies between vessel reported discard estimates and EM reviewer discard estimates. Video data collected under the proposed EFP would be treated akin to observer data such that video data is reviewed and stored to maintain its confidentiality. After video and logbook data entry and review, summary reports will be generated providing detailed information on industry self-reported discard data (via logbooks) and review of EM haul data to verify compliance with salmon record keeping and reporting regulations.

Species Retention: This proposed EFP would exempt the participating vessels from discard requirements. Participating pollock trawl CVs in the BS and GOA will operate as a maximized retention fishery such that all catch, with few exceptions, must be delivered to a shoreside processor or a tender vessel. These exceptions may include:

- After catch is stowed below decks, the remaining pollock that is removed from the deck and fishing gear during cleaning and other similar vessel operations;
- Large individual marine organisms, such as fish species longer than six feet in length, provided the species and the reason for discarding are properly recorded in the vessel logbook; and
- Unavoidable discard of catch resulting from an event that is beyond the control of the vessel operator or crew, provided each species, the estimated quantity discarded of that species, the location of the tow, and reason for discarding are all recorded in the logbook.

Shoreside Plant Observations and Biological Samples

The applicant proposes replacing at-sea observers with EM systems, which would impact offloading monitoring operations at shoreside processing facilities. Under the proposed EFP, responsibilities associated with the collection of pollock biological samples, normally taken by at-sea observers, would shift to observers at the shoreside plant. The current pollock trawl CV observer sampling scheme for pollock biological data will continue to be followed by observers aboard BS and GOA pollock trawl CVs not participating in the proposed EFP.

Under the proposed EFP, all pollock deliveries in the BS from those CVs participating in the EFP would be made to shoreside processing facilities with an additional dedicated plant observer to ensure precise Chinook salmon PSC accounting and the collection of biological samples. This would ensure that individual vessel-level accountability for both Chinook salmon and pollock (as established under the cooperative management program) would be maintained. Shoreside pollock deliveries in the GOA from all CVs and tender vessels participating in the EFP would be sampled by a plant observer at a rate that results in 30 percent of the total EFP shoreside deliveries being monitored. This monitoring rate is higher than rates achieved for the GOA trawl partial observer coverage sector in the years 2013 through 2018, is equal to the desired monitoring rate for the EM fixed gear sector,[1] and will result in 100 percent salmon census at the trip level. For these shoreside deliveries, the processing facility would report the individual ODDS trip number (from the catcher or tender vessel's logbook) on the fish ticket generated for each participating EM CV delivery they receive (regardless of whether there is a plant observer present).

At the shoreside processing facilities with an additional plant observer per the EFP, a random sampling scheme would be developed and approved by NMFS for the collection of pollock biological samples (sex, length, weight, and otoliths). The EFP applicants propose that developing a statistically robust sampling scheme will allow for an entire vessel's catch to be sampled at the plant rather than only from the sampled vessel hauls. In this way, a straightforward random sampling scheme at the plant with easier access to the entire catch may allow for more statistically robust data.

Under the proposed EFP, Observer Program protocols for Chinook and chum salmon accounting and salmon biological data collection in both the BS and GOA would remain the same.[2] The monitoring of the offload for salmon is referred to as the offload salmon retention count. While the offload sampling duties are different for observers dependent on region[2] (BS or GOA), a full accounting of salmon is required in both areas. All non-salmon species catch information would be transmitted to NMFS via landing reports (fish tickets). Salmon retention data (census counts) collected by the shoreside plant observer would be used by NMFS for inseason management purposes.

Exemptions

To meet the proposed EFP's objective, exemptions from regulations that currently prevent full or maximized retention of all catch and observer coverage requirements are necessary. The requested exemptions from the following regulations would allow participating vessels to achieve maximized retention for all harvested species *(i.e.,* minimize discards to the greatest extent practicable):

- The regulations at 50 CFR 679.7(a)(16) and 679.20(e) that require a vessel to discard specific species after an MRA has been reached in the BS and GOA.
- The regulation at 50 CFR 679.7(b)(2) that requires a CV to discard pollock after the vessel has reached the 300,000 lb trip limit.
- The regulation at 50 CFR 679.20(d)(2) that prohibits retention of a species when they are placed on prohibited species status (for the fisheries with incidental catch) such that any catch must be discarded at sea.
- The regulation at 50 CFR 679.20(d)(1)(iii) that states a vessel may not retain incidental species in an amount that exceeds the MRA when directed fishing for that species is prohibited.
- The regulation at 50 CFR 679.21(a) that requires a vessel operator engaged in directed fishing for groundfish, including pelagic pollock, in the GOA

[1] Alaska Fisheries Science Center and Alaska Regional Office. 2019. North Pacific Observer Program 2018 Annual Report. AFSC Processed Rep. 2019–04, 148 p. Alaska Fish, Sci, Cent., NOAA, Natl. Mar. Fish. Serv., 7600 Sand Point Way NE, Seattle, WA 98115.

[2] *https://www.fisheries.noaa.gov/resource/document/north-pacific-observer-sampling-manual.*

or BSAI to minimize catch of prohibited species and, with the exception of salmon which has a 100 percent retention requirement, discard all PSC at sea with a minimum of injury (note that halibut would already be exempt due to the Prohibited Species Donation Program).

The requested exemption from the following regulation would allow the EFP to fully test the use of EM as a compliance monitoring tool for ensuring that no salmon are discarded at sea:

- The regulation at 50 CFR 679.51(a)(2) that requires a CV directed fishing for pollock in the BS to carry an observer at all times.

The EFP applicants requested an exemption from the following regulation in order to provide critical flexibility at the shoreside plant as the EFP applicants work to coordinate the necessary number of shoreside observers under all potential EM delivery scenarios, especially under the first year of the EFP.

- The regulation at 50 CFR 679.51(a)(2) (iii) that states the time required for an observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period.

Permit Conditions, Review, and Effects

If the proposed EFP is granted, required vessel information for participating CVs and tender vessels, as well as shoreside processors for the BS and GOA and WGOA components, would be provided to NMFS prior to the start of EFP fishing for 2020.

The EFP permit holders would be required to be submit to NMFS a written interim report prior to the first 2021 Council meeting and a final report prior to the first 2022 Council Meeting for review and consideration by the NMFS Alaska Region and the Council. These reports would address the four objectives of the EFP noted in the Exempted Fishing Permit section of this notice. The report would include an analysis of the metrics listed in the EFP application to evaluate the success of the EFP in achieving the objectives of the EFP and the Council's EM Cooperative Research Plan as a compliance monitoring tool in the BS and GOA pollock trawl CV fisheries. The evaluation of success in meeting those objectives using those metrics would include a seasonal component to provide a broader overview of the resulting behaviors of participating vessels. Data and information from the 2019 NFWF Pilot Study would be used as a baseline for comparison between EM and observer monitoring. These reports would inform future Council analyses in consideration of implementing EM aboard pelagic pollock CVs in the BS and GOA as a compliance monitoring tool in these fisheries.

The data collection conducted under this EFP is not expected to have a significant impact on the human environment as detailed in the categorical exclusion prepared for this action (see **ADDRESSES**). Fishing operations (area fished, effort, gear used) are not expected to change under the proposed EFP, and current fishing strategies and practices are expected to continue. Impacts to the biological and physical environment are not expected to change and will likely be similar to those realized under current fishing operations. No additional groundfish or PSC (salmon, halibut, crab, or herring) is being requested as part of this EFP application.

In accordance with § 679.6, NMFS has determined that the application warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled to consider the EFP application during its October 2019 meeting, which will be held at the Land's End Resort, Homer, AK. The EFP application will also be provided to the Council's Scientific and Statistical Committee for review at the October Council meeting. The applicant has been invited to appear in support of the application.

Public Comments

Interested persons may comment on the application at the October 2019 Council meeting during public testimony or until October 9, 2019. Information regarding the meeting is available at the Council's website at *https://www.npfmc.org.* Copies of the application and categorical exclusion are available for review from *Regulations.gov* (see **ADDRESSES**).

Comments also may be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 18, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–20535 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Teacher at Sea Application.

OMB Control Number: 0648–0283.

Form Number(s): NOAA Form 57–10–01.

Type of Request: Regular submission (revision and extension of a currently approved information collection).

Number of Respondents: 375.

Average Hours per Response: Application: 1 hr. 15 min; Recommendations: 15 minutes; NOAA Health Services Questionnaire and Tuberculosis Screening Document: 45 minutes; Follow-up Report: 2 hours.

Burden Hours: 781.

Needs and Uses: Consistent with the support for research and education under the National Marine Sanctuaries Act (16 U.S.C. 32 § 1440) and other coastal and marine protection legislation, NOAA provides educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an ongoing research project with NOAA scientists.

The application solicits information from interested educators, and participants in the program are selected following review of their application. The application includes two recommendation forms: One from the applicant's Administrator and one from a colleague. The NOAA Health Services Questionnaire (NHSQ) and Tuberculosis Screening Document (TSD) is a requirement of anyone going to sea and must be completed by teachers who are selected for the program. Once an educator is selected and participates on a cruise, s/he writes a report detailing the events of the cruise and his/her ideas for classroom activities based on what was learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going to sea. NOAA does not collect

information from this universe of respondents for any other purpose.

The revisions to this collection included updating the miscellaneous costs and correcting the time to complete the NOAA Health Services Questionnaire and Tuberculosis Screening Document to more accurately reflect the correct burden.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–20611 Filed 9–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0121]

Agency Information Collection Activities; Comment Request; Form for Maintenance of Effort Waiver Requests

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 25, 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–0121. 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 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Todd Stephenson, 202–205–1645.

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: Form for Maintenance of Effort Waiver Requests.

OMB Control Number: 1810–0693.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 1,600.

Abstract: Section 8521(a) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) provides that a local educational agency (LEA) may receive funds under Title I, Part A and other ESEA ''covered programs'' for any fiscal year only if the State educational agency (SEA) finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. This provision is the maintenance of effort (MOE) requirements for LEAs under the ESEA.

If an LEA fails to meet the MOE requirement, under section 8521(b) of the ESEA, the SEA must reduce the amount of funds allocated under the programs covered by the MOE requirement in any fiscal year in the exact proportion by which the LEA fails to maintain effort by falling below 90 percent of either the combined fiscal effort per student or aggregate expenditures, if the LEA has also failed to maintain effort for 1 or more of the 5 immediately preceding fiscal years. In reducing an LEA's allocation because it failed to meet the MOE requirement, the SEA uses the measure most favorable to the LEA.

Section 8521(c) gives the U.S. Department of Education (ED) the authority to waive the ESEA's MOE requirement for an LEA if it would be equitable to grant the waiver due to an exceptional or uncontrollable circumstance such as a natural disaster or a change in the organizational structure of the LEA or a precipitous decline in the LEA's financial resources. If an MOE waiver is granted, the reduction required by section 8521(b) does not occur for that year.

A request for a waiver of the MOE requirement is discretionary. Only an LEA that has failed to maintain effort and that believes its failure justifies a waiver would request one. To review an MOE waiver request, ED relies primarily on expenditure, revenue, and other data relevant to an LEA's request provided by the SEA. To assist an SEA with submitting this information, ED developed an MOE waiver form as part of the 2009 Title I, Part A Waiver Guidance, which covered a range of waivers that ED invited at that time.

The purpose of this collection is to renew approval for the MOE waiver form. This MOE waiver form has been updated to reflect the statutory changes in the ESEA, as amended by the Every Student Succeeds Act. ED believes that the proposed form, which is slightly modified from the currently approved version, will enable an SEA to provide

the information needed in an efficient manner. This collection includes burden at the SEA level.

Dated: September 19, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–20663 Filed 9–23–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14999–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Four Lakes Task Force

On June 20, 2019, Four Lakes Task Force filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Edenville Dam Hydroelectric Project located on the Tittabawassee and Tobacco River system approximately one mile north of Edenville, in Gladwin and Midland Counties, Michigan. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project is located immediately upstream of the confluence of Tittabawassee and Tobacco rivers and would consist of the following facilities: (1) A 6-square-mile, 40,000 acre-feet at normal maximum surface elevation of 676.1 National Geodetic Vertical Datum 29 (NGVD29) existing reservoir (Wixom Lake); (2) a 6,200.0-foot-long existing earthen gravity dam with a minimum crest elevation of 682.1 feet NGVD29 including: (i) a 625.0-foot-long left (south-east) embankment; (ii) a 68.6-foot-wide spillway containing two 20.0-foot-wide by 9.5-foot-high steel Tainter gates and one 23.6-foot-wide by 9.5-foot-high steel Tainter gate each with a sill elevation of 667.8 feet NGVD29; (iii) a 50.5-foot-wide, 114.7-foot-long existing concrete and steel powerhouse containing two 2.4 megawatts (MW) turbine-generators; (iv) a 3,428.7-foot-long center section embankment; (v) a 60.0-foot-wide, 60.0-foot-long new concrete and steel powerhouse containing one 1.2 MW turbine-generator; (vi) a 72.2-foot-wide spillway containing two 23.6-foot-wide by 9.5-foot-high steel Tainter gates and one 20.0-foot-wide by 9.5-foot-high steel Tainter gate each with a sill elevation of 667.8 feet NGVD29; and (vii) a 1,895.0-foot-long right (west) embankment; (3) a 50.6 to 65.0-foot-wide, 47.0-foot-long tailrace; (4) an 800-foot-long, 2.3 kilovolt existing transmission line conveying the project power to Edenville Dam Substation owned by Consumers Energy; and (5) appurtenant facilities. The proposed project would have an annual generation of 21,000 megawatt-hours.

Applicant Contact: David E. Kepler, II, Four Lakes Task Force, 233 E. Larkin St., Suite 2, Midland, MI 48640; phone: (989) 636–7701.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14999–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14999) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 18, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20628 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–2823–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Isabella Wind, LLC

This is a supplemental notice in the above-referenced proceeding of Isabella 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 October 8, 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: September 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20625 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–018.
Applicants: Public Service Company of Colorado.
Description: Supplement to January 11, 2019 Triennial MBR Update (Treatment of TRM/CBM in SIL Study) of Public Service Company of Colorado.
Filed Date: 9/17/19.
Accession Number: 20190917–5140.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: ER15–1456–008; ER10–2959–015; ER11–3859–019; ER19–967–002; ER15–748–005; ER16–999–009; ER11–4634–008; ER10–2934–014; ER19–968–002; ER18–920–004; ER17–436–007; ER14–1699–009; ER10–2615–013; ER11–2335–014; ER10–1933–006; ER15–1457–008; ER19–464–001.
Applicants: Beaver Falls, L.L.C., Chambers Cogeneration, Limited Partnership, Dighton Power, LLC, Fairless Energy, L.L.C., Garrison Energy Center LLC, Greenleaf Energy Unit 1 LLC, Hazleton Generation LLC, Logan Generating Company, L.P., Manchester Street, L.L.C., Marco DM Holdings, L.L.C., Marcus Hook Energy, L.P., Milford Power, LLC, Plum Point Energy Associates, LLC, Plum Point Services Company, LLC, RockGen Energy, LLC, Syracuse, L.L.C., Vermillion Power, L.L.C.
Description: Supplement to August 8, 2019 Notice of Change in Status of the SEG MBR Entities, et al.
Filed Date: 9/11/19.
Accession Number: 20190911–5143.
Comments Due: 5 p.m. ET 10/2/19.

Docket Numbers: ER17–802–006.
Applicants: Exelon Generation Company, LLC.
Description: Compliance filing: Informational Filing Regarding Mothballing of SE Chicago Energy Project Units to be effective N/A.
Filed Date: 9/18/19.
Accession Number: 20190918–5076.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ER18–1266–002.
Applicants: Moxie Freedom LLC.
Description: Report Filing: Refund Report to be effective N/A.
Filed Date: 9/18/19.
Accession Number: 20190918–5125.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ER19–470–002.
Applicants: ISO New England Inc., Eversource Energy Service Company.
Description: Compliance filing: Update Eff Date of Previously Filed Revisions Implementing Trans. Chrg Exemption to be effective 12/1/2019.
Filed Date: 9/18/19.
Accession Number: 20190918–5139.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ER19–2276–001.
Applicants: New York Independent System Operator, Inc.
Description: Tariff Amendment: NYISO response to deficiency letter re: June 27, 2019 DER filing to be effective 5/1/2020.
Filed Date: 9/18/19.
Accession Number: 20190918–5138.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ER19–2825–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Western Area Power Administration Contract Services Agreement Amendment to be effective 11/16/2019.
Filed Date: 9/17/19.
Accession Number: 20190917–5115.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: ER19–2826–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 5128, Queue No. AD1–156 to be effective 6/15/2018.
Filed Date: 9/17/19.
Accession Number: 20190917–5121.
Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: ER19–2827–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2987R1 Associated Electric/PSC of OK/KAMO Electric Inter Agr to be effective 9/16/2019.
Filed Date: 9/18/19.
Accession Number: 20190918–5010.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ER19–2828–000.
Applicants: AEP Ohio Transmission Company, Inc., Ohio Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP Ohio submits Revised ILDSA, SA No. 1336 and 8 Facilities Agreements to be effective 8/21/2019.
Filed Date: 9/18/19.
Accession Number: 20190918–5059.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ER19–2829–000.
Applicants: Phalanx Energy Services, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 9/19/2019.
Filed Date: 9/18/19.
Accession Number: 20190918–5075.
Comments Due: 5 p.m. ET 10/9/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–55–000.
Applicants: ITC Great Plains, LLC.
Description: Application under Section 204 of the Federal Power Act for Authorization to Extend Maturity of Revolving Credit Facility of ITC Great Plains, LLC.
Filed Date: 9/18/19.
Accession Number: 20190918–5110.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ES19–56–000.
Applicants: ITC Midwest LLC.
Description: Application under Section 204 of the Federal Power Act for Authorization to Extend Maturity of Revolving Credit Facility of ITC Midwest LLC.
Filed Date: 9/18/19.
Accession Number: 20190918–5113.
Comments Due: 5 p.m. ET 10/9/19.

Docket Numbers: ES19–57–000.
Applicants: International Transmission Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Extend Maturity of Revolving Credit Facility of International Transmission Company.
Filed Date: 9/18/19.
Accession Number: 20190918–5124.
Comments Due: 5 p.m. ET 10/9/19.

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: September 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20622 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–2822–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Airport Solar LLC

This is a supplemental notice in the above-referenced proceeding of Airport Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 8, 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: September 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20620 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1567–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091719 Negotiated Rates—Mercuria Energy America, Inc. R–7540–02 to be effective 11/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5038.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1568–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091719 Negotiated Rates—Mercuria Energy America, Inc. R–7540–19 to be effective 11/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5047.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1569–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091719 Negotiated Rates—Freepoint Commodities LLC R–7250–25 to be effective 11/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5048.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1570–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091719 Negotiated Rates—Freepoint Commodities LLC R–7250–26 to be effective 11/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5054.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1571–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091719 Negotiated Rates—Freepoint Commodities LLC R–7250–27 to be effective 11/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5055.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1572–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 091719 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–17 to be effective 11/1/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5062.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: RP19–1573–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—September 17 2019 Continental 1011192 to be effective 9/17/2019.

Filed Date: 9/17/19.

Accession Number: 20190917–5074.

Comments Due: 5 p.m. ET 9/30/19.

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: September 18, 2019.

Nathaniel J. Davis Sr.,

Deputy Secretary.

[FR Doc. 2019–20623 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–500–000]

Notice of Intent To Prepare an Environmental Assessment for the Northern Natural Gas Company Proposed Palmyra to South Sioux City A-Line Abandonment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Palmyra to South Sioux City A-line Abandonment Project involving the abandonment of pipeline facilities in Otoe, Lancaster, Saunders, Dodge, Burt, Thurston, and Dakota Counties, Nebraska and the construction and operation of facilities in Otoe, Dakota, and Dodge Counties, Nebraska by Northern Natural Gas Company (Northern). The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC, on or before 5:00pm Eastern Time on October 18, 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 August 15, 2019, you will need to file those comments in Docket No. CP19–500–000 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.

Northern 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 (CP19–500–000) 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

The Palmyra to South Sioux City A-line Abandonment Project consists of the following:

- Abandonment of 44.2 miles of 20-inch-diameter and 14.8 miles of 16-inch-diameter mainline in Otoe, Lancaster, Saunders, and Dodge Counties, Nebraska;
- abandonment of 58.7 miles of 16-inch-diameter mainline in Dodge, Burt, Thurston, and Dakota Counties, Nebraska;
- construction of 1.7 miles of new 24-inch-diameter pipeline loop, a pig launcher, and two valve sites in Otoe County, Nebraska; [1] and
- construction of 2.5 miles of a new 24-inch-diameter pipeline loop, a pig launcher, and a valve site in Dodge County, Nebraska.

According to Northern, its project would improve reliability and provide for the safer long-term operation of its system. The general location of the project facilities is shown in appendix 1.[2]

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity. A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this

Land Requirements for Construction

The A-line disconnection would temporarily disturb 2 acres of land. The construction of pipeline loops and associated aboveground appurtenances would disturb about 121.6 acres of land. Following construction, Northern would maintain 16.9 acres for permanent operation of the proposed project's facilities; the remaining acreage would be restored and revert to former use. At the disconnect sites, 100% of the A-line is co-located with other Northern pipelines.

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 eLibrary [3] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

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.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] 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 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.,* CP19–500–000). 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: September 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–20624 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

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.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–6–000]

Notice of Joint Meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission

The Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) will hold a joint meeting on Wednesday, September 25, 2019 at the headquarters of the Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The open meeting is expected to begin at 9:00 a.m. and conclude at approximately 11:15 a.m. Eastern Time. Members of the public may attend the open session. Commissioners from both agencies are expected to participate.

The format for the joint meeting will consist of discussions between the two sets of Commissioners following presentations by their respective staffs. In addition, representatives of the North American Electric Reliability Corporation (NERC) will attend and participate in this meeting. Attached is an agenda of the meeting.

A free webcast of this event will be made available through the NRC website, at *www.nrc.gov.* In addition, the event will be transcribed and the transcription will be made available through the NRC website approximately three business days after the meeting.

All interested persons are invited to the open meeting. Pre-registration is not required and there is no fee to attend this joint meeting. Questions about the meeting should be directed to Sarah McKinley at *sarah.mckinley@ferc.gov* or by phone at 202–502–8004.

Dated: September 18, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20630 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File License Applications, Filing of Pre-Application Documents (PADs), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pads and Scoping Document, and Identification of Issues and Associated Study Requests

	Project No.
Center Rivers Power, NH LLC	2287–053
Center Rivers Power, NH LLC	2288–057
Great Lakes Hydro America, LLC	2300–052
Great Lakes Hydro America, LLC	2311–067
Great Lakes Hydro America, LLC	2326–054
Great Lakes Hydro America, LLC	2327–047
Great Lakes Hydro America, LLC	2422–058
Great Lakes Hydro America, LLC	2423–031

a. *Type of Filing:* Notices of Intent to File License Applications for New Licenses and Commencing Pre-filing Process.

b. *Submitted By:* Center Rivers Power, NH LLC and Great Lakes Hydro America, LLC.

c. *Name of Projects:* J. Brodie Smith, Gorham, Shelburne, Upper Gorham, Cross Power, Cascade, Sawmill, and Riverside Hydroelectric Projects.

d. *Location:* On the Androscoggin River, in Coos County, New Hampshire.

e. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

f. *Potential Applicant Contacts:* Mr. Curtis R. Mooney, Project Manager, Central Rivers Power NH, LLC, 59 Ayers Island Road, Bristol, New Hampshire 03222, (603) 744–0846. Randy Dorman, Great Lakes Hydro America, LLC, Brookfield Renewable, 150 Main St., Lewiston, Maine 04240, (207) 755–5605, *randy.dorman@brookfieldrenewable.com.*

g. *FERC Contact:* Ryan Hansen at (202) 502–8074 or email at *ryan.hansen@ferc.gov.*

h. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item m below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

i. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

j. With this notice, we are designating Center Rivers Power, NH LLC and Great Lakes Hydro America, LLC as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

k. Center Rivers Power, NH LLC and Great Lakes Hydro America, LLC filed with the Commission Pre-Application Documents (PADs; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

l. Copies of the PADs are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). Copies are also available for inspection and reproduction at the address in paragraph f.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

m. With this notice, we are soliciting comments on the PADs and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PADs and SD1, and study requests should be sent to the address above in paragraph f. In addition, all comments on the PADs and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents 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.* 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(s) P–2287–053, P–2288–057, P–2300–052, P–2311–067, P–2326–054, P–2327–047, P–2422–058, and/or P–2423–031.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PADs or SD1, and any agency requesting cooperating status must do so by November 25, 2019.

n. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the projects at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings,

and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Tuesday, October 22, 2019.
Time: 2 p.m.
Location: Town and Country Inn, 1033 20, US–2, Shelburne, NH 03581.
Phone: (603) 466–3315.

Evening Scoping Meeting

Date: Tuesday, October 22, 2019.
Time: 6 p.m.
Location: Town and Country Inn, 1033 20, US–2, Shelburne, NH 03581.
Phone: (603) 466–3315.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph l. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The licensee and Commission staff will conduct an *Environmental Site Review* of the projects on October 22 and 23, 2019.

Date: October 22, 2019.
Time: 10:00 a.m.
Location: J. Brodie Smith Hydroelectric Project, 99 Glen Avenue, Berlin, New Hampshire 03570.
Projects: J. Brodie Smith (P–2287), Gorham (P–2288).
Date: October 23, 2019.
Time: 9 a.m.
Location: Sawmill Hydroelectric Project, 972 Main Street, Berlin, New Hampshire 03570.
Projects: Sawmill (P–2422), Riverside (P–2423), Cross Power (P–2326), Upper Gorham (P–2311), Cascade (P–2327), Shelburne (P–2300).

All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Curtis Mooney of Center Rivers Power at (603) 744–0846 or Mr. Randy Dorman of Great Lakes Hydro America at (207) 755–5605 on or before October 18, 2019.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PADs in preparation for the scoping meetings. Directions on how to obtain a copy of the PADs and SD1 are included in item l. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: September 18, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–20631 Filed 9–23–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10000–24–OA]

Notification of a Public Meeting of the Science Advisory Board All-Ages Lead Model Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meeting.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB's All-Ages Lead Model (AALM) Panel. The Panel will meet to conduct a peer review the EPA's AALM External Review Draft Version 2.0, comprising the model's software, technical documentation, and user manual (hereafter referred to collectively as AALM 2.0). The AALM 2.0 was developed by EPA's Office of Research and Development.

DATES: The two-day public meeting will be held October 17–18, 2019, from 9 a.m. until 5:30 p.m. the first day and from 8:30 a.m. until 3:30 p.m. the second day (Eastern Time).

ADDRESSES: The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 20002.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this public meeting may contact Iris Goodman, Designated Federal Officer (DFO), EPA Science Advisory Board Staff (SAB) Office, by telephone at (202) 564–2164, or by email at *goodman.iris@epa.gov.* The SAB mailing address is U.S. EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. General information about the SAB, including information concerning the SAB meeting announced in this notice, can be found at the SAB web page at *http://epa.gov/sab.*

Technical Contact for EPA's Draft Reports: For information concerning the EPA materials to be reviewed, please contact James Brown, by telephone at (919) 541–0765 or by email at *brown.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB AALM Review Panel will hold a public meeting for its peer review of the AALM 2.0, which was developed by EPA's Office of Research and Development (ORD).

EPA's ORD requested that the SAB conduct a peer review of the AALM 2.0. The EPA SAB Staff Office formed a Panel of subject matter experts to provide advice to the Administrator through the chartered board regarding the AALM 2.0. The AALM Panel will provide advice to the Administrator through the chartered SAB. The public meeting on October 17–18, 2019, will be a two-day review of the AALM 2.0. All draft reports developed by SAB panels, committees, or workgroups are reviewed and approved by the Chartered SAB through a quality review process before being finalized and transmitted to the EPA Administrator. The AALM Review Panel will comply with the provisions

of FACA and all appropriate SAB Staff Office procedural policies.

Availability of the Meeting Materials: Prior to the meeting, the following materials will be posted on the SAB website (*http://www.epa.gov/sab*): The meeting agenda, charge questions, EPA presentations, the link to the AALM 2.0 software, technical documentation, and user manual. To locate meeting materials, go to *www.epa.gov/sab* and click on ''Upcoming and Recent Meetings'' to get to the SAB calendar. From the calendar, click on October 17, 2019. For questions concerning EPA's AALM materials to be reviewed, please contact Dr. James Brown, EPA Office of Research and Development, at *brown.james@epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to the EPA program offices. The process for submitting comments to a federal advisory committee is thus different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory panels, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the EPA's charge, meeting materials, or the group providing the advice. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the pubic wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting to make an oral presentation at the meeting will be limited to five minutes during a public comment period. Interested parties wishing to provide comments should contact Iris Goodman, DFO, in writing (preferably via email), at the contact information noted above by October 10, 2019, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by the AALM Review Panel, statements should be supplied to the DFO (preferably via email) at the contact information above by October 10, 2019 (7 days prior to meeting). It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Iris Goodman at 202–564–2164, or *goodman.iris@epa.gov,* preferably at least ten days prior to the meeting to give the EPA as much time as possible to process your request.

Dated: September 16, 2019.

Khanna Johnston,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2019–20677 Filed 9–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2019–0296; FRL–9046–9]

Proposed Information Collection Request; Comment Request; Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions'' (EPA ICR No. 2243.08, OMB Control No. 2020–0033) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2020. An Agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2019–0296, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The 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: Candi Schaedle, NEPA Compliance Division, Office of Federal Activities, Mail Code 2203A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–6121; fax number: 202–564–0070; email address: *schaedle.candi@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 the EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register**

notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347 establishes a national policy for the environment. The Council on Environmental Quality (CEQ) oversees the NEPA implementation. CEQ's Regulations at 40 CFR parts 1500 through 1508 set the standard for NEPA compliance. They also require agencies to establish their own NEPA implementing procedures. The EPA's procedures for implementing NEPA are found in 40 CFR part 6. Through this part, the EPA adopted the CEQ Regulations and supplemented those regulations for actions proposed by the EPA that are subject to NEPA requirements. The EPA actions subject to NEPA include the award of wastewater treatment construction grants under Title II of the Clean Water Act, the EPA's issuance of new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act, certain research and development projects, development and issuance of regulations, the EPA actions involving renovations or new construction of EPA facilities, and certain grants awarded for projects authorized by Congress through the agency's annual appropriations act. The EPA is collecting information from certain applicants as part of the process of complying with either NEPA or Executive Order 12114 (''Environmental Effects Abroad of Major Federal Actions''). The EPA's NEPA regulations apply to actions of the EPA that are subject to NEPA in order to ensure that environmental information is available to the agency's decision-makers and the public before decisions are made and before actions are taken. When the EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the agency generally follows its NEPA procedures. Compliance with the procedures is the responsibility of the EPA's Responsible Officials, and for applicant proposed actions applicants may be required to provide environmental information to the EPA as part of the environmental review process. For this ICR, applicant-proposed projects subject to either NEPA or Executive Order 12114 (and that are not addressed in other EPA programs' ICRs) are addressed through the NEPA process.

Form Numbers: None.

Respondents/Affected Entities: Entities potentially affected by this action are certain grant or permit applicants who must submit environmental information documentation to the EPA for their projects to comply with NEPA or Executive Order 12114, including Wastewater Treatment Construction Grants Program facilities, State and Tribal Assistance Grant recipients, and new source National Pollutant Discharge Elimination System permittees.

Respondent's Obligation to Respond: Voluntary.

Estimated Number of Respondents: 26 (total).

Frequency of Response: On occasion.

Total Estimated Burden: 4,720 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $394,461 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 8,957 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an adjustment change in the size of the respondent universe.

Dated: September 19, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–20645 Filed 9–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9999–24–OA]

National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency office of Public Engagement and Environmental Education is soliciting applications for environmental education professionals for consideration to serve on the National Environmental Education Advisory Council (NEEAC). There are two vacancies on the Advisory Council that must be filled. We are seeking applications to fill one State Department of Education and/or Natural Resources position and one Business and Industry position. Additional avenues and resources may be utilized in the solicitation of applications. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

DATES: Applications should be submitted by October 11, 2019.

ADDRESSES: Submit non-electronic application materials to Javier Araujo, Designated Federal Officer, National Environmental Education Advisory Council, U.S. Environmental Protection Agency, Office of Public Engagement and Environmental Education (MC 1704A), 1200 Pennsylvania Ave. NW, Room 1426 (WJCN), Washington, DC 20460, Phone: (202) 564–2642, Fax (202) 564–2753, email: *araujo.javier@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations, please contact Mr. Javier Araujo, Designated Federal Officer, *araujo.javier@epa.gov,* 202–564–2642, U.S. EPA, Office of Environmental Education, William Jefferson Clinton North Room 1426, 1200 Pennsylvania Avenue NW, Washington, DC 20460. General Information concerning NEEAC can be found on the EPA website at: *http://www2.epa.gov/education/national-environmental-education-advisory-council.*

SUPPLEMENTARY INFORMATION: The National Environmental Education Act requires that the council be comprised of (11) members appointed by the Administrator of the EPA. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following sectors: Primary and secondary education (one of whom shall be a classroom teacher), two members; colleges and universities, two members; business and industry, two members; non-profit organizations, two members; state departments of education and/or natural resources, two members, and one member to represent senior Americans. Members are chosen to represent various geographic regions of the country, and the Council strives for a diverse representation. The professional backgrounds of Council members should include education, science, policy, or other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. *Members of the council shall receive compensation and allowances, including travel* expenses at a rate fixed by the Administrator.

Expertise Sought: The NEEAC staff office seeks candidates with demonstrated experience and or knowledge in any of the following environmental education issue areas: (a) Integrating environmental education into state and local education reform and improvement; (b) state, local and

tribal level capacity building for environmental education; (c) cross-sector partnerships to foster environmental education; (d) leveraging resources for environmental education; (e) design and implementation of environmental education research; (f) evaluation methodology; professional development for teachers and other education professionals; and targeting under-represented audiences, including low-income, multi-cultural, senior citizens and rural communities audiences.

The NEEAC is best served by a structurally and geographically diverse group of individuals. Each individual will demonstrate the ability to make a time commitment. In addition, the individual will demonstrate both strong leadership and analytical skills. Also, strong writing skills, communication skills and the ability to evaluate programs in an unbiased manner are essential. Team players, which can meet deadlines and review items on short notice are ideal candidates.

How to submit applications: Any interested and qualified individuals may be considered for appointment on the National Environmental Education Advisory Council. Applications should be submitted in electronic format to the Designated Federal Officer, Javier Araujo, *araujo.javier@epa.gov* and contain the following: Contact information including name, address, phone and fax numbers and an email address; a curriculum vitae or resume; the specific area of expertise in environmental education and the sector or slot the applicant is applying for; recent service on other national advisory committees or national professional organizations; a one page commentary on the applicant's philosophy regarding the need for, development, implementation and or management of environmental education nationally.

Persons having questions about the application procedure or who are unable to submit applications by electronic means, should contact Javier Araujo (DFO), at the contact information provided above in this notice. Non-electronic submissions must contain the same information as the electronic. The NEEAC staff Office will acknowledge receipt of the application. The NEEAC staff office will develop a short list of candidates for more detailed consideration. The short list candidates will be required to fill out the Confidential Disclosure Form for Special Government Employees serving Federal Advisory Committees at the U.S. Environmental Protection Agency. (EPA form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which include membership on a Federal Advisory Committee) and private interests and activities and the appearance of a lack of impartiality as defined by Federal regulation. The form may be viewed and downloaded from the following URL address. *http://intranet.epa.gov/ogc/ethics/EPA3110-48ver3.pdf.*

Dated: September 4, 2019.

Elizabeth (Tate) Bennett,

Associate Administrator, Office of Public Engagement and Environmental Education.

Javier Araujo,

Designated Federal Officer, Environmental Education Specialist.

[FR Doc. 2019–20680 Filed 9–23–19; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

TIME AND DATE: Thursday, October 10, 2019, at 9:30 a.m. (EST).

PLACE: 811 Vermont Avenue NW, Room 1126, Washington, DC 20571.

STATUS: Portions of this meeting will be open to the public. Remaining items will be closed to the public.

MATTERS TO BE CONSIDERED: Open Meeting of the Board of Directors of the Export-Import Bank of the United States (EXIM Bank):

1. PEFCO Secured Notes Resolutions for FY 2020
2. Small Business Update

PORTIONS OPEN TO THE PUBLIC: The meeting will be open to public participation for Item No. 1 & 2 only.

CONTACT PERSON FOR MORE INFORMATION: Members of the public who wish to attend the meeting should call Joyce Brotemarkle Stone, Office of the General Counsel, 811 Vermont Avenue NW, Washington, DC 20571 (202) 565–3336 by 4:00 p.m. (EST), Tuesday, October 8, 2019.

Joyce Brotemarkle Stone,

Assistant Corporate Secretary.

[FR Doc. 2019–20828 Filed 9–20–19; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1222]

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 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 November 25, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1222.

Title: Inmate Calling Services Annual Reporting, Certification, and Consumer Disclosure Requirements.

Form Number(s): FCC Form 2301(a) and FCC Form 2301(b).

Type of Review: Revision of a currently-approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 5 hours–80 hours.

Frequency of Response: Annual reporting and certification requirements; third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 4(j), 201, 225, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201, 225, 276, and 303(r).

Total Annual Burden: 2,000 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission anticipates treating as presumptively confidential any particular information identified as proprietary by providers of inmate calling services (ICS).

Needs and Uses: Section 201 of the Communications Act of 1934 Act, as amended (Act), 47 U.S.C. 201, requires that ICS providers' interstate and international rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including ICS providers) be fairly compensated for completed calls.

In the Second Report and Order and Third Further Notice of Proposed Rulemaking (*Second Report and Order*), WC Docket No. 12–375, FCC 15–136, the Commission undertook comprehensive reform of the ICS rules. The Commission, among other things, established new rate caps for interstate and intrastate ICS calls and limited and capped ancillary service charges. To enable the Commission to ensure compliance with the rules adopted in the *Second Report and Order* and monitor the effectiveness of the ICS reforms, the Commission required all ICS providers to file annual reports providing data and other information on their ICS operations.

In particular, the Commission required each ICS provider to file a report annually specifying, for the prior calendar year: Interstate, international, and intrastate minutes of use by facility; and the name, size, and type of facility being served; fees for any ancillary services, the amount of these fees, and the number of times each fee was imposed; monthly site commission payments; rates and minutes of use for video calling services by facility, as well as ancillary fee charges for such services; the number of disability-related calls, problems associated with such calls, and ancillary fees charged in connection with such calls; and the number of complaints received related to, for example, dropped calls and poor call quality and the number of instances of each by TTY and TRS users. The annual reports ensure that the Commission has access to the information it needs to fulfill its regulatory duties, while minimizing the burden on ICS providers.

The Commission required that an ICS provider certify annually the accuracy of the data and other information submitted in the provider's annual report and the provider's compliance with the Commission's ICS rates. Pursuant to the authority delegated to it by the Commission in the *Second Report and Order,* the Commission's Wireline Competition Bureau (Bureau) created standardized templates for the annual reports (FCC Form 2301(a)) and certifications (FCC Form 2301(b)). The Bureau provided instructions that explain the reporting and certification requirements and reduce the burden of the data collection. The Commission also required ICS providers to disclose to consumers their interstate, intrastate, and international rates and ancillary service charges.

On June 13, 2017, the D.C. Circuit vacated the video visitation requirements in the annual report. Pursuant to the D.C. Circuit's mandate, the Commission has removed the video visitation reporting requirements in the annual report and amended the instructions to reflect the removal of this requirement. As part of the Commission's continued administration of the ICS data collection, the Commission has modified the instructions for FCC Form 2301(a) and FCC Form 2301(b) in several additional respects. These changes make the instructions clearer and will make the annual reports easier to understand and analyze. The amended instructions require ICS providers to: Submit all reports using the electronic Excel template provided by the Commission, and to provide the data in a machine-readable, manipulatable format; provide city and state information for each facility served; group the facilities served by underlying contracts in the section for ICS Rates; separately report and explain their rates for debit/prepaid calls and collect calls; report fixed site commission payments by facility as well as by contract; and explain certain entries, including any entry that omits requested information. These changes will impose only a minimal additional burden on providers because they address only information that providers usually and customarily compile in the normal course of their business activities. The information will help the Commission continue to analyze changes in the ICS industry, to monitor compliance with the ICS rules, and to enforce these rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–20633 Filed 9–23–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

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 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 November 25, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

Title: Incumbent 39 GHz Licensee Payment Instruction.

Form Number: FCC Form 1877.

Type of Review: New information collection.

Respondents: Individuals or households and Business or other for-profit.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 309(j)(8)(G).

Total Annual Burden: 50 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The information collection includes information identifying bank accounts and providing account and routing numbers to access those accounts. FCC considers that information to be records not routinely available for public inspection under 47 CFR 0.457, and exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Needs and Uses: The Commission is requesting Office of Management and Budget (OMB) approval for a new information collection as described below.

The Commission is conducting an auction for 39 GHz spectrum pursuant to 47 U.S.C. 309(j)(8)(G) in which it is offering incumbent licensees a share of auction proceeds as an incentive to relinquish voluntarily previously granted spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible use rules.

The information in the form is needed to make payments of the respective shares of auction proceeds. The information required for a licensee with respect to payments in incentive auctions is covered under 47 CFR 1.2115(b).

The information collection for which we are requesting approval is necessary for incumbent licensees to instruct the Commission on how to pay the approved amounts due to them, and for the payees to make certifications that reduce the risk of waste, fraud, abuse and improper payments.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–20632 Filed 9–23–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for a reinstatement of the existing collection of information requirements under Commission rules concerning Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries.

DATES: Written comments must be submitted on or before October 24, 2019.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725 17th Street NW, Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV*, Fax: (202) 395–5806 and to:

Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573, Telephone: (202) 523–5800, *omd@fmc.gov.*

Please reference the information collection's title and OMB approved number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Donna Lee at 202–523–5800 or email: *omd@fmc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Commission invites the general public and other Federal agencies to comment on the proposed information collection. On May 31, 2019, the Commission published a notice and request for comment in the **Federal Register** (84 FR 25274) regarding the agency's request to OMB for reinstatement for information collections as required by the Paperwork Reduction Act of 1995. The Commission received no comments on the request for reinstatement of OMB approval. The Commission has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR part 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries.

OMB Approval Number: 3072–0018 (Expired March 31, 2019)

Abstract: The Shipping Act of 1984 (the Act), 46 U.S.C. 40101–41309 (2006), as modified by Public Law 105–258 (The Ocean Shipping Reform Act of 1998) and Section 424 of Public Law 105–383 (The Coast Guard Authorization Act of 1998), provides that no person in the United States may act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The Commission has implemented the Act's OTI requirements in regulations contained in 46 CFR part 515, including financial responsibility Forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, its related license

application Form FMC–18, and the related foreign-based unlicensed NVOCC registration/renewal Form FMC–65.

Type of Request: Reinstatement, with changes of a previously approved collection for which approval has expired.

Proposed Changes: The proposed changes to the collection reflect proposed changes to Part 515 in a recent rulemaking, which include: (a) Removing optional paper license application process and related reference to fee amounts; (b) clarifying language specifying who can be the Qualifying Individual in a partnership between entities other than individuals; (c) updating description of processes regarding renewals, bonds, and terminations; (d) expanding the types of applications subject to direct Commission review to include applicants employing the same officers, managers, or members of an OTI whose license was revoked or denied within the previous three years; (e) clarifying that sureties provide the organization number of OTIs with claim details for registered NVOCCs; (f) adding the submission of Form FMC–1 prior to being licensed; and (g) deleting reference to availability of the Regulated Person's Index (RPI) upon request.

Most of the proposed changes seek to streamline licensing, registration, renewal, and termination processes so that the Commission, licensees and registrants can receive and transmit documents electronically; remove references to paper license application and registration forms on the basis that no requests for waivers of electronic filing requirement were received; and assist carriers in verifying an NVOCC's compliance with OTI licensing, tariff, and financial responsibility requirements by adding the requirement that Form FMC–1 be submitted prior to issuance of an OTI license. Electronic filing of applications, registrations, and financial responsibility documents reduces cost to OTIs and the Commission and facilitates Commission review and issuance of OTI licenses and registrations. The Commission currently issues OTI licenses upon receipt of evidence of financial responsibility. Licensees that are NVOCCs must publish a tariff and notify the Commission using Form FMC–1, prior to commencing NVOCC service. The proposed change to issue an NVOCC OTI license upon receipt of financial responsibility and Form FMC–1 will assist common carriers in determining an NVOCC's compliance with the OTI licensing, tariff, and financial responsibility requirements. Foreign-registered NVOCCs submit a Form FMC–65, Form FMC–1, and evidence of financial responsibility to the Commission prior to commencing NVOCC service. The Commission is clarifying that sureties provide the organization number of OTIs with claim details for registered NVOCCs. The sureties currently provide similar identifying information for licensed OTIs. Data contained in the RPI can be downloaded at no cost from the Commission's website, and therefore the Commission is proposing to delete reference to availability of the RPI upon request.

Purpose: The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with the Act and regulations, and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing. The Commission would also not be able to effectively assess the compliance of foreign-based, unlicensed NVOCCs without the required registration information.

Frequency: This information is collected when applicants apply for a license or submit a registration, complete the triennial renewal, or when existing licensees or registrants change certain information in their application forms.

Type of Respondents: The types of respondents are persons desiring to obtain or maintain a license or registration to act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier, or both.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 6,475 entities.

Estimated Time per Response: The time per response to complete application Form FMC–18 averages 2 hours and to complete the triennial renewal is 10 minutes. The time to complete a financial responsibility form averages 20 minutes. The time to complete Form FMC–65 to submit or renew a registration as a foreign-based, unlicensed NVOCC averages 10 minutes.

Total Annual Burden: The Commission estimates the total annual burden at 3,918 hours.

Rachel Dickon,

Secretary.

[FR Doc. 2019–20614 Filed 9–23–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 24, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Central Bancshares, Inc., Muscatine, Iowa;* to acquire the outstanding voting shares of Walcott Trust & Savings Bank, Walcott, Iowa, pursuant to section 3 of the Bank Holding Company Act. In connection with this application, Central

Bancshares, Inc., has applied to acquire Hail, Inc., Walcott, Iowa, and thereby engage in the sale of insurance in a town of less than 5,000 in population pursuant to section 4 of the Bank Holding Company Act and 12 CFR 225.28(b)(11)(iii)(A).

Board of Governors of the Federal Reserve System, September 18, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–20564 Filed 9–23–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1215]

Post-Marketing Pediatric-Focused Product Safety Reviews; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice, establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to collect comments related to the post-marketing pediatric-focused safety reviews of products posted between April 12, 2019, and September 23, 2019, on FDA's website but not presented at the September 26 or 27, 2019, Joint Pediatric Advisory Committee (PAC) and Drug Safety and Risk Management (DSaRM) Advisory Committee meeting. These reviews are intended to be available for review and comment by members of the PAC, interested parties (such as academic researchers, regulated industries, consortia, and patient groups), and the general public.

DATES: Submit either electronic or written comments by October 7, 2019.

ADDRESSES: FDA is establishing a docket for public comment on this document. The docket number is FDA–2019–N–1215. The docket will close on October 7, 2019. Submit either electronic or written comments by that date. Please note that late, untimely comments will not be considered. Electronic comments must be submitted on or before October 7, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 7, 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.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to make available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–1215 for ''Post-Marketing Pediatric-Focused Product Safety Reviews; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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: Marieann Brill, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5154, Silver Spring, MD 20993, 240–402–3838, *marieann.brill@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our Nation's food supply, cosmetics, and products that emit radiation. FDA also has responsibility for regulating the manufacturing, marketing, and distribution of tobacco products to protect the public health and to reduce tobacco use by minors.

FDA is establishing a public docket, Docket No. FDA–2019–N–1215, to receive input on post-marketing pediatric-focused safety reviews of

products posted between April 12, 2019, and September 23, 2019, available on FDA's website at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/PediatricAdvisoryCommittee/ucm510701.htm* but not presented at the September 26 or 27, 2019, Joint PAC or DSaRM meeting. FDA welcomes comments by members of the PAC, as mandated by the Best Pharmaceuticals for Children Act (Pub. L. 107–109) and the Pediatric Research Equity Act of 2003 (Pub. L. 108–155), interested parties (such as academic researchers, regulated industries, consortia, and patient groups), and the general public. The docket number is FDA–2019–N–1215. The docket will open on September 23, 2019, and remain open until October 7, 2019. The post-marketing pediatric-focused safety reviews are for the following products from the following centers at FDA:

Center for Biologics Evaluation and Research

(1) GAMMAPLEX—Immune Globulin Intravenous (Human) 5% Liquid
(2) NUWIQ®—(simoctocog alfa)
(3) TACHOSIL®—Absorbable Fibrin Sealant Patch
(4) WILATE—von Willebrand Factor/Coagulation Factor VIII Complex (Human)

Center for Drug Evaluation and Research

(1) ATIVAN INJECTION—(lorazepam injection)
(2) E–Z–HD—(barium sulfate)
(3) LIQUID E–Z–PAQUE—(barium sulfate)
(4) READI–CAT 2 and READI–CAT 2 SMOOTHIE—(barium sulfate)
(5) VARIBAR PUDDING—(barium sulfate)
(6) CALCIUM GLUCONATE INJECTION—(calcium gluconate)
(7) CEREBYX®—(fosphenytoin sodium)
(8) DOTAREM—(gadoterate meglumine)
(9) FYCOMPA ORAL TABLETS AND SUSPENSION—(perampanel)
(10) HARVONI—(ledipasvir and sofosbuvir)
(11) ISENTRESS AND ISENTRESS HD—(raltegravir)
(12) LATUDA—(lurasidone hydrochloride)
(13) RAPIVAB®—(peramivir)
(14) RYZODEG 70/30—(insulin degludec and insulin aspart injection) for subcutaneous use 100 units/mL (U–100) in 3ml FlexTouch Pen
(15) SIMPONI—(golimumab SC) and SIMPONI ARIA (golimumab IV)
(16) SOVALDI—(sofosbuvir)
(17) STRIBILD—(elvitegravir, cobicistat, emtricitabine/tenofovir disoproxil fumarate)
(18) TRESIBA—(insulin degludec injection), for subcutaneous use, 100 units/mL (U–100) in 3ml single-patient-use FlexTouch Pen; 200 units/mL (U–200) in 3mL single-patient-use FlexTouch Pen; 100 units/mL (U–100) 10mL in multiple-dose vial
(19) VIGAMOX—(moxifloxacin hydrocholoride ophthalmic solution 0.5%)
(20) VISIPAQUE INJECTION—(iodixanol)
(21) ZEMPLAR—(paricalcitol)
(22) ZYMAR® 0.3%—(gatifloxacin ophthalmic solution)

Center for Devices and Radiological Health

(1) CONTEGRA PULMONARY VALVED CONDUIT—(Humanitarian Device Exemption [HDE])
(2) ELANA SURGICAL KIT—(HDE)
(3) ENTERRA THERAPY SYSTEM—(HDE)
(4) PLEXIMMUNE™ IN–VITRO DIAGNOSTIC TEST—(HDE)
(5) PULSERIDER ANEURYSM NECK RECONSTRUCTION DEVICE—(HDE)

Dated: September 19, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20658 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0797]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) 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 FDA regulations for human tissue intended for transplantation.

DATES: Submit either electronic or written comments on the collection of information by November 25, 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 November 25, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–0797 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation.'' 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.govinfo.gov/content/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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Human Tissue Intended for Transplantation—21 CFR Part 1270

OMB Control Number 0910–0302—Extension

Under section 361 of the Public Health Services Act (42 U.S.C. 264), FDA issued regulations under part 1270 (21 CFR part 1270) to prevent the transmission of human immunodeficiency virus, hepatitis B, and hepatitis C, through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) requires written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process under § 1270.21; (2) all significant steps for obtaining, reviewing, and assessing the relevant medical records of the donor as prescribed in § 1270.21; (3) designating and identifying quarantined tissue; and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Sections 1270.31(a) and (b) also requires recording and justification of any deviation from the written procedures. Section 1270.33(a) requires records to be maintained concurrently with the performance of each significant step required in the performance of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and of the records required under § 1270.21. Section 1270.33(h) requires all records to be retained for at least 10 years beyond the date of transplantation if known, distribution, disposition, or expiration of the tissue, whichever is the latest. Section 1270.35(a) through (d) requires specific records to be maintained to document the following: (1) The results and interpretation of all required infectious disease tests; (2) information on the identity and relevant medical records of the donor; (3) the receipt and/or distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from the Center for Biologics Evaluation and Research's (CBER's) database system, we estimate 383 tissue establishments, of which 262 are conventional tissue banks and 121 are eye tissue banks. Based on information provided by industry, we estimate a total of 2,141,960 conventional tissue products, and 130,987 eye tissue products distributed per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, we estimate 29,799 deceased donors of conventional tissue and 70,027 deceased donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirements in part 1270. Based on information included in

CBER's database system, 90 percent of the conventional tissue banks are members of AATB (262 × 90 percent = 236), and 95 percent of eye tissue banks are members of EBAA (121 × 95 percent = 115). Therefore, we exclude burden for recordkeeping by these 351 establishments (236 + 115 = 351) from our estimate as we believe such recordkeeping is usual and customary business activity (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 32 establishments, which is 8.36 percent of all establishments (383 − 351 = 32, or 32/383 = 8.36 percent).

We assume that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, our estimated burden includes the general review and update of written procedures (an annual average of 24 hours), and the recording and justifying of any deviations from the written procedures under § 1270.31(a) and (b) (an annual average of 1 hour). The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h) include documenting the results and interpretation of all required infectious disease tests and results and the identity and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and our experience with the information collection.

We estimate the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part 1270; human tissue intended for transplantation	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Subpart C—Procedures and Records					
1270.31(a), (b), (c), and (d) [2]	32	1	32	24	768
1270.31(a) and 1270.31(b) [3]	32	2	64	1	64
1270.33(a), (f), and (h), and 1270.35(a) and (b)	32	6,198.84	198,363	1.0	198,363
1270.35(c)	32	11,876.12	380,036	1.0	380,036
1270.35(d)	32	1,454.50	47,504	1.0	47,504
Total					626,735

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of standard operating procedures (SOPs).
[3] Documentation of deviations from SOPs.

Based on a review of the information collection since our last OMB approval, we have made no adjustments to our burden estimate.

Dated: September 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20669 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–P–2123]

Determination That ATROPINE SULFATE ANSYR PLASTIC SYRINGE (Atropine Sulfate Solution) Intravenous, Intramuscular, Subcutaneous, and Endotracheal, 0.5 Milligram/5 Milliliters (0.1 Milligram/Milliliter), Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 milligram (mg)/5 milliliters (mL) (0.1 mg/mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for atropine sulfate solution intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Carlarease Hunter, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–3702, *Carlarease.Hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness.

This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), is the subject of NDA 021146, held by Hospira, Inc., and initially approved on July 9, 2001. ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), is indicated for temporary blockade of severe or life-threatening muscarinic effects (*e.g.,* as an antisialagogue, an antivagal agent, an antidote for organophosphorus or muscarinic mushroom poisoning, and to treat bradyasystolic cardiac arrest).

ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), has never been marketed. In previous instances (see *e.g.,* 72 FR 9763 (March 5, 2007) and 61 FR 25497 (May 21, 1996)), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

Lachman Consultants submitted a citizen petition dated May 1, 2019 (Docket No. FDA–2019–P–2123), under 21 CFR 10.30, requesting that the Agency determine whether ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ATROPINE SULFATE ANSYR PLASTIC SYRINGE (atropine sulfate solution) intravenous, intramuscular, subcutaneous, and endotracheal, 0.5 mg/5 mL (0.1 mg/mL), may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: September 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20662 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–E–0267]

Determination of Regulatory Review Period for Purposes of Patent Extension; Med–El Electric and Acoustic Stimulation Hybrid Hearing Prosthesis System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for MED–EL Electric and Acoustic Stimulation Hybrid Hearing Prosthesis System (MED–EL EAS) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2019. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 23, 2020. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 November 25, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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–2018–E–0267 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; MED–EL Electric and Acoustic Stimulation Hybrid Hearing Prosthesis 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device MED–EL EAS. The MED–EL EAS is intended to provide electrical stimulation to the mid- to high-frequency region of the cochlea and acoustic amplification to the low-frequency regions, for candidates with residual low frequency hearing sensitivity. The MED–EL EAS is indicated for partially deaf individuals aged 18 years and older who have residual hearing sensitivity in the low frequencies sloping to a severe/profound sensorineural hearing loss in the mid to high frequencies, and who obtain minimal benefit from conventional acoustic amplification. Subsequent to this approval, the USPTO received a patent term restoration application for MED–EL EAS (U.S. Patent No. 7,917,224) from Med-El Electromedizinische Gerate GmbH, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 5, 2018, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of MED–EL EAS represented the first permitted commercial marketing or use of this product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MED–EL EAS is 4,537 days. Of this time, 4,269 days occurred during the testing phase of the regulatory review period, while 268 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* April 16, 2004. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on January 2, 2004. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on April 16, 2004, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 23, 2015. FDA has verified the applicant's claim that the premarket approval application (PMA) for MED–EL EAS (PMA P000025 S084) was initially submitted December 23, 2015.

3. *The date the application was approved:* September 15, 2016. FDA has verified the applicant's claim that PMA P000025 S084 was approved on September 15, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension.

However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 998 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20657 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4212]

Wholesale Distributor Verification Requirement for Saleable Returned Drug Product—Compliance Policy; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product—Compliance Policy.'' This guidance describes FDA's intention regarding enforcement of the Drug Supply Chain Security Act (DSCSA) provision requiring wholesale distributors to verify a product identifier prior to further distributing returned product beginning on November 27, 2019. Given concerns expressed by stakeholders and to minimize possible disruptions in the pharmaceutical distribution supply chain, FDA does not intend to take action against wholesale distributors who do not, prior to November 27, 2020, verify a product identifier prior to further distributing returned product as required under the DSCSA. This represents a 1-year delay in enforcement of this DSCSA requirement.

DATES: The announcement of the guidance is published in the **Federal Register** on September 24, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–4212 for ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product—Compliance Policy.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sarah Venti, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product—Compliance Policy.'' FDA is issuing this guidance consistent with the good guidance practices regulation (21 CFR 10.115). FDA is implementing this guidance without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (21 CFR 10.115(g)(2)). FDA made this determination because this guidance document provides information pertaining to the statutory requirement that takes effect November 27, 2019, for wholesale distributors to verify saleable returned drug products prior to redistribution under section 582(c)(4)(D) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360eee–1(c)(4)(D)). It is important that FDA provide this information before that date. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's good guidance practices (21 CFR 10.115(g)(3)).

The DSCSA (Title II of Pub. L. 113–54) was signed into law on November 27, 2013. Section 202 of the DSCSA added section 582 to the FD&C Act. This section established product tracing, product identifier, authorized trading partner, and verification requirements for manufacturers, wholesale distributors, repackagers, and dispensers to facilitate the tracing of a product through the pharmaceutical distribution supply chain. Failure to comply with the requirements of section 582 is prohibited under section 301(t) of the FD&C Act (21 U.S.C. 331(t)) and subject to enforcement action under the FD&C Act.

Beginning November 27, 2019, wholesale distributors are required, under section 582(c)(4)(D) of the FD&C Act, to verify the product identifier, including the standardized numerical identifier, on each sealed homogeneous case of saleable returned product, or, if such product is not in a sealed homogeneous case, on each package of saleable returned product, prior to further distributing such returned product.

As described in the guidance, FDA has received comments and feedback from wholesale distributors as well as other trading partners and stakeholders expressing concern with industry-wide readiness for implementation of the verification of saleable returned product requirement for wholesale distributors and the challenges stakeholders face with developing interoperable, electronic systems to enable such verification and achieve interoperability between networks. Given the concerns expressed, FDA recognizes that some wholesale distributors may need additional time beyond November 27, 2019, before they can begin verifying the product identifier on returned products prior to further distribution in an efficient, secure, and timely manner.

To minimize possible disruptions in the distribution of prescription drugs in the United States, FDA has adopted the compliance policy described in this guidance. Under this compliance policy, FDA does not intend to take action before November 27, 2020, against wholesale distributors who do not verify a product identifier prior to further distribution of a package or sealed homogenous case of product as required by section 582(c)(4)(D) of the FD&C Act.

Additionally, section 582 of the FD&C Act requires certain trading partners (manufacturers, repackagers, wholesale distributors, and dispensers) to exchange transaction information, transaction history, and a transaction statement when engaging in transactions involving certain prescription drugs. Section 581(27)(E) of the FD&C Act (21 U.S.C. 360eee(27)(E)) requires that the transaction statement include a statement that the entity transferring ownership in a transaction had systems and processes in place to comply with verification requirements under section 582. This guidance also explains that, prior to November 27, 2020, FDA does not intend to take action against a wholesale distributor for providing a transaction statement to a subsequent purchaser of product on the basis that such wholesale distributor does not yet have systems and processes in place to comply with the saleable return verification requirements under section 582(c)(4)(D). The guidance document explains the scope of the compliance policy in further detail.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the current thinking of FDA on ''Wholesale Distributor Verification Requirement for Saleable Returned Drug Product—Compliance Policy.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics,* or *https://www.regulations.gov.*

Dated: September 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20651 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0035]

Amyotrophic Lateral Sclerosis: Developing Drugs for Treatment; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Amyotrophic Lateral Sclerosis: Developing Drugs for Treatment.'' The guidance provides FDA's current thinking on the clinical development program and clinical trial designs for drugs to support an indication for the treatment of amyotrophic lateral

sclerosis (ALS). The guidance addresses the clinical development of drugs intended to treat the main motor aspects of ALS, *i.e.,* muscle weakness and its direct consequences, including shortened life expectancy. It does not address in detail the development of drugs to treat other symptoms that may arise in ALS, such as muscle cramps, spasticity, sialorrhea, pseudobulbar affect, and others. This guidance finalizes the draft guidance of the same name issued on February 16, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on September 24, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–0035 for ''Amyotrophic Lateral Sclerosis: Developing Drugs for Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Billy Dunn, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–2250; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Amyotrophic Lateral Sclerosis: Developing Drugs for Treatment.'' ALS is a progressive neurodegenerative disease that primarily affects motor neurons in the cerebral motor cortex, brainstem, and spinal cord, leading to loss of voluntary movement and the development of difficulty in swallowing, speaking, and breathing. The purpose of this guidance is to assist sponsors in the clinical development of drugs for the treatment of ALS.

The guidance addresses the clinical development of drugs intended to treat the main motor aspects of ALS (*i.e.,* muscle weakness and its direct consequences, including shortened survival). It does not address in detail the development of drugs to treat other symptoms that may arise in ALS, such as muscle cramps, spasticity, sialorrhea, and pseudobulbar affect.

The guidance covers considerations for early phase clinical development, drug development population, clinical efficacy study design and endpoints, and risk-benefit, as well as other factors, such as relevant nonclinical safety and pharmacokinetic/pharmacodynamic considerations. This guidance finalizes the draft guidance of the same name issued on February 16, 2018 (83 FR 7047). Changes made to the guidance took into consideration written and verbal comments received. Information was added about strategies to expedite clinical trials in ALS and minimize exposure to placebo, about the importance of broad inclusion criteria in ALS clinical trials, encouraging the use

of patient input and experience in the development of new outcome measures that are capable of measuring clinically meaningful effects in patients, and encouraging the incorporation of exploratory biomarkers in ALS development programs. Language was also added to provide greater context on the use of historical control data in ALS clinical trials, to suggest approaches to minimize patient burden during clinical trials, and to clarify safety data expectations for new ALS treatments. Finally, additions emphasize FDA's willingness to exercise flexibility in applying the statutory standards for approval of drugs for the treatment of serious diseases with unmet medical needs, while preserving appropriate assurances for safety and effectiveness.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Amyotrophic Lateral Sclerosis: Developing Drugs for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014, the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001, and the collections of information referred to in the guidance for industry entitled ''Establishment and Operation of Clinical Trial Data Monitoring Committees'' (available at *https://www.fda.gov/media/75398/download*) have been approved under OMB control number 0910–0581.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics,* or *https://www.regulations.gov.*

Dated: September 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20629 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3846]

Patient Engagement in the Design and Conduct of Medical Device Clinical Investigations; Draft Guidance for Industry, Food and Drug Administration Staff, and Other Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Patient Engagement in the Design and Conduct of Medical Device Clinical Investigations.'' The Patient Engagement Advisory Committee (PEAC) recommended that FDA and industry develop some type of framework to clarify how patient advisors can engage in the clinical investigation process. This draft guidance focuses on the applications, perceived barriers, and common challenges of patient engagement in the design and conduct of medical device clinical investigations. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 25, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–3846 for ''Patient Engagement in the Design and Conduct of Medical Device Clinical Investigations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as

''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Patient Engagement in the Design and Conduct of Clinical Investigations'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Mimi Nguyen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5437, Silver Spring, MD 20993–0002, 301–796–4125; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11 and 12, 2017, the PEAC met to discuss and make recommendations regarding patient engagement into medical device clinical investigations. The PEAC stated that some framework should be developed by FDA and industry to clarify how patient advisors can engage in the clinical investigation process. Based on this recommendation, FDA is pursuing various efforts of patient engagement in clinical trials, including guidance. FDA believes medical device clinical investigations designed with patient input may help to address common challenges faced in medical device clinical investigations.

While FDA acknowledges that patient engagement may be beneficial across the total product lifecycle, this draft guidance focuses on the applications of patient engagement in the design and conduct of medical device clinical investigations.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Patient Engagement in the Design and Conduct of Clinical Investigations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''Patient Engagement in the Design and Conduct of Clinical Investigations'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 18040 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''	De Novo classification process	0910–0844
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards	0910–0755
56	Institutional Review Boards	0910–0130

Dated: September 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20593 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4203]

Bone, Reproductive and Urologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Bone, Reproductive and Urologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on October 29, 2019, from 8:15 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2019–N–4203. The docket will close on October 28, 2019. Submit either electronic or written comments on this public meeting by October 28, 2019. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 28, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 28, 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.

Comments received on or before October 15, 2019, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–4203 for ''Bone, Reproductive and Urologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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 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 the 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: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *BRUDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting

cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss supplemental new drug application (sNDA 021945/S–023#) for MAKENA (hydroxyprogesterone caproate injection, 250 milligrams per milliliter) manufactured by AMAG Pharmaceuticals. In 2011, MAKENA received approval under the accelerated approval pathway (21 CFR part 314, subpart H, and section 506(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356(c)) for reducing the risk of preterm birth in women with a singleton pregnancy who have a history of singleton spontaneous preterm birth. MAKENA was shown in the preapproval clinical trial to reduce the proportion of women who delivered at less than 37 weeks gestation, a surrogate endpoint that FDA determined was reasonably likely to predict a clinical benefit of preterm birth prevention, such as improved neonatal mortality and morbidity. As required under 21 CFR 314.510, the Applicant conducted a postapproval confirmatory clinical trial to verify and describe clinical benefit. AMAG Pharmaceuticals has disclosed that this completed confirmatory trial did not demonstrate a statistically significant difference between the treatment and placebo arms for the co-primary endpoints of reducing the risk of recurrent preterm birth or improving neonatal mortality and morbidity. The committee will consider the trial's findings and the sNDA in the context of AMAG Pharmaceuticals' confirmatory study obligation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 15, 2019, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 4, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 7, 2019.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kalyani Bhatt (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20656 Filed 9–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI) From Non-Federal Stakeholders: Developing the 2020 National Vaccine Plan

AGENCY: Office of Infectious Disease and HIV/AIDS Policy (OIDP), Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The development of a National Vaccine Plan (NVP) was mandated by Congress as a mechanism for the Director of the National Vaccine Program (as delegated by the Assistant Secretary for Health) to communicate priorities for achieving the Program's responsibilities of ensuring adequate supply of and access to vaccines and ensuring the effective and optimal use of vaccines. The most recent NVP, released in 2010, provided a comprehensive 10-year national strategy for enhancing all aspects of the plan, including vaccine research and development, supply, financing, distribution, and safety; informed decision-making by consumers and health care providers; vaccine-preventable disease surveillance; vaccine effectiveness and use monitoring; and global cooperation (*http://www.hhs.gov/nvpo/vacc_plan/index.html*). To help inform the development of the National Vaccine Plan 2020, HHS is issuing a Request for Information (RFI). The RFI will solicit specific information regarding the priorities, goals, and objectives in the next iteration of the NVP, remaining gaps, and stakeholder perspectives for the 2020–2025 timeframe.

DATES: To be considered, comments must be received electronically at the email address provided below, no later than 5:00 p.m. ET on October 24, 2019.

ADDRESSES: Responses must be submitted electronically, and should be addressed to *NVP.RFI@hhs.gov.* Mailed paper submissions and submissions received after the deadline will not be reviewed.

SUPPLEMENTARY INFORMATION: With U.S. vaccination rates above 90% for many childhood vaccines, most individuals have not witnessed firsthand the devastating illnesses against which vaccines offer protection, such as polio or diphtheria. According to a recent study, routine childhood immunizations among U.S. children born in 2009 will prevent 20 million cases of disease and 42,000 premature deaths, with a net savings of $13.5 billion in direct costs

and $68.8 billion in total societal costs.[1] In contrast, adult vaccination coverage rates have remained persistently low, with only modest gains for certain populations in the past few years.[2] As a result, the standards for adult immunization practice were updated in 2014 to promote integration of vaccines into routine clinical care for adults.[3]

Despite the widespread availability of effective vaccines, vaccine-preventable diseases (VPDs) remain a significant public health challenge. In particular, rates of non-medical exemptions for childhood vaccines are increasing,[4] and there have been recent measles outbreaks in the U.S.[5] and globally, due to growing vaccine hesitancy and coverage levels below the threshold needed for herd immunity. With an estimated cost of $20,000 per case of measles to the public sector in 2016,[6] the economic consequences of this and other VPDs, as well as the health consequences, are significant. Furthermore, few adults in any age group are fully vaccinated as recommended by the Advisory Committee on Immunization Practices. Large disparities in vaccine coverage by race/ethnicity persist, with African Americans, Hispanics, and Asian Americans lagging behind whites in nearly all vaccination coverage rates.[7] VPDs such as pertussis and hepatitis B continue to take a heavy toll on public health,[8] with 18,975 cases of pertussis and 3,409 (22,000 estimated) cases of hepatitis B infections reported in the United States in 2017.[9] [10] In light of these challenges, strengthening the vaccine and immunization enterprise is a priority for HHS.

The 2010 National Vaccine Plan (*https://www.hhs.gov/sites/default/files/nvpo/vacc_plan/2010-Plan/nationalvaccineplan.pdf*) and the associated implementation plan (*https://www.hhs.gov/sites/default/files/nvpo/vacc_plan/2010-2015-Plan/implementationplan.pdf*) have played an important role in guiding strategies and allocations of resources with respect to vaccines and vaccination. However, since the publication of the 2010 National Vaccine Plan, there have been many changes in the vaccine landscape.

To respond to the public health challenges of VPDs, OIDP in collaboration with other federal partners is leading the development of the 2020 National Vaccine Plan. This updated plan will recommend vaccine strategies across the lifespan and guide priority actions for the period 2020–2025. To develop this plan, HHS, through OIDP, seeks input from subject matter experts and nonfederal partners and stakeholders such as health care providers, national professional organizations, health departments, school administrators, community-based and faith-based organizations, manufacturers, researchers, advocates, and persons affected by VPDs.

This request for information seeks public input on strengthening and improving the nation's response to VPDs and strategies to address infectious diseases through vaccination. The 2020 National Vaccine Program requests information in five broad areas. Responders may address one or more of the areas below:

1. Priorities for the 2020 National Vaccine Plan during 2020–2025. What do you recommend as the top priorities for vaccines and immunizations in the United States? Why are these priorities most important to you? [Provide up to 2 pages to answer these questions]

2. What changes should be made to the 2010 National Vaccine Plan to make it more current and useful? This could include changes to the goals, objectives, strategies, activities, indicators, and other areas of the plan. Which components of the 2010 National Vaccine Plan worked well and should be maintained? [Provide up to 2 pages to answer these questions]

3. What are the goals, objectives, and strategies for each of your top priority areas? Are there any goals in the current strategy that should be discarded or revised? Which ones and why? [Provide up to 2 pages to answer these questions]

4. What indicators can be used to measure your top priorities and goals? Are there any indicators in the 2010 National Vaccine Plan or the National Adult Immunization Plan (*https://www.hhs.gov/sites/default/files/nvpo/national-adult-immunization-plan/naip.pdf*) that should continue to be used? If so, which ones, and why? [Provide up to 2 pages to answer these questions]

5. Identify which stakeholders you believe should have responsibility for enacting the objectives and strategies listed in the 2020 National Vaccine Plan, as well as for any new objectives and strategies you suggest. Specifically identify roles that you or your organization might have in the 2020 National Vaccine Plan. [Provide up to 2 pages to answer these questions].

The information received will inform the development of the 2020 National Vaccine Plan.

Dated: September 9, 2019.

Tammy R. Beckham,

Director, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2019–20415 Filed 9–23–19; 8:45 am]

BILLING CODE 4150–28–P

[1] Zhou F et al. Economic evaluation of the routine childhood immunization program in the United States, 2009. Pediatrics. 2014; 133: 1–9.

[2] *https://www.cdc.gov/vaccines/imz-managers/coverage/adultvaxview/pubs-resources/NHIS-2017.html.*

[3] National Vaccine Advisory Committee. Recommendations from the National Vaccine Advisory Committee: standards for adult immunization practice. Public Health Rep. 2014;129:115–23.

[4] Omer, S. et al. Nonmedical exemptions to school immunization requirements: secular trends and association of state policies with pertussis incidence. *JAMA.* 2006;296(14):1757–1763.

[5] *https://www.cdc.gov/measles/cases-outbreaks.html.*

[6] Lo NC, Hotez PJ. Public Health and Economic Consequences of Vaccine Hesitancy for Measles in the United States. *JAMA Pediatr.* 2017;171(9):887–892. doi:10.1001/jamapediatrics.2017.1695.

[7] Lu PJ et al. Racial and Ethnic Disparities in Vaccination Coverage Among Adult Populations in the U.S. *Am J Prev Med.* 2015;49(6 Suppl 4):S412–S425. doi:10.1016/j.amepre.2015.03.005.

[8] *https://www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/e/reported-cases.pdf.*

[9] *https://www.chop.edu/centers-programs/vaccine-education-center/global-immunization/diseases-and-vaccines-world-view.*

[10] *Schillie et al. Prevention of Hepatitis B Virus Infection in the United States: Recommendations of the Advisory Committee on Immunization Practices. MMWR.* 2018;67(1):1–31.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: October 18, 2019.

Time: 9:00 a.m. to 2:40 p.m.

Agenda: Discussion of Patient Safety, Quality Improvement Assessment, and Medical Research Scholars Program.

Place: National Institutes of Health, Building 1, Wilson Hall, One Center Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, Office of the Director, National Institutes of Health, One Center Drive, Building 1, Bethesda, MD 20892, 301–496–4272, *woodgs@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 18, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20596 Filed 9–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; VSL Fellowship Review.

Date: October 16, 2019.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing and Balance Fellowship Review.

Date: October 18, 2019.

Time: 8:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Cooperative Agreement for Clinical Trials in Communication Disorders (U01).

Date: October 29, 2019.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 17, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20594 Filed 9–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel R21–33 Application Review.

Date: October 2, 2019.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel NIDCD Institutional Training Grant Review.

Date: October 3, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683 *katherine.shim@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel Chemosensory Fellowship Application Review.

Date: October 10, 2019.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of

Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov*.

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. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 17, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20592 Filed 9–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: September 18–19, 2019.

Time: September 18, 2019, 4:00 p.m. to 9:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Hotel, Bethesda/Potomac Room, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: September 19, 2019, 7:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 60/Mary Woodard Lasker Center, Chapel and Lecture Hall, 1 Cloisters Court, Bethesda, MD 20892.

Contact Person: Paul Liu, Ph.D., MD, Deputy Scientific Director, National Institutes of Heath, National Human Genome Res, Institute Bldg. 49, Rm. 3A26/49, Covent Dr., MSC442, Bethesda, MD 20892, (301) 402–2529, *pliu@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 17, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20598 Filed 9–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; Tools For Next Generation Patient-Derived Cancer Models.

Date: November 8, 2019.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2E908, Rockville, MD 20850.

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W260, National Cancer Institute, NIH, Bethesda, MD 20892–9745, (240) 276–5856, *nadeem.khan@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: November 19, 2019.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W554, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Christopher L. Hatch, Ph.D., Chief Program Coordination & Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W554, Rockville, MD 20850, 240–276–6454, *ch29v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 17, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20595 Filed 9–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0751]

Commercial Fishing Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee teleconference meeting.

SUMMARY: The Commercial Fishing Safety Advisory Committee (CFSAC) will meet via teleconference to discuss CFSAC task statement #01–19. The U.S. Coast Guard will consider CFSAC recommendations as part of the process of developing voluntary guidelines for fishing vessel construction, maintenance, and repair. The teleconference will be open to the public.

DATES:

Meeting. The full Committee is scheduled to meet by teleconference on Wednesday, October 30, 2019, from 1 p.m. to 3:00 p.m. Eastern Daylight Time. Please note that this teleconference may adjourn early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the teleconference, submit your written comments no later than October 23, 2019.

ADDRESSES: To join the teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. on October 24, 2019. The number of teleconference lines is limited and will be available on a first-come, first-served basis.

Instructions: You are free to submit comments at any time, including orally at the teleconference, but if you want Committee members to review your comments before the teleconference, please submit your comments no later than October 23, 2019. We are particularly interested in comments on the issue in the ''Agenda'' section below. You must include the words ''Department of Homeland Security'' and the docket number [USCG–2019–0751]. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. For more about privacy and the docket, review Privacy and Security Notice for the Federal Docket Management at *https://www.regulations.gov/privacyNotice.* Written comments may also be submitted using the Federal e-Rulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: For access to the docket or to read documents or comments related to this notice, go to *http://www.regulations.gov,* insert ''USCG–2019–0751'' in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph D. Myers, Alternate Designated Federal Officer of the Commercial Fishing Safety Advisory Committee, (202) 372–1249, or email *CGFishsafe@uscg.mil* or Mr. Jonathan Wendland, Alternate Designated Federal Officer of the Commercial Fishing Safety Advisory Committee, telephone (202) 372–1245, or email *CGFishsafe@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the Federal Advisory Committee Act, Title 5 U.S.C., Appendix.

The Commercial Fishing Safety Advisory Committee is authorized by Title 46 United States Code Section 4508. The Committee's purpose is to provide advice and recommendations to the United States Coast Guard and the Department of Homeland Security on matters relating to the safe operation of commercial fishing industry vessels.

Agenda

The agenda for the October 30, 2019 meeting, is as follows:

(1) Introduction.

(2) Roll call of Committee members and determination of a quorum.

(3) Comments by Designated Federal Officer (DFO).

(4) Comments by ADFO Regarding Commercial Fishing Safety Advisory.

(5) Committee and the National Commercial Fishing Safety Advisory Committee.

(6) Comments by Federal Advisory Committee Act Representative.

(7) Old Business from the 39th Commercial Fishing Safety Advisory Committee meeting.

(8) New Business.

(9) Comments by Committee Chairman.

(10) Discussion Task # 01–19 Develop a voluntary best practice guide to be used by the Commercial Fishing Industry during fishing vessel construction, maintenance, and repair.

(11) Public Comment period.

(12) Comments by Designated Federal Officer (DFO).

(13) Comments by Committee Chairman.

(14) Adjournment of meeting.

A copy of all meeting documentation is available at *https://www.dco.uscg.mil/fishsafe.* Alternatively, you may contact Mr. Joseph D. Myers or Mr. Jonathan Wendland as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments will be limited to three minutes per person. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

A copy of available meeting documentation will be posted to the docket, as noted above, and at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Fishing-Vessel-Safety-Division/cfsac/* by October 29, 2019. Post-meeting documentation will be posted to the website, noted above, within 30 days after the meeting, or as soon as possible.

Dated: September 18, 2019.

David C. Barata,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2019–20613 Filed 9–23–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Mickleton, NJ) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Mickleton, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Mickleton, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 19, 2018.

DATES: AmSpec LLC (Mickleton, NJ) was approved and accredited as a commercial gauger and laboratory as of September 19, 2018. The next triennial inspection date will be scheduled for September 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 410 Southgate Ct., Mickleton, NJ 08056, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Mickleton, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

AmSpec LLC (Mickleton, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20650 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of King Inspection and Testing, Inc. (Carson, CA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of King Inspection and Testing, Inc. (Carson, CA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that King Inspection and Testing, Inc. (Carson, CA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of December 13, 2018.

DATES: King Inspection and Testing, Inc. (Carson, CA) was approved and accredited as a commercial gauger and laboratory as of December 13, 2018. The next triennial inspection date will be scheduled for December 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that King Inspection and Testing, Inc., 1300 E 223rd St., #401, Carson, CA 90745, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

King Inspection and Testing, Inc. (Carson, CA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

King Inspection and Testing, Inc. (Carson, CA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
N/A	D 7153	Standard Test Method for Freezing Point of Aviation Fuels (Automatic Laser Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20661 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Gonzales, LA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Gonzales, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Gonzales, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 11, 2019.

DATES: AmSpec LLC (Gonzales, LA) was approved and accredited as a commercial gauger and laboratory as of April 11, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 1203 East Hwy. 30, Gonzales, LA 70737, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Gonzales, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurement.

AmSpec LLC (Gonzales, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20654 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Davie, FL) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Davie, FL), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that

AmSpec LLC (Davie, FL), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 9, 2018.

DATES: AmSpec LLC (Davie, FL) was approved and accredited as a commercial gauger and laboratory as of August 9, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 4370 Oakes Road, Unit 732, Davie, FL 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Davie, FL) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

AmSpec LLC (Davie, FL) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).
27–57	D 7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20653 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of AmSpec LLC (Kenai, AK), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of AmSpec LLC (Kenai, AK), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Kenai, AK), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of April 11, 2019.

DATES: AmSpec LLC (Kenai, AK) was approved, as a commercial gauger as of April 11, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that AmSpec LLC, 46170 Spruce Place, Kenai, AK 99611 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. AmSpec LLC (Kenai, AK) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries

regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20647 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Nederland, TX) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Nederland, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Nederland, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 15, 2019.

DATES: AmSpec LLC (Nederland, TX) was approved and accredited as a commercial gauger and laboratory as of May 15, 2019. The next triennial inspection date will be scheduled for May 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 2310 Highway 69 North, Nederland, TX 77627, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Nederland, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

AmSpec LLC (Nederland, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20648 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (La Porte, TX) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (La Porte, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (La Porte, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 10, 2019.

DATES: AmSpec LLC (La Porte, TX) was approved and accredited as a commercial gauger and laboratory as of April 10, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 1836 Miller Cut Off Rd., La Porte, TX 77571, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum

products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (La Porte, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

AmSpec LLC (La Porte, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20649 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation (St. Rose, LA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (St. Rose, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (St. Rose, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 5, 2017.

DATES: Inspectorate America Corporation (St. Rose, LA) was approved and accredited as a commercial gauger and laboratory as of April 5, 2017. The next triennial inspection date will be scheduled for April 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 101 Widgeon Drive, St. Rose, LA 70087, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Inspectorate America Corporation (St. Rose, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Marine Measurement.

Inspectorate America Corporation (St. Rose, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.

CBPL No.	ASTM	Title
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D 5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–57	D 7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20659 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Laboratory Service, Inc. (Carteret, NJ) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Laboratory Service, Inc. (Carteret, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Laboratory Service, Inc. (Carteret, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of January 17, 2018.

DATES: Laboratory Service, Inc. (Carteret, NJ) was approved and accredited as a commercial gauger and laboratory as of January 17, 2018. The next triennial inspection date will be scheduled for January 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Laboratory Service, Inc., 85 Lafayette St., P.O. Box 10, Carteret, NJ 07008, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Laboratory Service, Inc. (Carteret, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Laboratory Service, Inc. (Carteret, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
N/A	D 1364	Standard Test Method for Water in Volatile Solvents (Karl Fischer Reagent Titration Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20660 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation (Aston, PA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (Aston, PA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (Aston, PA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of October 25, 2018.

DATES: Inspectorate America Corporation (Aston, PA) was approved and accredited as a commercial gauger and laboratory as of October 25, 2018. The next triennial inspection date will be scheduled for October 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 2947 Dutton Mill Rd., Aston, PA 19014, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Inspectorate America Corporation (Aston, PA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
9	Density Determination.
12	Calculations.
17	Maritime Measurement.

Inspectorate America Corporation (Aston, PA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).
N/A	D 4530	Standard Test Method for Determination of Carbon Residue (Micro Method).
N/A	D 5762	Standard Test Method for Nitrogen in Liquid Hydrocarbons, Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20646 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Pan Pacific Surveyors, Inc. (Wilmington, CA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Pan Pacific Surveyors, Inc. (Wilmington, CA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Pan Pacific Surveyors, Inc. (Wilmington, CA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of November 16, 2018.

DATES: Pan Pacific Surveyors, Inc. (Wilmington, CA) was approved and accredited as a commercial gauger and laboratory as of November 16, 2018. The next triennial inspection date will be scheduled for November 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Pan Pacific Surveyors, Inc., 444 Quay Avenue Suite #7, Wilmington, CA 90744, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Pan Pacific Surveyors, Inc. (Wilmington, CA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Pan Pacific Surveyors, Inc. (Wilmington, CA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
N/A	D 4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: September 5, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–20655 Filed 9–23–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2019–0014; OMB No. 1660–0098]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; FEMA Citizen Responder Programs Registration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before October 24, 2019.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Andy Burrows, Citizen Responder Lead, Individual and Community Preparedness Division, FEMA, 400 C Street SW, Washington, DC 20024, 202–716–0527, *andrew.burrows@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on July 11, 2019 at Volume 84 FR 33083 with a 60-day public comment period. No comments were received.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: FEMA Citizen Responder Programs Registration.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0098.

Form Titles and Numbers: FEMA Form 008–0–25, FEMA Citizen Responder Programs Registration.

Abstract: The FEMA Citizen Responder registration form will allow FEMA as well as State, local, tribal and territorial (SLTT) personnel to evaluate whether prospective Councils/Community Emergency Response Teams (CERTs) have the support of the appropriate government officials in their area, ensure a dedicated coordinator is assigned to the program, and provide an efficient way to track the effectiveness of the nationwide network of Councils and CERT programs.

Affected Public: SLTT governments and FEMA-affiliated citizen responders throughout the US and its territories.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses: 4,000.

Estimated Total Annual Burden Hours: 2,000.

Estimated Total Annual Respondent Cost: $54,750.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $10,475.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2019–20642 Filed 9–23–19; 8:45 am]

BILLING CODE 9110–46–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order No. 7884; El Paso Project 8, Hidalgo County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order withdraws, subject to valid existing rights, approximately 43.32 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period of 3 years for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This PLO takes effect on September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Timothy Spisak, State Director New Mexico, telephone: 505–954–2222, email: *tspisak@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Spisak. 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:

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, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes.

A strip of land of the uniform width of 60 feet lying contiguous to and parallel with the international border between the United States and Mexico, currently subject to Presidential Proclamation No. 758, 35 Stat. 2136 (May 27, 1907), located in the County of Hidalgo, State of New Mexico, and situate in the following described locations:

New Mexico Principal Meridian, New Mexico

T. 34 S, R. 18 W,
Secs. 19 thru 24.

The areas described above aggregate approximately 43.32 acres of Federal lands in Hidalgo County.

2. This withdrawal will expire 3 years from the effective date of this Order, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: September 18, 2019.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2019–20723 Filed 9–23–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order No. 7883; San Diego Project 4, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order withdraws, subject to valid existing rights, approximately 44 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period of 3 years for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This PLO takes effect on September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Stout, Acting State Director California, telephone: 916–978–4600, email: *j2stout@blm.gov.*

Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Stout. 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:

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, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes.

A strip of land of the uniform width of 200 feet lying contiguous to and parallel with the international border between the United States and Mexico, located in the County of San Diego, State of California, and situate in the following described locations:

San Bernardino Meridian, California

T. 18 S, R. 1 E,
Sec. 34;
Sec. 35.

The areas described above aggregate approximately 44 acres of Federal lands in San Diego County.

2. This withdrawal will expire 3 years from the effective date of this Order, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: September 18, 2019.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2019–20720 Filed 9–23–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order No. 7885; El Paso Project 2, Luna and Hidalgo Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order withdraws, subject to valid existing rights, approximately 176.23 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period of 3 years for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This PLO takes effect on September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Timothy Spisak, State Director New Mexico, telephone: 505–954–2222, email: *tspisak@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Spisak. 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:

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, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes.

A strip of land of the uniform width of 60 feet lying contiguous to and parallel with the international border between the United States and Mexico, currently subject to Presidential Proclamation No. 758, 35 Stat. 2136 (May 27, 1907), located in the County of Luna, State of New Mexico, and situate in the following described locations:

New Mexico Principal Meridian, New Mexico

T. 29 S, R. 11 W,
Secs. 16 thru 18.
T. 29 S, R. 12 W,
Secs. 13 thru 18.
T. 29 S, R. 13 W,
Secs. 13 thru 16.

The area described aggregates 94.76 acres.

A strip of land of the uniform width of 60 feet lying contiguous to and parallel with the international border between the United States and Mexico, currently subject to Presidential Proclamation No. 758, 35 Stat. 2136 (May 27, 1907), located in the County of Hidalgo, State of New Mexico, and situate in the following described locations:

New Mexico Principal Meridian, New Mexico

T. 34 S, R. 16 W,
Sec. 19;
Sec. 20;
Sec. 21, W of the N and S centerline of SW¼.
T. 34 S, R. 17 W,
Sec. 20; E of the N and S centerline of SE¼;
Secs. 21 thru 24.

The area described aggregates 47.39 acres.

A strip of land of the uniform width of 60 feet lying contiguous to and parallel with the international border between the United States and Mexico, currently subject to Presidential Proclamation No. 758, 35 Stat. 2136 (May 27, 1907), located in the County of Hidalgo, State of New Mexico, and situate in the following described locations:

New Mexico Principal Meridian, New Mexico

T. 34 S, R. 20 W,
Sec 19;
Sec. 20;
Sec. 21, W of the N and S centerline of SW¼.
T. 34 S, R. 21 W,
Sec. 22, E of the N and S centerline;
Sec. 23;
Sec. 24.

The area described aggregates 34.08 acres.

The areas described above aggregate approximately 176.23 acres of Federal lands in Luna and Hidalgo counties.

2. This withdrawal will expire 3 years from the effective date of this Order, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: September 18, 2019.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2019–20718 Filed 9–23–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order No. 7887; Yuma Project 3, Yuma County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order withdraws, subject to valid existing rights, approximately 228 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period of 3 years for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This PLO takes effect on September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Raymond Suazo, State Director Arizona, telephone: 602–417–9500, email: *rmsuazo@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Suazo. 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:

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, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes.

Strips of land of the uniform width of 60 feet lying contiguous to and parallel to the international border between the United States and Mexico, currently subject to Presidential Proclamation No. 758, 35 Stat. 2136 (May 27, 1907), located in the County of Yuma, State of Arizona, and situate in the following described locations:

Gila-Salt River Meridian, Arizona

T. 14 S, R. 15 W,
Secs. 18 and 19;
Sec. 20, SE¼;
Sec. 21;
Sec. 22, SW¼;
Sec. 26, S½.
T. 14 S, R. 16 W,
Sec. 6, E½;
Secs. 7 thru 10, and 13 thru 15.
T. 15 S, R. 11 W,
Secs. 31 and 32.
T. 15 S, R. 12 W,
Secs. 19, 20, 26 thru 29, 35 and 36.
T. 15 S, R. 13 W,
Secs. 7 thru 9, 14 thru 16, 23 and 24.
T. 15 S, R. 14 W,
Secs. 1 and 2;
Sec. 3, NE¼;
Sec. 12.
T. 16 S, R. 10 W,
Sec. 18, W½.
T. 16 S, R. 11 W,
Secs. 3 thru 6, and 10 thru 12.

The areas described above aggregate approximately 228 acres of Federal lands in Yuma County.

2. This withdrawal will expire 3 years from the effective date of this Order, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: September 18, 2019.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2019–20719 Filed 9–23–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order No. 7886; Yuma Project 6, Imperial County, CA, and Yuma County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order withdraws, subject to valid existing rights, approximately 68 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period of 3 years for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This PLO takes effect on September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Stout, Acting State Director California, telephone: 916–978–4600, email: *jstout@blm.gov;* or, Raymond Suazo, State Director Arizona, telephone: 602–417–9500, email: *rmsuazo@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Stout or Mr. Suazo. 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:

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, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes.

A strip of land of the uniform width of 270 feet lying contiguous to and parallel to the international border between the United States and Mexico, located in the County of Imperial, State of California, and situate in the following described locations:

San Bernardino Meridian, California

T. 16 S, R. 21 E,
Sec. 33, lots 13, 14, 19, and 20;
Sec. 34.

Containing 49 acres

Subject to existing State sovereign land in the last natural bed of the Colorado River.

The areas described above aggregate approximately 49 acres of Federal lands in Imperial County, California.

A strip of land of the uniform width of 200 feet lying contiguous to and parallel to the international border between the United States and Mexico, located in the County of Yuma, State of Arizona, and situate in the following described locations:

Gila-Salt River Meridian, Arizona

T. 8 S, R. 24 W,
Sec. 21;
Sec. 22, lot 4.

San Bernardino Meridian, California

T. 16 S, R. 21 E,
Sec. 35.

Containing 12 acres

A strip of land of the uniform width of 200 feet, located in the County of Yuma, State of Arizona, and situate in the following described locations:

Gila-Salt River Meridian, Arizona

T. 8 S, R. 24 W,
Sec. 28, lot 4, and lots 15 thru 18.

Containing 7 acres

Subject to existing State sovereign land in the last natural bed of the Colorado River.

The areas described above aggregate approximately 19 acres of Federal lands in Yuma County, Arizona and Imperial County, California.

2. This withdrawal will expire 3 years from the effective date of this Order, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: September 18, 2019.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2019–20717 Filed 9–23–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028865; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan (UMMAA) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Michigan. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Michigan at the address in this notice by October 24, 2019.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of the Vice President for Research, 4080 Fleming Building, 503 South Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Michigan, Ann Arbor, MI. The human remains and associated funerary objects were removed from the Wickcliffe Mounds (15.0001/15BA4) site, Ballard County, KY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Michigan professional staff in consultation with representatives of The Chickasaw Nation and The Quapaw Tribe of Indians (hereafter referred to as ''The Tribes'').

History and Description of the Human Remains

Between 1932 and 1935, human remains representing, at minimum, two individuals were removed from the Wickcliffe Mounds site (15.0001/15BA4) in Ballard County, KY. The site is located near the junction of the Ohio and Mississippi Rivers. Between 1932 and 1939, an amateur collector conducted extensive excavations in the area. On June 2, 1933, the collector donated to the UMMAA ceramic sherds noted as coming from burials. Human remains from the site were donated by the collector to the UMMAA in May of 1935. UMMAA records for these collections and their excavation are minimal. The two individuals are one adult of indeterminate age and sex with a possible underlying infection, and one perinate child. The burials have been dated to the Mississippian Period (A.D. 1000–1400) based on the associated funerary objects and chronometric dating. No known individuals were identified. The eight associated funerary objects are five lots of ceramic sherds, two lots of shell-tempered ceramic sherds, and one lot of various archeological materials comprised of ceramic sherds, a possible lithic scraper, and a lithic flake.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on accession documentation and archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the eight objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Chickasaw Nation.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of the Vice President for Research, 4080 Fleming Building, 503 South Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu,* by October 24, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The University of Michigan is responsible for notifying The Tribes that this notice has been published.

Dated: September 6, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–20618 Filed 9–23–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028836; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (USACE, Omaha District) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the USACE Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the USACE Omaha District at the address in this notice by October 24, 2019.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and in the physical custody of the South Dakota State Archaeological Research Center, Rapid City, SD. The human remains and associated funerary objects were removed from site 39BO0206 in Bon Homme County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) and USACE Omaha District professional staff in consultation with representatives of the Yankton Sioux Tribe of South Dakota.

History and Description of the Remains

In 1964, human remains representing, at minimum, one individual were removed from the Harmon Site, 39BO0206, in Bon Homme County, SD. The human remains were collected by James Howard and Robert Gant, archeologists from the University of South Dakota-Vermillion Museum, during a salvage excavation of a burial eroding out of the cutbank on the Gavins Point Reservoir. The human remains and funerary objects were stored at the South Dakota-Vermilion Museum, which housed SARC at the time, and then were transferred to the new SARC facility at Fort Meade, SD, in 1976. The majority of the human remains were reburied at site 39ST0015 in 1986. The following year, the SARC facility moved from Fort Meade, SD, to Rapid City, SD. During an inventory at SARC in 1992, a small bag containing post-cranial remains from the re-buried individual was found, along with the funerary objects that had not been reburied. No known individuals were identified. The five associated funerary objects are one faunal bone, one lithic biface, one lithic core fragment, one unmodified stone, and one lithic shatter piece.

Determinations Made by the U.S. Army Corps of Engineers, Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context and morphological features of the human remains.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the five objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Yankton Sioux Tribe of South Dakota.
- Treaties indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Yankton Sioux Tribe of South Dakota.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Yankton Sioux Tribe of South Dakota.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PMA–C, 1616 Capitol Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by October 24, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Yankton Sioux Tribe of South Dakota may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for

notifying the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: September 3, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–20616 Filed 9–23–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028866; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan (UMMAA) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Michigan. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Michigan at the address in this notice by October 24, 2019.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of the Vice President for Research, 4080 Fleming Building, 503 South Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Michigan, Ann Arbor, MI. The human remains were removed from the Lake Cormorant (22.0029/13–P–8) and Irby (22.0030/13–P–10) sites, DeSoto County, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Michigan professional staff in consultation with representatives of The Chickasaw Nation and The Quapaw Tribe of Indians (hereafter referred to as ''The Tribes'').

History and Description of the Human Remains

In January of 1958, human remains representing, at minimum, one individual were removed from the Lake Cormorant site (22.0029/13–P–8) in DeSoto County, MS. The site is located near the junction of Lake Cormorant and an old meander of the Mississippi River. The property owner described the site as having two mounds, but only one 1–2 foot high mound was present in 1940. Plowing disturbed the site. The site was excavated multiple times by multiple parties. The human remains in the UMMAA's possession were donated by Gregory Perino of the Gilcrease Foundation on February 18, 1958. UMMAA records for these human remains are minimal. The burial is believed to date to the Middle Mississippian Period (A.D. 1200–1500) based on non-burial-related diagnostic artifacts collected from the site. The one individual is an adolescent/young adult 12–20 years old of indeterminate sex, with marked fronto-occipital cranial modification and mild porotic hyperostosis throughout the cranial vault (possibly from mineral deficiencies). No known individuals were identified. No associated funerary objects are present.

In January of 1958, human remains representing, at minimum, one individual were removed from the Irby site (22.0030/13–P–10) in DeSoto County, MS. The site is located on a natural levee of the Alpike Bayou near a junction with Johnson Creek. The site was described as a single mound of indeterminate shape. The north end of the mound has been plowed and was noted as having a heavy deposit of daub. Daub was also noted as being abundant on the bank west of the mound and scattered throughout an adjacent field. The site has been excavated multiple times by multiple parties. The human remains in the UMMAA's possession were donated by Gregory Perino of the Gilcrease Foundation on February 18, 1958. UMMAA records for these human remains are minimal. The burial is believed to date to within the Late Woodland (Baytown) and Middle Mississippian Periods (A.D. 400–1500) based on non-burial-related diagnostic artifacts collected from the site. The one individual is an adult 30–40 years old and possibly male, with marked fronto-occipital cranial modification, mild porotic hyperostosis throughout the cranial vault (possibly from mineral deficiencies), and a possible depression fracture above the left eye orbit. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on cranial morphology, accession documentation, and archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Chickasaw Nation.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of the Vice President for Research, 4080 Fleming Building, 503 South Thompson Street, Ann Arbor,

MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu,* by October 24, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Michigan is responsible for notifying The Tribes that this notice has been published.

Dated: September 6, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–20617 Filed 9–23–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–499–500 and 731–TA–1215–1216, 1221–1223 (Review)]

Oil Country Tubular Goods From India, Korea, Turkey, Ukraine, and Vietnam; Notice of Commission Determinations To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing duty orders on oil country tubular goods from India and Turkey and the antidumping duty orders on oil country tubular goods from India, Korea, Turkey, Ukraine, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: September 6, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher Watson (202–205–2684), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On September 6, 2019, the Commission determined that it should proceed to conduct full reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that the domestic interested party group response to its notice of institution (84 FR 25570, June 3, 2019) was adequate. The Commission also found that the respondent interested party group responses to its notice of institution concerning the countervailing duty order on imports from Turkey and the antidumping duty order on imports from Ukraine were adequate and, therefore, determined to proceed with full reviews of those orders. The Commission determined that the respondent interested party group responses to its notice of institution concerning the countervailing and antidumping duty orders on imports from India and the antidumping duty orders on imports from Korea, Turkey, and Vietnam were inadequate with respect to those reviews. The Commission determined, however to conduct full reviews of those orders in order to promote administrative efficiency in light of its determination to conduct full reviews of the countervailing duty order on imports from Turkey and the antidumping duty order on imports from Ukraine. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under the authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 18, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–20604 Filed 9–23–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *August 1, 2019 through August 31, 2019.* (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path:

(i) the sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR (II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR (II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have

increased; OR (III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:

(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e))must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1)of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C)of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,564	R&M Sea Level Marine LLC, R&M Ship Technologies USA, Inc.	Davie, FL	February 25, 2018.
94,613	Hawkins Architectural Products, LLC, Solar Seal Division, Express Employment Professionals.	Stafford, VA	March 8, 2018.
94,635	Porcelain Industries, Inc., Express, People Ready, Talent Force, Safe Harbor, Volt.	Dickson, TN	March 15, 2018.
95,081	Mueller Copper Tube Products, Inc., Mueller Industries, Inc.	Wynne, AR	August 15, 2018.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,472	MSCI ESG Research LLC, MSCI Inc	Portland, ME	January 22, 2018.
94,704	Sulzer Pumps (US) Inc., Pumps Equipment Division, Sulzer US Holding, Madden Industrial Craftsmen.	Portland, OR	May 7, 2018.
94,704A	Quadco Industrial Services Inc. and Randstad, Sulzer Pumps (US) Inc., Pumps Equipment Division, Sulzer US Holding Inc.	Portland, OR	April 4, 2018.
94,765	Cenveo Publisher Services, Richmond—Content Division, Cenveo Worldwide Limited, Cenveo, Inc.	Richmond, VA	April 29, 2018.
94,805	Purewick Corporation, Express Employment Professionals ..	El Cajon, CA	May 10, 2018.
94,824	AIG Employee Services, Inc., Investments & Corporate IT-Water Street, American International Group, etc.	New York, NY	May 19, 2018.
94,824A	AIG Employee Services, Inc., Investments & Corporate IT—Berkeley Heights, etc.	Berkeley Heights, NJ	May 19, 2018.
94,861	Becton, Dickinson and Company, Finance Division, ZForce	Chelmsford, MA	May 30, 2018.
94,879	Kulicke & Soffa, Industries, Intellisource, LLC, John Galt	Santa Ana, CA	June 5, 2018.
94,883	Gray & Company, Seneca Foods Corporation, Aerotek, GLISS General Labor & Industrial.	Dayton, OR	June 5, 2018.
94,896	AT&T Digital Retail and Care, Customer Loyalty, AT&T Services, AT&T, Sutherland Global Services.	Houston, TX	June 13, 2018.
94,927	CCPI Inc., Staffmark, Contingent WorkForce	Blanchester, OH	June 21, 2018.
94,955	Citibank, Global Consumer Technology Division	Sioux Falls, SD	June 28, 2018.
94,962	X-Cel Optical Company, Essilor of America, Inc., Aerotek	Sauk Rapids, MN	July 1, 2018.
94,964	Perry Capital Holding, Appalachian Regional Manufacturing	Jackson, KY	July 2, 2018.
94,972	TMG Health, A Cognizant Company, Cognizant Domestic Holdings, Cognizant Technology Solutions, Aerotek, etc.	Amarillo, TX	July 3, 2018.
94,976	Novo Nordisk Case Processing team, Product Safety, Novo Nordisk Inc.	Plainsboro Township, NJ	July 9, 2018.
94,986	Sargent Manufacturing Company, Assa Abloy, Information Technology Help Desk Support, Tek Systems, etc.	New Haven, CT	July 12, 2018.
95,000	Cleveland Hardware & Forging Co., Cleveland Hardware Division, Express Employment.	Cleveland, OH	July 17, 2018.
95,005	CommScope Technologies, LLC, CommScope Inc., CommScope Holding Company, Inc.	Forest, VA	July 19, 2018.
95,011	Black Diamond Equipment, Synergy Staffing, BBSI Staffing, Elwood Staffing.	Salt Lake City, UT	July 23, 2018.
95,012	Frontier Communications, Network Translations Organization Team, Frontier Communications Corporation.	Norwich, NY	July 23, 2018.
95,018	Flexsteel Industries, Inc., Penmac, Synergy HR, PeopleLink	Harrison, AR	July 25, 2018.
95,020	Kimball Hospitality, Debbie's Staffing	Martinsville, VA	July 26, 2018.
95,021	Affinity Insurance Services, Inc., Aon Services Corp., Tapfin, TCS, and Genpact.	Fort Washington, PA	July 29, 2018.
95,029	Vesuvius USA Corporation, Fused Silica Division, Olsten Staffing Services and Amotec.	Dillon, SC	July 30, 2018.
95,032	First Call Resolution, LLC, Ortana, Elwood Staffing, Express Employment, Aerotek Professionals, etc.	Roseburg, OR	July 31, 2018.
95,044	Mitsubishi Heavy Industries Climate Control, Inc., Mitsubishi Heavy Industries Thermal Systems, Crown Services, etc.	Franklin, IN	August 5, 2018.
95,064	Experian Services Corp., Alliance Resource Group LP, Apex Systems, Compunnel Software Group, etc.	Costa Mesa, CA	August 12, 2018.
95,106	Vesuvius Pittsburgh Research, Flow Control VISO Division, Medix and Apex Life Sciences.	Pittsburgh, PA	August 21, 2018.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,692	AT&T Services, Inc., Corporate Telecommunications Services (CTS).	San Ramon, CA	April 4, 2018.
94,692A	AT&T Services, Inc., Corporate Telecommunications Services (CTS).	Oakland, CA	April 4, 2018.
94,692B	AT&T Services, Inc., Corporate Telecommunications Services (CTS).	Cerritos, CA	April 4, 2018.
94,775	General Motors, Warren Transmission Operations	Warren, MI	August 17, 2019.
94,775A	Allegis, Jones Lang Lasalle, Eurest Services, and Integrity Fleet Services, General Motors, Warren Transmission Operations.	Warren, MI	May 1, 2018.
94,901	Parker Hannifin Corporation, Hose Product Division	Kennett, MO	June 13, 2018.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,945	Arconic Lancaster DBA Alumax Mill Products, Inc., Global Rolled Products Division, Arconic Inc.	Lancaster, PA	February 5, 2018.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified.

The investigation revealed that the requirements of Trade Act section 222 (a)(1) and (b)(1) (significant worker total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA–W No.	Subject firm	Location	Impact date
94,874	Lodging Solutions, Accommodations Plus International, Information Technology Unit.	Melville, NY	
94,911	Fidelity Information Services, LLC, Fidelity National Information Services, Inc.	Woodbury, MN	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
94,487	Integrated Device Technology Inc. (IDT), Eastridge, West Valley.	San Jose, CA	
94,608	JW Aluminum Company	Russellville, AR	
94,691	Android Industries-Belvidere, LLC, QPS Employment Group-Rockford, Spherion Staffing Services.	Belvidere, IL	
94,811	Liberty Mutual Group Inc., Mishawaka Customer Response Center.	Mishawaka, IN	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
93,577	Tech Mahindra (Americas), Inc., Tech Mahindra Limited, System Database Administrators, AT&T Account.	Mount Clemens, MI	
93,993	Mellanox Technologies Silicon Photonics Inc. (MTSP), Mellanox Technologies Inc., Aerotek.	Monterey Park, CA	
94,695	Grupo Antolin Illinois, Staff On Site Midwest, Inc	Belvidere, IL	
94,705	Syncreon, US, QPS, Cortech	Belvidere, IL	
94,714	Verizon Wireless, Call Center	Albuquerque, NM	
94,812	Premier Aviation Overhaul Center, Ltd., Launch Technical Workforce Solutions, STS Aerostaff, Aviation Personnel.	Rome, NY	
94,815	AEC Virginia, LLC, Asheboro Elastics Corporation	Boykins, VA	
94,825	Payless Shoesource Worldwide, Inc., Payless, Inc., Logistics Department.	Topeka, KS	
94,839	Xerox Corporation, Global Communications Services Operations, Creative Services.	Webster, NY	
95,025	Futurewei Technologies, Inc., Huawei Technologies, Boston Research Center, Workforce Logiq, Experis, etc.	Framingham, MA	
95,025A	Futurewei Technologies, Inc., Huawei Technologies Co., Ltd, Boston Research Center.	Cambridge, MA	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
94,946	AT&T Services, Inc.	St. Louis, MO	
95,026	Hexagon Manufacturing Intelligence	North Kingstown, RI	
95,037	El Dorado Paper Bag Manufacturing Company, Inc.	El Dorado, AR	

The following determinations terminating investigations were issued in cases where the petition regarding the investigation has been deemed invalid.

TA–W No.	Subject firm	Location	Impact date
95,125	Briggs & Stratton Corporation, Murray Plant	Murray, KY	

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

TA–W No.	Subject firm	Location	Impact date
93,659	Sykes Enterprises Incorporated	Amherst, NY	
94,121	Sykes Enterprises, Incorporated	Milton Freewater, OR	
94,508	Smith & Nephew, KellyOCG	Mansfield, MA	
94,646	Smith & Nephew	Andover, MA	
94,646A	Smith & Nephew	Austin, TX	
94,701	Cognizant Technology Solutions U.S. Corp., Retail Consumer Goods Division.	Topeka, KS	
94,816	Primus Global Services, Inc., Sriven Systems of TX Inc., Teknaux, Cogent Infotech, TMG Health, A Cognizant Company, etc.	Jessup, PA	
94,842	ConAgra Brands, Inc., Global Business Information Services	Parsippany, NJ	
94,897	Insight and Exela Technologies, Ditech Holding Corporation	Rapid City, SD	
94,971	TE Connectivity, Randstad	Menlo Park, CA	
94,994	Fargo Assembly of PA, Inc., Electrical Components International Inc., Essential Personnel.	David City, NE	
95,017	AT&T Business-Global Operations & Services, Delivery Excellence-Global Product Ordering, Business VOIP Team, etc.	Grand Rapids, MI	

The following determinations terminating investigations were issued because the petitioning group of workers is covered by an earlier petition that is the subject of an ongoing investigation for which a determination has not yet been issued.

TA–W No.	Subject firm	Location	Impact date
94,864	Teck Washington Incorporated	Metaline Falls, WA	

I hereby certify that the aforementioned determinations were issued during the period of *August 1, 2019 through August 31, 2019.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 9th day of September 2019.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2019–20600 Filed 9–23–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions,

the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than October 4, 2019.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Administrator, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 2019.

The petitions filed in this case are available for inspection at the Office of the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 9th day of September 2019.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

107 TAA petitions instituted between 8/1/19 and 8/31/19

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
95030	Catalina Marketing Inc. (State/One-Stop)	St. Louis, MO	08/01/19	07/31/19
95031	Cenveo Publisher Services (Workers)	Lancaster, PA	08/01/19	07/31/19
95032	First Call Resolution, LLC (State/One-Stop)	Roseburg, OR	08/01/19	07/31/19
95033	Shelton Turnbull (Workers)	Eugene, OR	08/01/19	07/31/19
95034	Transaction Network Services (State/One-Stop)	Reston, VA	08/01/19	07/31/19
95035	Adidas America, Inc. (State/One-Stop)	Portland, OR	08/02/19	08/01/19
95036	Can-Clay (State/One-Stop)	Cannelton, IN	08/02/19	08/02/19
95037	El Dorado Paper Bag Manufacturing Company, Inc. (State/One-Stop).	El Dorado, AR	08/02/19	08/01/19
95038	FrieghtCar America (State/One-Stop)	Roanoke, VA	08/02/19	08/01/19
95039	Lexington Lighting Group LLC (State/One-Stop)	East Providence, RI	08/02/19	08/01/19
95040	Mondi Bags USA, LLC (Company)	Pine Bluff, AR	08/02/19	08/01/19
95041	Newell Rubbermaid (State/One-Stop)	Winchester, VA	08/02/19	08/01/19
95042	Cedar America (State/One-Stop)	Mountain View, AR	08/06/19	08/05/19
95043	McAfee, LLC (State/One-Stop)	Hillsboro, OR	08/06/19	08/05/19
95044	Mitsubishi Heavy Industries Climate Control, Inc. (Company)	Franklin, IN	08/06/19	08/05/19
95045	Pharmaceutics International, Inc. (State/One-Stop)	Hunt Valley, MD	08/06/19	08/05/19
95046	Aluwind Inc. (Company)	Castle Rock, CO	08/07/19	08/06/19
95047	Atos IT Solutions and Services, Inc. at Xerox (Workers)	Webster, NY	08/07/19	08/06/19
95048	Tucker Powersports (State/One-Stop)	Fort Worth, TX	08/07/19	08/05/19
95049	Linear Ams (Workers)	Livonia, MI	08/07/19	08/06/19
95050	Selectra Industries Corporation (State/One-Stop)	Vernon, CA	08/07/19	08/06/19
95051	Alo Tennessee Inc. and Alo USA, Inc. (State/One-Stop)	Telford, TN	08/08/19	08/07/19
95052	AT&T Services, Inc. (State/One-Stop)	Schaumburg, IL	08/08/19	08/06/19
95053	Filson Company (State/One-Stop)	Seattle, WA	08/08/19	08/06/19
95054	Goodman Manufacturing Company LP—Daikin Group (State/One-Stop).	Fayetteville, TN	08/08/19	08/07/19
95055	LEDVANCE, LLC (Company)	Wilmington, MA	08/08/19	08/07/19
95056	Workforce Logiq (Workers)	Dallas, TX	08/08/19	08/07/19
95057	Congoleum Corporation (Company)	Trainer, PA	08/09/19	08/09/19
95058	Mesa Ingredient Corporation (State/One-Stop)	Clovis, NM	08/09/19	08/08/19
95059	JPMorgan Chase & Co. (Workers)	Columbus, OH	08/12/19	08/10/19
95060	Seneca Foods Corporation (State/One-Stop)	Sunnyside, WA	08/12/19	08/09/19
95061	United Steelworkers Luke Local 8–676 (Company)	Westernport, MD	08/12/19	08/09/19
95062	United Structures of America,Inc. (State/One-Stop)	Portland, TN	08/12/19	08/09/19
95063	Consolidated Metco, Inc. (Company)	Bryson City, NC	08/13/19	08/12/19
95064	Experian Services Corp. (State/One-Stop)	Costa Mesa, CA	08/13/19	08/12/19
95065	Futurewei Technologies, Inc. (Company)	Bellevue, WA	08/13/19	08/12/19
95066	Hotelbeds (State/One-Stop)	Altamonte Springs, FL	08/13/19	08/12/19
95067	Liberty Mutual Group Inc. (Workers)	Allentown, PA	08/13/19	08/12/19
95068	Matthew-Warren Spring Division (Union)	Logansport, IN	08/13/19	08/12/19
95069	Newell Brands (Sunbeam Products, Inc.) (Workers)	McMinnville, TN	08/13/19	08/12/19
95070	Alsico (State/One-Stop)	Kent, OH	08/14/19	08/13/19
95071	CGI Technologies (State/One-Stop)	Fairfax, VA	08/14/19	08/13/19
95072	General Motors Metal Center (Union)	Pontiac, MI	08/14/19	08/05/19
95073	iQor (State/One-Stop)	Klamath Falls, OR	08/14/19	08/13/19
95074	Pace Industries (State/One-Stop)	Arden Hills, MN	08/14/19	08/13/19
95075	Schneider Electric (State/One-Stop)	Peru, IN	08/14/19	08/13/19
95076	Bank of New York Mellon (State/One-Stop)	Uniondale, NY	08/15/19	08/15/19
95077	Amerimax Coated Products, Inc. (State/One-Stop)	Helena, AR	08/16/19	08/15/19
95078	Briggs & Stratton Corporation (State/One-Stop)	Murray, KY	08/16/19	08/15/19
95079	La-Z-Boy (Company)	Newton, MS	08/16/19	08/15/19
95080	Lunar logic (State/One-Stop)	Eugene, OR	08/16/19	08/15/19
95081	Mueller Copper Tube Products, Inc. (State/One-Stop)	Wynne, AR	08/16/19	08/15/19

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
95082	S7 Sea Launch (State/One-Stop)	Long Beach, CA	08/16/19	08/15/19
95083	TE Connectivity (State/One-Stop)	Berwyn, PA	08/16/19	08/15/19
95084	HanesBrand, Inc. (State/One-Stop)	Clarksville, AR	08/19/19	08/16/19
95085	Schneider Electric IT USA, Inc. (State/One-Stop)	Costa Mesa, CA	08/19/19	08/16/19
95086	Teletrac Navman (State/One-Stop)	Garden Grove, CA	08/19/19	08/16/19
95087	Thomson Reuters (State/One-Stop)	Bellevue, WA	08/19/19	08/12/19
95088	Web.com (State/One-Stop)	Jacksonville, FL	08/19/19	08/16/19
95089	Bank of Montreal (State/One-Stop)	New York, NY	08/20/19	08/19/19
95090	Insight Global, LLC (State/One-Stop)	Atlanta, GA	08/20/19	08/07/19
95091	Kimberly-Clark Worldwide (State/One-Stop)	Fullerton, CA	08/20/19	08/19/19
95092	Littelfuse Inc. (State/One-Stop)	Orange, CA	08/20/19	08/16/19
95093	Norma Kamali Inc. (State/One-Stop)	New York, NY	08/20/19	08/19/19
95094	Cambria (State/One-Stop)	Le Sueur, MN	08/21/19	08/20/19
95095	Entergy-Pilgrim Power Plant (State/One-Stop)	Plymouth, MA	08/21/19	08/20/19
95096	Infor.com (State/One-Stop)	Saint Paul, MN	08/21/19	08/20/19
95097	Logic PD Inc. (State/One-Stop)	Montevideo, MN	08/21/19	08/20/19
95098	Profab Metal Products (State/One-Stop)	Lynn, MA	08/21/19	06/24/19
95099	United Health (State/One-Stop)	Johnston, RI	08/21/19	08/20/19
95100	Advantum Health (Workers)	Louisville, KY	08/22/19	08/21/19
95101	Georgia Pacific Crossett Facility (Union)	Crossett, AR	08/22/19	08/21/19
95102	Kaercher North America (State/One-Stop)	Camas, WA	08/22/19	08/20/19
95103	PPG (State/One-Stop)	Peru, IL	08/22/19	08/21/19
95104	Ricoh USA (Workers)	Malvern, PA	08/22/19	08/21/19
95105	Tomlinson Industries LLC (State/One-Stop)	Garfield Heights, OH	08/22/19	08/21/19
95106	Vesuvius Pittsburgh Research (Company)	Pittsburgh, PA	08/22/19	08/21/19
95107	Waterbury Screw Machine Products Company (State/One-Stop)	Waterbury, CT	08/22/19	08/21/19
95108	Mc Electronics (State/One-Stop)	Hollister, CA	08/23/19	08/22/19
95109	Pent Air Flow Technologies (State/One-Stop)	Costa Mesa, CA	08/23/19	08/22/19
95110	Stanley Black & Decker (State/One-Stop)	Georgetown, OH	08/23/19	08/22/19
95111	TE Connectivity (State/One-Stop)	Hemet, CA	08/23/19	08/22/19
95112	Walmart (Workers)	Charlotte, NC	08/23/19	08/22/19
95113	Walmart (Workers)	Charlotte, NC	08/23/19	08/22/19
95114	Yankee Candle Co., wholly owned subsidary of Newell Brands, Inc. (State/One-Stop).	South Deerfield, MA	08/23/19	08/22/19
95115	Team 10, LLC d/b/a American Eagle Mills (State/One-Stop)	Tyrone, PA	08/26/19	08/23/19
95116	Concentrix CVG Corporation (State/One-Stop)	Las Cruces, NM	08/26/19	08/23/19
95117	D & D Furniture (State/One-Stop)	Martinsville, VA	08/26/19	08/23/19
95118	Ocwen On Site Workers (Securitas, Williams Lea, Inc., CSSvSource) (State/One-Stop).	Waterloo, IA	08/26/19	08/23/19
95119	Riverbend Foods (Union)	Pittsburgh, PA	08/26/19	08/23/19
95120	Trelleborg (State/One-Stop)	El Segundo, CA	08/26/19	08/23/19
95121	Bank of the West (State/One-Stop)	Omaha, NE	08/27/19	08/26/19
95122	Conduent (Workers)	London, KY	08/27/19	08/26/19
95123	GP Strategies (State/One-Stop)	Columbia, MD	08/27/19	08/26/19
95124	Liberty Mutual Group Inc. (State/One-Stop)	Portland, OR	08/27/19	08/26/19
95125	Briggs & Stratton Corporation (Workers)	Murray, KY	08/28/19	08/27/19
95126	Cabinotch Innovative Solutions (State/One-Stop)	Salem, OR	08/28/19	08/27/19
95127	Conifer Revenue Cycle Solutions (State/One-Stop)	Des Moines, IA	08/28/19	08/27/19
95128	CSG Systems, Inc. (State/One-Stop)	Englewood, CO	08/28/19	08/27/19
95129	Farwest Steel Corporation (State/One-Stop)	Eugene, OR	08/28/19	08/27/19
95130	Intellectual Property Services, Inc. (Workers)	Erie, PA	08/28/19	08/27/19
95131	Jewell Manufacturing LLC (State/One-Stop)	Portland, OR	08/28/19	08/27/19
95132	Welocalize, Inc. (State/One-Stop)	Portland, OR	08/28/19	08/27/19
95133	Artelye Marble & Granite (State/One-Stop)	Beltsville, MD	08/29/19	08/26/19
95134	Johnson Control (Workers)	Westminster, MA	08/29/19	08/28/19
95135	Continental Powertrain USA, LLC (Company)	Fountain Inn, SC	08/30/19	08/29/19
95136	Watco Companies LLC (State/One-Stop)	Hollidaysburg, PA	08/30/19	08/29/19

[FR Doc. 2019–20602 Filed 9–23–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Post-Initial Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for

Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations (on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *August 1st through August 31st 2019.* Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

Affirmative Determinations Regarding Applications for Reconsideration

The following Applications for Reconsideration have been received and granted. See 29 CFR 90.18(d). The group of workers or other persons showing an interest in the proceedings may provide written submissions to show why the determination under reconsideration should or should not be modified. The submissions must be sent no later than ten days after publication in **Federal Register** to the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210. See 29 CFR 90.18(f).

TA–W No.	Subject firm	Location
94,578	Michigan Bell Telephone Company	Kalamazoo, MI.
94,578A	Wisconsin Bell, Inc	Appleton, WI.
94,578B	Indiana Bell Telephone Company Incorporated	Indianapolis, IN
94,578C	AT&T Services, Inc	Syracuse, NY.
94,578D	AT&T Services, Inc	Meridian, CT.

Notice of Revised Certifications of Eligibility

Revised certifications of eligibility have been issued with respect to cases where affirmative determinations and certificates of eligibility were issued initially, but a minor error was discovered after the certification was issued. The revised certifications are issued pursuant to the Secretary's authority under section 223 of the Act and 29 CFR 90.16. Revised Certifications of Eligibility are final determinations for purposes of judicial review pursuant to section 284 of the Act (19 U.S.C. 2395) and 29 CFR 90.19(a).

Summary of Statutory Requirement

(This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path:

(i) the sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased;

OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm;

OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:

(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm;

OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19

U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm;

OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e))must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1));

OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1)of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3));

OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2);

OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination, and the reason(s) for the determination.

The following revisions have been issued.

TA–W No.	Subject firm	Location	Impact date	Reason(s)
94,800	Ocwen Loan Servicing LLC	Fort Washington, PA.	3/11/2019	Other.
94,826	TE Connectivity	Berwyn, PA	5/17/2018	Worker Group Clarification.
94,826A	TE Connectivity	Menlo Park, CA.	5/17/2018	Worker Group Clarification.
94,443	TMG Health, A Cognizant Company	Jessup, PA	1/3/2018	Worker Group Clarification.
94,485	Ditech Holding Corporation	Rapid City, SD	1/24/2018	Worker Group Clarification.
94,688	Fargo Assembly of PA, Inc	Atchison, KS	4/3/2018	Worker Group Clarification.
94,688A	Fargo Assembly of PA, Inc	Bethany, MO	4/3/2018	Worker Group Clarification.
94,688B	Fargo Assembly of PA, Inc	David City, NE	4/3/2018	Worker Group Clarification.
93,471	Payless ShoeSource Worldwide, Inc	Topeka, KS	1/26/2017	Worker Group Clarification.
93,136	Sykes Enterprises Incorporated	Eugene, OR	9/12/2016	Worker Group Clarification.
93,136A	Sykes Enterprises Incorporated	Eugene, OR	9/12/2016	Worker Group Clarification.
93,136B	Sykes Enterprises Incorporated	Amherst, NY	9/12/2016	Worker Group Clarification.
93,136C	Sykes Enterprises Incorporated	Milton Freewater, OR.	9/12/2016	Worker Group Clarification.

I hereby certify that the aforementioned determinations were issued during the period of *August 1st through August 31st 2019.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 10th day of September 2019.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2019–20601 Filed 9–23–19; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 17, 2019, to discuss the draft report of the ACMUI

Training and Experience Subcommittee. This report will include the subcommittee's comments and recommendations on its review of the NRC staff's evaluation of the training and experience requirements for radiopharmaceuticals under title 10 *Code of Federal Regulations* (10 CFR) 35.300, ''Use of unsealed byproduct material for which a written directive is required.'' Meeting information, including a copy of the agenda and handouts, will be available at *https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html* on or about October 2, 2019. The agenda and handouts may also be obtained by contacting Ms. Kellee Jamerson using the information below.

DATES: The teleconference meeting will be held on Thursday, October 17, 2019, 2:00 p.m. to 4:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to participate in the teleconference meeting should contact Ms. Jamerson using the contact information below: Kellee Jamerson, email: *Kellee.Jamerson@nrc.gov,* telephone: (301) 415–7408.

SUPPLEMENTARY INFORMATION:

Conduct of the Meeting

Dr. Darlene Metter, ACMUI Chairman, will preside over the meeting. Dr. Metter will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Jamerson at the contact information listed above. All submittals must be received by October 11, 2019, three business days prior to the October 17, 2019, meeting and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's website *https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html* on or about December 2, 2019.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated: September 19, 2019.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

Subject: **Federal Register** Notice: Advisory Committee on the Medical Uses of Isotopes Meeting Notice. Dated September 19, 2019.

ADAMS ML19261C009

OFC	MSST/MSEB	MSST/MSEB	MSST/MSEB	SECY
NAME	KJamerson	LDimmick*	CEinberg*	RChazell.
DATE	9/18/2019	9/18/2019	9/18/2019	9/ /2019.

*via email.

Official Record Copy

[FR Doc. 2019–20612 Filed 9–23–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0187]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from August 27, 2019 to September 9, 2019. The last biweekly notice was published on September 10, 2019.

DATES: Comments must be filed by October 24, 2019. A request for a hearing must be filed by November 25, 2019.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0187. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0187, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0187.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/*

adams.html. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0187, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity

to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html*. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html*. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html*. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper

filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (Limerick), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 1, 2019. A publicly-available version is in ADAMS under Accession No. ML19213A246.

Description of amendment request: The amendments would relocate the following operability and surveillance requirements from the Limerick Technical Specifications (TSs) to the Limerick Technical Requirements Manual: TS Section 3.3.7.8.1, ''Chlorine Detection System,'' and TS Section 3.3.7.8.2, ''Toxic Gas Detection System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not alter the physical design of any plant structure, system, or component; therefore, the proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. Operation or failure of the Chlorine Detection System and the Toxic Gas Detection System are not assumed to be initiators of any analyzed event in the Updated Final Safety Analysis Report (UFSAR) and cannot cause an accident. Whether the requirements for the Chlorine Detection System and the Toxic Gas Detection System are in TS or another licensee-controlled document has no effect on the probability or consequences of any accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the plant configuration (no new or different type of equipment is being installed) or require any new or unusual operator actions. The proposed changes do not alter the safety limits or safety analysis assumptions associated with the operation of the plant. The proposed changes do not introduce any new failure modes that could result in a new accident. The proposed changes do not reduce or adversely affect the capabilities of any plant structure, system, or component in the performance of their safety function. Also, the response of the plant and the operators following the design basis accidents is unaffected by the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–010, 50–237, and 50–249, Dresden NuclearPower Station, Units 1, 2, and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 23, 2019. A publicly-available version is in ADAMS under Accession No. ML19239A006.

Description of amendment request: The amendments would revise the emergency plans for each of these facilities by removing specific references to radiation monitoring instrumentation in emergency action level (EAL) RA3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each site, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to EAL RA3.1 for the Exelon facilities noted meets the guidance established in NEI 99–01, Revision 6, as endorsed by the NRC and does not reduce the capability to meet the emergency planning requirements established in 10 CFR 50.47 and 10 CFR 50, Appendix E. The proposed change does not reduce the functionality, performance, or capability of Exelon's ERO [emergency response organization] to respond in mitigating the consequences of any design basis accident.

The probability of a reactor accident requiring implementation of Emergency Plan EALs has no relevance in determining whether the proposed change to EAL RA3.1 will reduce the effectiveness of the Emergency Plans. As discussed in Section D, ''*Planning Basis,*'' of NUREG–0654, Revision 1, ''*Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants*'':

''*. . . The overall objective of emergency response plans is to provide dose savings (and in some cases immediate life saving) for a spectrum of accidents that could produce offsite doses in excess of Protective Action Guides (PAGs). No single specific accident sequence should be isolated as the one for which to plan because each accident could have different consequences, both in nature and degree. Further, the range of possible selection for a planning basis is very large, starting with a zero point of requiring no planning at all because significant offsite radiological accident consequences are unlikely to occur, to planning for the worst possible accident, regardless of its extremely low likelihood. . . .*''

Therefore, Exelon did not consider the risk insights regarding any specific accident initiation or progression in evaluating the proposed change involving EAL RA3.

The proposed change to EAL RA3.1 does not involve any physical changes to plant equipment or systems, nor does the proposed change alter the assumptions of any accident analyses. The proposed change does not adversely affect accident initiators or precursors nor does the proposed change alter the design assumptions, conditions, and configuration or the manner in which the plants are operated and maintained. The proposed change does not adversely affect the ability of Structures, Systems, or Components (SSCs) to perform their intended safety functions in mitigating the consequences of an initiating event within the assumed acceptance limits.

Therefore, the proposed change to EAL RA3.1 for the affected sites does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to EAL RA3.1 for the Exelon facilities noted meets the guidance established in NEI 99–01, Revision 6, as endorsed by the NRC and does not involve any physical changes to plant systems or equipment. The proposed change does not involve the addition of any new plant equipment. The proposed change will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. Exelon ERO functions will continue to be performed as required. The proposed change does not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change to EAL RA3.1 for the affected sites does not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to EAL RA3.1 for the Exelon facilities noted meets the guidance established in the guidance in NEI 99–01, Revision 6, as endorsed by the NRC and does not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change. There are no changes to setpoints or environmental conditions of any SSC or the manner in which any SSC is operated. Margins of safety are unaffected by the proposed change to EAL RA3. The applicable requirements of 10 CFR 50.47 and 10 CFR 50, Appendix E will continue to be met.

Therefore, the proposed change to EAL RA3.1 for the affected sites does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis for each site and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Lisa M. Regner.

Southern Nuclear Operating Company, Docket No. 52–026, Vogtle Electric Generating Plant (VEGP), Unit 4, Burke County, Georgia

Date of amendment request: August 22, 2019. A publicly-available version is in ADAMS under Accession No. ML19234A327.

Description of amendment request: The amendment proposes to depart from AP1000 Design Control Document Tier 2* material that has been incorporated into the Updated Final Safety Analysis Report (UFSAR). The proposed departure consists of changes to Tier 2* information in the UFSAR to change the provided area of horizontal reinforcement for VEGP Unit 4 Wall L and Wall 7.3 from elevation 117′-6″ to 135′-3″.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

As described in UFSAR Subsections 3H.5.1.2 and 3H.5.1.3, interior Wall 7.3 and Wall L are located in the auxiliary building.

UFSAR, Section 3H.5 classifies Interior Wall on Column Line 7.3, from elevation (EL) 66′-6″ to 160′-6″ as a ''Critical Section.'' UFSAR, Section 3H.5 classifies Interior Wall

on Column Line L, from EL 117′-6″ to 153-0″ as a Critical Section.'' Deviations were identified in the constructed walls from the design requirements. The proposed changes modify the provided area of steel horizontal reinforcement for VEGP Unit 4 Wall L and Wall 7.3 from elevation 117′-6″ to 135′-3″. These changes maintain conformance to American Concrete Institute (ACI) 349–01 and have no adverse impact on the seismic response of Wall L and Wall 7.3 Wall L and Wall 7.3 continue to withstand the design basis loads without loss of structural integrity or the safety-related functions. The proposed changes do not affect the operation of any system or equipment that initiates an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events.

This change does not adversely affect the design function of VEGP Unit 4 Wall L and Wall 7.3, or the SSCs contained within the auxiliary building. This change does not involve any accident initiating components or events, thus leaving the probabilities of an accident unaltered.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change modifies the provided area of steel horizontal reinforcement for VEGP Unit 4 Wall L and Wall 7.3 from elevation 117′-6″ to 135-3″. As demonstrated by the continued conformance to the applicable codes and standards governing the design of the structures, the walls withstand the same effects as previously evaluated. The proposed change does not affect the operation of any systems or equipment that may initiate a new of different kind of accident or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed change does not adversely affect the design function of auxiliary building Wall L and Wall 7.3, or any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. This change does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change modifies the provided area of steel horizontal reinforcement for VEGP Unit 4 Wall L and Wall 7.3 from elevation 117′-6″ to 135′-3″. This change maintains conformance to ACI 349–01. The changes to Wall L and Wall 7.3 horizontal reinforcement from elevation 117′-6″ to 135′-3″ do not change the performance of the affected portion of the auxiliary building for postulated loads. The criteria and requirements of ACI 349–01 provide a margin of safety to structural failure. The design of the auxiliary building structure conforms to criteria and requirements in ACI 349–01 and therefore, maintains the margin of safety. The change does not alter any design function, design analysis, or safety analysis input or result, and sufficient margin exists to justify departure from the Tier 2* requirements for the walls. As such, because the system continues to respond to design basis accidents in the same manner as before without any changes to the expected response of the structure, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes. Accordingly, no significant safety margin is reduced by the change.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: July 26, 2019. A publicly-available version is in ADAMS under Accession No. ML19207A727.

Description of amendment request: The amendment request proposes changes to the Combined License (COL) Numbers NPF–91 and NPF–92 for VEGP, Units 3 and 4, and Updated Final Safety Analysis Report (UFSAR). Specifically, the requested amendment would eliminate COL condition 2.D.(2)(a)1 which describes a first plant Pressurizer Surge Line Stratification Evaluation and make related revisions to the UFSAR Tier 2 information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not affect the operation of any systems or equipment that initiates an analyzed accident or alter any structures, systems, or components [SSC] accident initiator or initiating sequence of events. The proposed changes remove the requirement to perform the Pressurizer Surge Line Stratification Evaluation first plant tests based on a number of factors that render the testing unnecessary. The changes do not adversely affect any methodology which would increase the probability or consequences of a previously evaluated accident.

The change does not impact the support, design, or operation of mechanical or fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the proposed change create any new accident precursors.

The proposed changes do not involve a change to any mitigation sequence or the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove the requirement to perform the Pressurizer Surge Line Stratification Evaluation first plant tests based on a number of factors that render the testing unnecessary. The proposed changes do not adversely affect any design function of any SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. This proposed change does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. Therefore, this proposed change does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains existing safety margin and provides adequate protection through continued application of the existing design requirements in the

UFSAR. The proposed change satisfies the same design functions in accordance with the same codes and standards as stated in the UFSAR. This change does not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by this change, and no significant margin of safety is reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment requests: May 2, 2017, as supplemented by letters dated July 20 and November 21, 2017; December 3, 2018; and March 7, April 8, July 10, and August 1, 2019.

Brief description of amendments: The amendments modified Catawba's Technical Specifications (TSs) to extend the Completion Time (CT) of TS 3.8.1, ''AC Sources—Operating,'' Required Action B.6 (existing Required Action B.4, numbered as B.6) for an inoperable emergency diesel generator (EDG) from 72 hours to 14 days. To support this request, the licensee will add a supplemental power source (*i.e.,* two supplemental diesel generators (SDGs) per station) with the capability to power any emergency bus.

The SDGs will have the capacity to bring the affected unit to cold shutdown. Additionally, the amendments would modify TS 3.8.1 to add new two limiting conditions for operation (LCOs), TS LCO 3.8.1.c and TS LCO 3.8.1.d, to ensure that at least one train of shared components has an operable emergency power supply. Corresponding Conditions, Required Actions and CTs of TS 3.8.1 are revised to account for the new supplemental AC power source.

Date of issuance: August 27, 2019.

Effective date: These license amendments are effective as of its date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 304 (Unit 1) and 300 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19212A655; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Renewed Licenses and TSs.

Date of initial notice in ***Federal Register:*** February 27, 2018 (83 FR 8512). The supplemental letters dated July 20 and November 21, 2017; December 3, 2018; and March 7, April 8, July 10, and August 1, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2019.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 11, 2017, as supplemented by letter dated June 6, 2019.

Brief description of amendment: The amendment revised Technical Specification (TS) Limiting Condition for Operation 3.7.13, ''Spent Fuel Pit Storage,'' and TS 4.0, ''Design Features,'' Section 4.3, ''Fuel Storage.'' The amendment resolves a non-conservative TS associated with TS Limiting Condition for Operation 3.7.13 and negates the need for the associated compensatory measures, while taking no credit for installed Boraflex panels.

Date of issuance: September 4, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 290. A publicly-available version is in ADAMS under Accession No. ML19209C966; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–26: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** March 13, 2018 (83 FR 10916). The supplemental letter dated June 6, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (Peach Bottom), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: September 28, 2018, as supplemented by letters dated February 15, 2019; March 26, 2019; and May 23, 2019.

Brief description of amendments: The amendments revised the design and licensing basis described in the Peach Bottom Updated Final Safety Analysis Report to reduce the design pressure rating of the high-pressure service water (HPSW) system. This change provides additional corrosion margin in the HPSW system pipe wall thickness, thereby increasing the margin of safety for the existing piping. In addition, this change also temporarily revises certain Technical Specifications (TSs) to allow sufficient time to perform modifications of the HPSW system to support the proposed reduction of the HPSW design pressure and to allow for timely repairs of a heat exchanger on Peach Bottom, Unit 3.

Date of issuance: August 28, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendments Nos.: 327 (Unit 2) and 330 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19182A006; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised TSs 3.6.2.3, 3.6.2.4, 3.6.2.5, and 3.7.1.

Date of initial notice in: November 6, 2018 (83 FR 55566).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAF), Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LCS), Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station (NMP), Unit 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: February 1, 2019, as supplemented by letter dated March 7, 2019.

Brief description of amendments: The amendments revise the Technical Specification (TS) requirements for these facilities related to the safety limit minimum critical power ratio (MCPR) and the core operating limits report. The amendments are based on Technical Specification Task Force (TSTF) Traveler TSTF–564, Revision 2, ''Safety Limit MCPR'' (ADAMS Accession No. ML18297A361). The amendments for LGS and JAF also make changes to these requirements that are outside the scope of TSTF–564, Revision 2.

Date of issuance: August 28, 2019.

Effective date: As of the date of issuance and shall be implemented as shown in the following table.

Facility	Implementation requirement
CPS Unit 1	prior to entering Mode 4 following refueling outage C1R19.
JAF	prior to entering Mode 4 following refueling outage FPR24.
LCS Unit 1	prior to entering Mode 4 following refueling outage L1R18.
LCS Unit 2	prior to LCS Unit 1 entering Mode 4 following refueling outage L1R18.
LGS Unit 1	prior to entering Operational Condition 4 following refueling outage Li1R18.
LGS Unit 2	prior to entering Operational Condition 4 following refueling outage Li2R16.
NMP Unit 2	prior to entering Mode 4 following refueling outage N2R17.
PBAPS Unit 2	prior to entering Mode 4 following refueling outage P2R23
PBAPS Unit 3	prior to entering Mode 4 following refueling outage P3R22.

Amendment Nos.: CPS–225, JAF–327, LCS–238/224, LGS–236/199, NMP2–176, and PBAPS–326/329. A publicly-available version is in ADAMS under Accession No. ML19176A033. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–62, DPR–59, NPF–11, NPF–18, NPF–39, NPF–85, NPF–69, DPR–44, and DPR–56: Amendments revised the Facility Operating Licenses and TSs.

Date of initial notice in: April 9, 2019 (84 FR 14146).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois and Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: January 31, 2019, as supplemented by letter dated August 9, 2019.

Brief description of amendments: The amendments revised Technical Specifications (TSs) for inoperable snubbers by adding limiting condition for operation (LCO) 3.0.9. The change is consistent with the NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specifications Change Traveler, TSTF–372, ''Addition of LCO 3.0.8, lnoperability of Snubbers.''

Date of issuance: August 28, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 202/208 (Braidwood, Units 1 and 2), and 208/208 (Byron, Unit Nos. 1 and 2). A publicly-available version is in ADAMS under Accession No. ML19190A081; documents related to these amendments are listed in the related Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the TSs and the Renewed Facility Operating Licenses.

Date of initial notice in: May 7, 2019 (84 FR 19970).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: July 25, 2018, as supplemented by letter dated March 6, 2019.

Brief description of amendment: The amendment revised the TMI–1 Renewed Facility Operating License and the associated Technical Specifications (TSs) to permanently defueled TSs, consistent with the permanent cessation of reactor operation and permanent defueling of the reactor. The amendment also changed the current licensing basis mitigation strategies for flood mitigation and aircraft impact protection in the air intake tunnel.

Date of issuance: August 29, 2019.

Effective date: The amendment is effective following the docketing of the certifications required by 10 CFR 50.82(a)(1)(i) and (ii) that TMI–1 has been permanently shut down and defueled. The amendment shall be implemented within 30 days of the effective date of the amendment, but will not exceed December 31, 2019.

Amendment No.: 297. A publicly-available version is in ADAMS under Accession No. ML19211D317; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–50: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in: November 20, 2018 (83 FR 58611). The supplemental letter dated March 6, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2019.

No significant hazards consideration comments received: No.

Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC, Docket No. 50–293, Pilgrim Nuclear Power Station (Pilgrim), Plymouth County, Massachusetts

Date of amendment request: November 16, 2018, as supplemented by letters dated November 16, 2018; April 17, 2019; and July 29, 2019.

Brief description of amendment: The amendment revised Renewed Facility Operating License No. DPR–35 to reflect the indirect transfer of Pilgrim Renewed Facility Operating License No. DPR–35 and the general license for the Pilgrim Independent Spent Fuel Storage Installation from Entergy Nuclear Operations, Inc. (ENOI) to Holtec International; the name change for Entergy Nuclear Generation Company to Holtec Pilgrim, LLC; and the direct transfer of ENOI's operating authority to Holtec Decommissioning International, LLC.

Date of issuance: August 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 249. A publicly-available version is in ADAMS under Accession No. ML19235A050; documents related to this amendment are listed in the Safety Evaluation referenced in the letter dated August 22, 2019 (ADAMS Accession No. ML19170A101).

Renewed Facility Operating License No. DPR–35: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in: January 31, 2019 (84 FR 816).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2019.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: March 28, 2018, as supplemented by letters dated March 13, 2019, and May 15, 2019.

Brief description of amendment: The amendment added a condition to the MNGP renewed facility operating license to allow the implementation of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''

Date of issuance: August 29, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 203. A publicly-available version is in ADAMS under Accession No. ML19176A421; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–22: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in: May 22, 2018 (83 FR 23735). The supplemental letters dated March 13, 2019, and May 15, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2019.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 18, 2019.

Brief description of amendment: The amendment revised Hope Creek Generating Station Technical Specification (TS) 3.6.5.1, ''Secondary Containment Integrity,'' Surveillance Requirements (SRs) 4.6.5.1.a and 4.6.5.1.b.2.a. SR 4.6.5.1.a is revised to address conditions during which the secondary containment pressure may not meet the SR pressure requirements. SR 4.6.5.1.b.2.a is modified to

acknowledge that both secondary containment access openings may be simultaneously open for entry and exit. Additionally, TS Definitions 1.39.d and 1.39.g are revised to conform to the changes to these two SRs.

Date of issuance: September 6, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 218. A publicly-available version is in ADAMS under Accession No. ML19205A306; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–57: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** June 4, 2019 (84 FR 25839).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant (Hatch), Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: October 17, 2018.

Brief description of amendments: The amendments modified the required actions associated with the Hatch, Unit Nos. 1 and 2, Technical Specification (TS) 3.6.4.1, ''Secondary Containment,'' to allow up to 7 days to determine and correct the cause of secondary containment degradation when at least one combination of standby gas treatment subsystems can maintain adequate secondary containment vacuum.

Date of issuance: September 4, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 298 (Unit 1) and 243 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19198A104; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** March 26, 2019 (84 FR 11342).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority (TVA) Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (Browns Ferry), Units 1, 2, and 3, Limestone County, Alabama

TVA Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (Sequoyah), Units 1 and 2, Hamilton County, Tennessee

TVA Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant (Watts Bar), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: November 17, 2017, as supplemented by letter dated June 18, 2018, and as subsequently revised by letter dated November 19, 2018, and supplemented by letter dated January 25, 2019.

Brief description of amendments: The amendments added a new level of protection regarding ''unbalanced voltage'' to the Technical Specifications (TSs) for the loss of power instrumentation. Implementation of these amendments provides for equipment protection from the effects of an unbalanced voltage in a similar fashion to the existing degraded and loss of voltage protection schemes. Specifically, the amendments added a new condition to TS 3.3.8.1 and revised TS Table 3.3.8.1–1 for Browns Ferry, and added a new condition to TS 3.3.5 and revised TS Table 3.3.5–1 for Sequoyah and Watts Bar to reflect the implementation of the Class 1E ''unbalanced voltage'' relays for Browns Ferry, Sequoyah, and Watts Bar TSs loss of power instrumentation.

Date of issuance: August 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 309, 332, and 292 (Browns Ferry, Units 1, 2, and 3 respectively); 345 and 339 (Sequoyah, Units 1 and 2, respectively); and 128 and 31 (Watts Bar, Units 1 and 2, respectively). A publicly-available version is in ADAMS under Accession No. ML18277A110; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, DPR–68, DPR–77, and DPR–79, and Facility Operating License Nos. NPF–90 and NPF–96: The amendments revised the Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** January 16, 2018 (83 FR 2231). The supplemental letter dated June 18, 2018, and as subsequently revised by letter dated November 19, 2018, and supplemented by letter dated January 25, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 18th day of September 2019.

For the Nuclear Regulatory Commission.

Jessica A. Bielecki,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–20507 Filed 9–23–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29462; NRC–2019–0167]

Consideration of License Amendment Request for Exemption to NRC's Regulations to Remove Radioisotope Thermoelectric Generators From the Department of the Navy Master Material License No. 45–23645–01NA; Permit No. 45–4650–N1NP; Naval Nuclear Power Unit

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption under its regulations to the U.S. Navy from the decommissioning requirements as it relates to six Radioisotope Thermoelectric Generators (RTGs). The approval would allow the in-situ abandonment of six RTGs on the ocean bottom and subsequent termination of Naval Radioactive Materials Permit No. 45–4650–N1NP, Naval Nuclear Power Unit, Port Hueneme, California.

DATES: The environmental assessment and finding of no significant impact referenced in this document are available on September 24, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0167 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–2019–0167. 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the AVAILABILITY OF DOCUMENTS section.
- *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: Robin Elliott, U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, Pennsylvania 19406; telephone: 610–337–5076; email: *Robin.Elliott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an exemption to NRC decommissioning requirements for the Master Materials License held by the Department of the Navy, License 45–23645–01NA. The exemption would authorize the removal of six RTGs that are currently permitted for storage on the ocean bottom pending development of a viable disposal option. Therefore, as required by part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC performed an environmental assessment. Based on the results of the environmental assessment that follows, the NRC has determined not to prepare an environmental impact statement for the amendment, and is issuing a finding of no significant impact.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would approve the licensee's August 29, 2018, license amendment and associated exemption request, resulting in the in-situ abandonment of six RTGs on the ocean bottom, therefore allowing termination of the permit supporting their storage.

In 1970 and 1977, the Navy emplaced six RTGs in the deep oceans of the North Atlantic and South Pacific at depths greater than 10,000 feet to provide power for acoustic transponders. Currently, the RTGs are buried in silt and are irretrievable and further retrieval attempts are dangerous to personnel and equipment due to the depths involved, according to the U.S. Navy.

Each RTG consists of a strontium-90 titanate heat source, thermoelectric generator, thermal insulation, biological shielding, and a pressure vessel/housing that is designed to withstand at least 20,000 feet of ocean depth. The strontium pellets are sealed in a stainless steel liner. Final encapsulation of the liner is within an alloy that is resistant to seawater corrosion. The strontium capsules are designed to retain their integrity for at least 300 years while exposed to seawater at 10,000 pounds per square inch. Three of the six RTGs utilize a minimum of 270 pounds of depleted uranium shielding, while the remaining three utilized lead shielding. The half-life of strontium-90 is 28.8 years.

In 1978, the Navy attempted to recover three of these RTGs using a manned submersible vehicle. This attempt failed and the deep submergence vehicle was damaged as part of that retrieval attempt. The Navy has expressed concern regarding danger to personnel and equipment in subsequent attempts to retrieve these RTGs, especially given their buried condition.

Master Material License (MML) No. 45–23645–01NA was issued on March 23, 1987, pursuant to 10 CFR part 30, and has been amended periodically since that time. This MML license authorizes, via Naval Radioactive Materials Permit No. 45–4650–N1NP, these six RTGs. They are currently licensed for storage on the ocean bottom pending development of a viable disposal option.

License termination for such sources is usually accomplished under the regulatory framework of 10 CFR 30.36. The NRC is evaluating a request to exempt the Navy from these requirements in recognition of the irretrievability of these RTGs and to allow the Navy to remove these RTGs from their MML due to the fact that they no longer possess the material (*i.e.,* these RTGs as irretrievable).

Need for the Proposed Action

The Navy is requesting approval of this permitting action because it has ceased use of the RTGs, is unable to retrieve the sources, and further retrieval attempts are dangerous for personnel and equipment, and therefore to terminate the associated permits.

Environmental Impacts of the Proposed Action

All of the RTGs are located on the ocean floor at depths greater than 10,000 feet deep and are designed to retain their strontium-90 fuel for 300 years without deformation in a deep ocean environment. The half-life of strontium-90 is 28.8 years. Thus, at the design life of the RTG fuel capsules, 10 half-lives have passed, and the remaining activity of strontium will be indistinguishable from background levels.

Based on photos the staff reviewed in the submittals, it appears that these RTGs are buried or semi-buried in silt. Additionally, each RTG has significant depleted uranium or lead shielding. This weight, coupled with the fact that these RTGs are buried in varying degrees in the ocean floor, have essentially immobilized them.

The RTGs are in a state where they are semi or completely buried in silt. Given this, and the fact that during a previously attempt to retrieve these RTGs, the deep submergence vehicle was damaged, attempting the same activity again may damage vehicles attempting retrieval. As discussed by the Navy, there is a significant degree of (non-radiological) risk to personnel attempting another retrieval attempt due to the depth and silt accumulation of the RTGs.

The NRC staff evaluated dose assessments if the strontium fuel capsules leak, and determined that doses would be minimal. These RTGS are located in remote areas of the ocean in the deep subsurface. There are a limited number of vehicles capable of reaching depths of 10,000 feet or greater. Given this, the NRC staff finds it unlikely that these RTGs will be intruded upon, as discussed in greater detail in the NRC staff's safety evaluation report.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff

considered is the no-action alternative, under which the staff would leave things as they are by simply denying the exemption request. This no-action alternative is not feasible as it conflicts with 10 CFR 30.36(d), requiring that a license (permit in this case) be terminated when no principal activities under the license have been conducted for a period of 24 months. It has been greater than 24 months since the licensee (permittee) conducted any principal activities with the sources. Additionally, denying the amendment request would result in no change in current environmental impacts, since the sources are irretrievable. The environmental impacts of the proposed action and the no-action alternative are therefore the same, and would not result in significant environmental impacts.

The staff also considered requiring the Navy to again attempt to retrieve RTGs as a potential alternative. However, based on the information submitted by the Navy and reviewed by the NRC staff, this is not a feasible option, and is therefore not considered further.

Agencies and Persons Consulted

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this environmental assessment in support of the proposed action. On the basis of this environmental assessment, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a finding of no significant impact is appropriate.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	Adams Accession No.
Department of the Navy letter dated August 29, 2018, ''Request for Technical Assistance In the Abandonment of Radioisotope Thermoelectric Generators In Siu At The Bottom Of The Ocean''.	ML19165A234
''Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees'' (NUREG–1757, Vol.1 Rev. 2).	ML063000243
Safety Evaluation Report Approval of Request to Remove RTGS from Department of Navy License, dated August 13, 2019.	ML19226A177

Dated at Rockville, Maryland, this 18th day of September, 2019.

For the Nuclear Regulatory Commission.

Joseph L. Nick,

Deputy Director, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2019–20597 Filed 9–23–19; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. on Thursday, September 26, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: September 19, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–20750 Filed 9–20–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86999; File No. SR–NYSE–2019–50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Aggregate Rates and Requirements Across Tapes A, B and C Securities for Midpoint Passive Liquidity Orders

September 18, 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 September 3, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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) aggregate rates and requirements across Tapes A, B and C securities for Midpoint Passive Liquidity (''MPL'') Orders, including revising the requirements for the two existing MPL tiers that provide liquidity to the Exchange, and (2) add a new tier for MPL Orders across Tapes A, B and C securities. The Exchange proposes to implement the fee changes effective September 3, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to revise pricing available for MPL that provide liquidity to the Exchange as follows:

(1) Revise all MPL tiers so that the respective credits are available for MPL Orders that add liquidity in Tapes A, B and C securities;

(2) Add a new MPL tier with lower requirements for MPL Orders that add liquidity in Tapes A, B and C securities. Under the proposed tier, member organizations that have an average daily volume (''ADV'') of MPL Orders executed on the Exchange that add liquidity (''Adding ADV'') that is at least 0.0075% of consolidated average daily volume (''CADV'') [4] in Tapes A, B and C combined (''US CADV''), excluding any liquidity added by a Designated Market Maker (''DMM''), would qualify for a $0.0020 credit;

(3) For the two existing MPL tiers for which qualification is based on the member organization having Adding ADV in MPL Orders in Tape A securities that represents a specified percentage of NYSE CADV, lowering the specified percentages and replacing the requirement of NYSE CADV with Tapes A, B and C combined; and

(4) Conform the rates for adding liquidity in Tapes B and C securities in MPL Orders by eliminating the separate credits for adding liquidity in Tapes B and C securities in MPL Orders.

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 liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective September 3, 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, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) in Tape A, B and C combined declined from 9.9% in March 2019 to 9.1% in July 2019.[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.

Proposed Rule Change

To respond to this competitive environment, the Exchange has established incentives for its member organizations who submit MPL Orders that provide liquidity on the Exchange, including cross-tape incentives for member organizations based on submission of orders that provide displayed and non-displayed liquidity in Tapes B and C securities.

For Tape A securities at or above $1.00, the Exchange currently offers a base rate for MPL Orders that provide liquidity to the Exchange, excluding MPL Orders from DMMs, and two related MPL tiers for member organizations that have a minimum amount of Adding ADV of NYSE CADV in MPL orders. The MPL credits are $0.0010 (base rate), $0.00250 (first Adding ADV tier) and $0.00275 (second tier). Member organizations that do not meet the Adding ADV thresholds in the two existing tiers would receive the base rate credit.

The proposed fee change is designed to attract additional MPL Order flow to the Exchange by aggregating rates and requirements for MPL Orders across Tapes A, B and C securities, introducing a new tier rate for MPL Orders that provide liquidity to the Exchange, and lowering the Adding ADV requirements for the two existing tiers that would apply across all three tapes rather than solely Tape A, as described below.

[4] The terms ''ADV'' and ''CADV'' are defined in footnote * of the Price List.

[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, 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, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

MPL Orders

An MPL Order is defined in Rule 7.31 as a Limit Order that is not displayed and does not route, with a working price at the midpoint of the PBBO.[11]

MPL Orders That Provide Liquidity

Currently, for securities at or above $1.00 in Tape A securities, the Exchange provides a credit of $0.00100[12] for all MPL Orders (other than MPL Orders from DMMs) that add liquidity to the NYSE, unless one of the higher credits set forth in two tiers that follow in the Price List apply.

The Exchange proposes to retain this base rate credit but extend its applicability to all MPL Orders in Tapes A, B and C securities, other than MPL Orders from DMMs.

The Exchange further proposes to introduce a new, higher fee of $0.0020 per share for member organizations that have an Adding ADV in MPL Orders that is at least 0.0075% of Tapes A, B and C CADV combined, excluding any liquidity added by DMMs. The proposed tier would be inserted between the base rate and the two existing tiers, discussed below.

For example, in a month where US CADV is 6.1 billion shares, a member organization has an Adding ADV in MPL Orders that add liquidity of 500,000 shares in Tapes A, B and C securities. That member organization's Adding ADV as a percentage of US CADV would accordingly be 0.0081%, which would qualify for the proposed MPL Adding Tier 3 credit of $0.0020 per share. Prior to proposed change, such a member organization would have received the non-tier credit of $0.0012 per share.

Further, currently a member organization that has Adding ADV in MPL Orders that is at least 0.030% of NYSE CADV, excluding any liquidity added by a DMM, would be eligible for a $0.00250 credit.

The Exchange proposes to retain this credit and revise the qualifying requirement to having an Adding ADV in MPL Orders that is at least 0.015% of Tapes A, B and C CADV combined, once again excluding any liquidity added by a DMM.

Similarly, under the other current tier, a member organization that has Adding ADV in MPL Orders that is at least 0.140% of NYSE CADV, excluding any liquidity added by a DMM, would be eligible for a $0.00275 credit.

The Exchange proposes to retain this credit as well and revise the requirement for qualifying to having an Adding ADV in MPL Orders that is at least 0.075% of Tapes A, B and C CADV combined, excluding any liquidity added by a DMM.

The Exchange notes that the reduction in the percentage of CADV levels for MPL Adding Tiers 1 and 2 are in line with the Tape A percentage of all US CADV insofar as the proposed requirement utilizes a denominator (US CADV) that is almost double the previous denominator limited to Tape A securities. In July 2019, Tape A CADV was 3.141 billion shares, 51.2% of total US CADV, which was 6.127 billion shares.

MPL Orders That Provide Liquidity in Tapes B and C Securities

Currently, for securities priced at or above $1.00, the Exchange offers a credit of $0.0010 per share for executions in each of Tape B and C securities for MPL Orders that provide liquidity to the Exchange, unless a specific credit applies.

Under the Adding Tier 1, the Exchange offers a per tape credit of $0.0025 per share for an MPL Order on a per tape basis for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the member organization has at least 0.10% of Adding CADV in Tape B or C. For purposes of qualifying for this tier, the 0.10% of Adding CADV could include shares of both an SLP-Prop and an SLMM[13] of the same or an affiliated member organization.

The Exchange proposes to delete the reference to the $0.0010 credit per share for executions in each of Tape B and C securities for MPL Orders and refer to the portion of the Price List following the ''Executions at the Close Equity Per Share Charge'' section that would set forth the proposed aggregation of rates for MPL Orders across tapes described above.

Similarly, the Exchange proposes to delete the reference to the per tape credit of $0.0025 per share for an MPL Order on a per tape basis in Adding Tier 1.

Application and Impact of Transition Period Pricing

The purpose of these proposed changes are to incentivize member organizations to trade on the Exchange in MPL Orders in Tapes A, B and C securities. The proposed new tier for member organizations with Adding ADV in MPL Orders that is at least 0.0075% of Tapes A, B and C CADV combined would incentivize member organizations with lower trading volumes who qualified for the lower base rate the opportunity to qualify for a higher credit of $0.0020, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange. In addition, the new proposed tier would encourage member organizations with lower trading volumes to increase mid-point liquidity, thereby improving overall market quality and offering price improvement.

The proposed changes to the two existing MPL tiers to lower the Adding ADV requirement while expanding it to all three tapes would increase liquidity-providing MPL Orders in Tapes A, B and C securities, 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 credits to the level of MPL Orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more MPL Orders that add liquidity to the Exchange, thereby increasing the potential for price improvement and execution opportunities to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive and fragmented market environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed new MPL tier with a higher rate and lowered amount of Adding ADV requirement spread across three tapes would provide an incentive for member organizations to add additional MPL liquidity to the Exchange. Currently, 8 firms (out of a total 146 member firms) can qualify for the MPL tiers. Based on the profile of liquidity-adding firms generally, the Exchange believes that at least 5 additional member organizations could qualify for the new tiered rate under if

[11] *See* Rule 7.31(d)(3). Limit Order is defined in Rule 7.31(a)(2).

[12] For the sake of consistency, the Exchange proposes to delete the extra zero in the current Price List.

[13] Under Rule 107B, a Supplemental Liquidity Provider (''SLP'') can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM''). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

they choose to direct order flow to, and increase quoting on, the Exchange.

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,[14] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[15] 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

As discussed above, the Exchange operates in a highly fragmented and competitive market. 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 that 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) in Tape A, B and C combined declined between March and July 2019.

Specifically, the Exchange believes that aggregating rates and requirements across tapes for MPL Orders that provide liquidity to the Exchange is reasonable because it would streamline the Exchange's Price List in a manner consistent with the practice on other exchanges where adding rates are consistent across tapes for the same order types.[16]

Further, the Exchange believes the proposed new tier for member organizations with Adding ADV in MPL orders that is at least 0.0075% of Tapes A, B and C CADV combined is reasonable because it would incentivize member organizations with lower trading volumes who receive the lower base rate if they do not qualify for the MPL adding tiers the opportunity to qualify for a higher credit of $0.0020, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange. In addition, the new proposed tier would encourage member organizations with lower trading volumes to increase mid-point liquidity, thereby improving overall market quality and offering price improvement.

Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed new MPL tier with a higher rate and lowered amount of Adding ADV spread across three tapes would provide an incentive for member organizations to add additional liquidity from the Exchange in Tape B and C securities. As previously noted, a number of firms can qualify for the MPL tiers and additional member organizations could qualify for the new tiered rate under the proposed criteria if they choose to direct order flow to, and increase offering the opportunity for price improvement to incoming orders on, the Exchange.

Finally, the Exchange believes that the proposed changes to the two existing MPL tiers to lower the Adding ADV requirement while expanding it to all three tapes is reasonable because it would increase liquidity-providing MPL orders in Tapes A, B and C securities, 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 credits to the level of MPL orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more MPL orders that add liquidity to the Exchange, thereby increasing the potential for price improvement and execution opportunities to incoming marketable orders submitted to the Exchange.

The Exchange notes that the existing credits for the MPL orders in Tape A securities remain unchanged and the credits in Tape B and C securities are in line with the credits the Exchange currently credits member organizations for adding MPL orders in Tape A securities.

Finally, the Exchange also believes the proposed non-substantive changes are reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that, for the reasons discussed above, the proposed aggregation of rates and requirements across tapes for MPL Orders would incentivize member organizations with lower trading volumes who qualified for the lower base rate the opportunity to qualify for a higher credit of $0.0020, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange. In addition, the new proposed tier would encourage member organizations with lower trading volumes to increase mid-point liquidity, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement. 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 also believes that the proposed new tier for member organizations with Adding ADV in MPL Orders that is at least 0.0075% of Tapes A, B and C CADV combined would encourage member organizations with lower trading volumes who qualified for the lower base rate the opportunity to qualify for a higher credit of $0.0020, thereby increasing the number of orders adding liquidity that are executed on

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) & (5).

[16] For instance, the requirements for the Exchange's affiliate NYSE National, Inc.'s Adding Tiers 1, 2, and 3 utilize Adding ADV as a percentage of US CADV, and offer the same credits for adding displayed liquidity across Tapes A, B and C securities within the same tier. *See https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

the Exchange and improving overall liquidity on a public exchange. In addition, the new proposed tier would encourage member organizations with lower trading volumes to increase mid-point liquidity, thereby improving overall market quality and offering price improvement. As previously noted, a number of member organizations are qualifying for the MPL tiers. Based on the profile of liquidity-adding firms generally, the Exchange believes additional member organizations could qualify for the new tiered rate under the proposed criteria if they choose to direct order flow to, and increase quoting on, the Exchange. The proposed rate and lower Adding ADV requirement across all three tapes is also equitable because it would apply equally to all existing member organizations that add liquidity to the Exchange in MPL Orders.

Further, the Exchange believes that proposed changes to the two existing MPL tiers to lower the Adding ADV requirement while expanding it to all three tapes would increase liquidity-providing MPL Orders in Tapes A, B and C securities, would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders, to benefit of all member organizations. The Exchange believes that the proposal would provide an equal incentive to all member organizations to send additional MPL Orders to the Exchange, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebates.

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 does not permit unfair discrimination because the existing MPL rates as well as the rate for the proposed new tier 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 fee for member organizations under the proposed tier because the tier would be provided on an equal basis to all member organizations. Further, the Exchange believes the proposed lower Adding ADV requirements for the two existing tiers while expanding it to all three tapes would increase liquidity-providing MPL Orders in Tapes A, B and C securities, would provide an equal incentive to all member organizations to send additional MPL Orders to the Exchange, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebates.

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.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] 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.'' [18]

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 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. As noted, the Exchange's market share of intraday trading in Tape B and C securities (excluding auction volume) in Tape A, B and C combined declined between March and July 2019. 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) [19] of the Act and

[17] 15 U.S.C. 78f(b)(8).

[18] Regulation NMS, 70 FR at 37498–99.

[19] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(2) of Rule 19b–4 [20] 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) [21] 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–2019–50 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–2019–50. 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–2019–50 and should be submitted on or before October 15, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Petersen,

Assistant Secretary.

[FR Doc. 2019–20574 Filed 9–23–19; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10897]

Notice of Public Meeting of the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

In accordance with the Federal Advisory Committee Act (FACA), the PEPFAR Scientific Advisory Board (hereinafter referred to as ''the Board'') will meet on Wednesday, October 16, 2019 at the offices of the U.S. Global AIDS Coordinator and Health Diplomacy located at 1800 G St. NW, Suite 10–300, Washington, DC 20006. The meeting is expected to run from 8:30 a.m. until 5:30 p.m. and is open to the public.

The Board is established under the general authority of the Secretary of State and the Department of State (''the Department'') as set forth in Title 22 of the United States Code, in particular Section 2656 of that Title, and consistent with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix).

The meeting will be hosted by U.S. Global AIDS Coordinator, Ambassador-at-Large Deborah Birx, M.D., who leads the coordination and implementation of PEPFAR, and the Board Chair, Dr. Carlos del Rio. The Board serves the U.S. Global AIDS Coordinator in a solely advisory capacity concerning scientific, implementation, and policy issues related to the U.S. response to HIV/AIDS globally. These issues evolve and are of concern as they influence the priorities and direction of PEPFAR, the content of national and international strategies for program implementation, and the role of PEPFAR in international discourse regarding an appropriate and resourced response and we advance towards epidemic control of HIV/AIDS. Topics for the October 16 meeting will include a report out from an expert working group on the use of HIV recency testing; updates on PEPFAR 2019 programmatic activities; updates on next-generation HIV biomedical prevention; updates on universal test and treat; and a risk/benefit discussion of the transition to dolutegravir based ART regimens.

The public may attend this meeting as capacity allows. Admittance to the meeting will be by means of a pre-arranged clearance list. In order to be placed on the list and, if applicable, to request reasonable accommodation, please register online via the following: *https://forms.gle/vrD4HgcbLQ7aiq4p6* no later than Monday, September 30. While the meeting is open to public attendance, the Board will determine procedures for public participation. Requests for reasonable accommodation that are made after 12 p.m. on September 30, 2019 may not be possible to fulfill.

For further information about the meeting, please contact Dr. Sara Klucking, Designated Federal Officer for the Board, Office of the U.S. Global AIDS Coordinator and Health Diplomacy at *KluckingSR@state.gov.*

Sara R. Klucking,

Acting Director for Research and Science.

[FR Doc. 2019–20575 Filed 9–23–19; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 10901]

Certification Pursuant to Section 7041(f)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019

Pursuant to section 7041 (f)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019 (Div. F, Pub. L. 116–6) (SFOAA) and Department of State Delegation of Authority 245–2, I hereby certify that all practicable steps have been taken to ensure that mechanisms are in place for monitoring, oversight, and control of funds made available by the SFOAA for assistance for Libya.

This certification shall be published in the **Federal Register** and, along with

the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: July 19, 2019.

John J. Sullivan,

Deputy Secretary.

[FR Doc. 2019–20725 Filed 9–23–19; 8:45 am]

BILLING CODE 4710–31–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36323]

Arkansas-Oklahoma Railroad Company—Acquisition and Operation Exemption—State of Oklahoma

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for Arkansas-Oklahoma Railroad Company (AOK), a Class III carrier, to acquire from the State of Oklahoma and operate approximately 69.60 miles of rail line extending from milepost 295.36 in Howe, Okla., to milepost 364.96 in McAlester, Okla. (the Line).[1] Because AOK is a Class III rail carrier, the acquisition and operation exemption is not subject to labor protective conditions.

DATES: This exemption will be effective on October 19, 2019. Petitions to stay must be filed by September 27, 2019. Petitions to reopen must be filed by October 9, 2019.

ADDRESSES: Pleadings may be filed with the Board either via e-filing format or in writing addressed to: Surface Transportation Board, Attn: Docket No. FD 36323, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on AOK's representative, Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision served on September 19, 2019, which is available at *www.stb.gov.*

Decided: September 18, 2019.

[1] AOK acquired the Line from the State of Oklahoma in April 2016 under the mistaken belief that the acquisition was already authorized by the Board. (*See* AOK Pet. 2.) In June 2019, AOK filed its petition for Board authority to correct its error.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2019–20634 Filed 9–23–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2019–60]

Petition for Exemption; Summary of Petition Received; Costruzioni Aeronautiche Tecnam S.p.A.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from a specified requirement of the Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 15, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0694 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, AIR–691, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106; telephone (404) 474–5558; facsimile (816) 329–4090.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 17, 2019.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0694.

Petitioner: Costruzioni Aeronautiche Tecnam S.p.A.

Section(s) of 14 CFR Affected: § 23.1419(b).

Description of Relief Sought: The proposed exemption, if granted, would allow certification of the petitioner's Model P2012 Traveler airplanes for flight into known icing conditions without having to meet the ice protection system testing requirements. If granted, this relief from § 23.1419(b) would be allowed for a maximum of 16 airplanes and would be time-limited for a period of eight months until the airplanes are retrofitted with lift detector devices.

[FR Doc. 2019–20548 Filed 9–23–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Permanent Closure of Grundy Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of permanent closure of Grundy Municipal Airport (GDY).

SUMMARY: The Federal Aviation Administration (FAA) received written notice on September 4, 2019, from the

town of Grundy advising that effective October 31, 2019, the town will be permanently closing Grundy Municipal Airport (GDY), Grundy, Virginia.

DATES: The permanent closure of the airport is effective as of October 31, 2019.

FOR FURTHER INFORMATION CONTACT: John M. Robinson, Airport Engineer, Washington Airports District Office, Federal Aviation Administration, 13873 Park Center Road, Suite 490S, Herndon, VA 20171, (703) 487–3976.

SUPPLEMENTARY INFORMATION: GDY is a small 89-acre non-towered, general aviation airport, that is listed in the national plan of integrated airport systems. It has been owned and operated by the town of Grundy since 1963. Although the town of Grundy has been the recipient of grant funding from the FAA in the past, the FAA recognizes that the town is no longer contractually obligated by these previous grant agreements to continue operating GDY as an airport. Section 46319 of Title 49 of the United States Code [49 U.S.C. 46319] provides that a public agency (as defined in 49 U.S.C. 47102) may not permanently close an airport listed in the national plan of integrated airport systems under 49 U.S.C. 47103 without providing written notice to the Administrator of the FAA at least 30 days before the date of the closure. The FAA recognizes the letter received September 4, 2019 from the town of Grundy meets that requirement. The FAA is publishing the town of Grundy's notice of permanent closure of Grundy Municipal Airport in accordance with 49 U.S.C. 46319(b).

Issued in, Herndon, VA, on September 18, 2019.

Matthew J. Thys,

Manager, Washington Airports District Office.

[FR Doc. 2019–20684 Filed 9–23–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering, and Development Advisory Committee (REDAC); Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Research, Engineering, and Development Advisory Committee (REDAC).

DATES: The meeting will be held on October 10, 2019, from 9 a.m.–4 p.m. EDT. Requests for accommodations to a disability must be received by September 26, 2019. Individuals requesting to speak during the meeting must submit a written copy of their remarks to DOT by September 26, 2019. Requests to submit written materials to be reviewed during the meeting must be received no later than September 26, 2019.

ADDRESSES: The meeting will be held at the FAA Headquarters, 800 Independence Avenue SW, Washington, DC 20591. Copies of the meeting minutes will be available on the REDAC internet website at *http://www.faa.gov/go/redac.* A final agenda will be posted on the REDAC internet website at *http://www.faa.gov/go/redac* at least one week in advance of the meeting. You can visit the REDAC internet website at *http://www.faa.gov/go/redac.*

FOR FURTHER INFORMATION CONTACT: Chinita A. Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at *chinita.roundtree-coleman@faa.gov* or (609) 485–7149. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Research, Engineering, and Development Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 100–591 (1988) and Public Law 101–508 (1990) to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

II. Agenda

At the meeting, the agenda will cover the following topics:

- FAA Research and Development Landscapes
- Emergence of new entrant vehicles and operations into the National Airspace System

III. Public Participation

The meeting will be open to the public on a first-come, first-served basis, as space is limited. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be 45 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to REDAC members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 17, 2019.

Chinita. A. Roundtree-Coleman,

REDAC PM/Lead, Federal Aviation Administration.

[FR Doc. 2019–20683 Filed 9–23–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America (Daimler) has requested an exemption for one commercial motor vehicle (CMV) driver from the Federal requirement to hold a U.S. commercial driver's license (CDL). Daimler request an exemption for Mr. Thomas Passegger, Project Engineer in Autonomous Trucks for Daimler. Mr. Passegger holds a valid German commercial license and wants to test drive Daimler vehicles on U.S. roads to better understand product requirements in ''real world'' environments, and verify results. Daimler states that the requirements for a German commercial license ensure that operation under the exemption will likely achieve a level of safety

equivalent to or greater than the level that would be obtained in the absence of the exemption. FMCSA requests public comments on Daimler's application for exemption.

DATES: Comments must be received on or before October 24, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2012–0032 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery 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:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2012–0032), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2012–0032'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in 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 and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Daimler has applied for an exemption for Thomas Passegger from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Thomas Passegger, holds a valid German commercial license but is unable to obtain a CDL in any of the U.S. States due to residency requirements in the United States. A copy of the application is in Docket No. FMCSA–2012–0032.

The exemption would allow Mr. Passegger to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to develop improved safety and emission technologies. Mr. Passegger will typically drive for no more than 6 hours per day for one to two days, and 10 percent of the test driving will be on two-lane State highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled. Daimler requests that the exemption cover the maximum allowable duration of five years.

Mr. Passegger holds a valid German commercial license, and as explained by Daimler in its exemption requests, the requirements for that license ensure that the same level of safety is met or exceeded as if this driver had a U.S. CDL. Daimler request that the exemption cover the maximum allowable duration of five years.

IV. Method To Ensure an Equivalent or Greater Level of Safety

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. Since 2015, FMCSA has granted Daimler drivers similar exemptions: [March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7,

2015 (80 FR 76059); December 21, 2015 (80 FR 79410); July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742).]

Issued on: September 18, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–20586 Filed 9–23–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

National Hazardous Materials Route Registry

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice; revisions to the listing of designated and restricted routes for hazardous materials.

SUMMARY: This notice provides revisions to the National Hazardous Materials Route Registry (NHMRR) reported to the FMCSA from April 1, 2018 through March 31, 2019. The NHMRR is a listing, as reported by States and Tribal governments, of all designated and restricted roads and preferred highway routes for transportation of highway route controlled quantities of Class 7 radioactive materials and non-radioactive hazardous materials.

DATES: These revisions are effective September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent Babich at (202) 366–4871, or *vincent.babich@dot.gov;* or Ms. Melissa Williams at (202) 366–4163 or *melissa.williams@dot.gov,* Hazardous Materials Division, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m. ET., Monday through Friday, except for Federal holidays.

Legal Basis and Background

Paragraphs (a)(2) and (b) of section 5112 of title 49 United States Code (U.S.C.) permit States and Tribal governments to designate and limit highway routes over which hazardous materials (HM) may be transported, provided the State or Tribal government complies with standards prescribed by the Secretary of Transportation (the Secretary) and meets publication requirements in section 5112(c). To establish standards under paragraph (b), the Secretary must consult with the States, and, under section 5112(c), coordinate with the States to ''update and publish periodically'' a list of currently effective HM highway routing designations and restrictions. The requirements that States and Tribal governments must follow to establish, maintain, or enforce routing designations for the transport of placardable quantities of non-radioactive hazardous materials (NRHM) are set forth in 49 CFR part 397, subpart C. Subpart D of part 397 sets out the requirements for designating preferred routes for highway route controlled quantities of Class 7 radioactive materials (HRCQ/RAM) shipments as an alternative, or in addition, to Interstate System highways. For HRCQ/RAM shipments, § 397.101 defines a preferred route as an Interstate Highway for which no alternative route is designated by the State; a route specifically designated by the State; or both. (See § 397.65 for the definition of ''NRHM'' and ''routing designations.'')

Under a delegation from the Secretary,[1] FMCSA has authority to implement 49 U.S.C. 5112.

Currently, 49 CFR 397.73 establishes public information and reporting requirements for NRHM. States or Tribal governments are required to furnish information regarding any new or changed routes to FMCSA within 60 days after establishment. Under 49 CFR 397.103, a State routing designation for HRCQ/RAM routes (preferred routes) as an alternative, or in addition, to an Interstate System highway, is effective when the authorized routing agency provides FMCSA with written notification, FMCSA acknowledges receipt in writing, and the route is published in FMCSA's NHMRR. The Office of Management and Budget has approved these collections of information under control number 2126–0014, Transportation of Hazardous Materials, Highway Routing.

In this notice, FMCSA is merely performing the ministerial function of updating and publishing the NHMRR based on input from its State and Tribal partners under 49 U.S.C. 5112(c)(1). Accordingly, this notice serves only to provide the most recent revisions to the NHMRR; it does not establish any new public information and reporting requirements.

Updates to the NHMRR

FMCSA published the full NHMRR in a **Federal Register** Notice on April 29, 2015 (80 FR 23859). Since publication of the 2015 notice, FMCSA published two updates to the NHMRR in **Federal Register** Notices on August 8, 2016 (81 FR 52518) and August 9, 2018 (83 FR 39500).

This notice provides revisions to the NHMRR, reported to the FMCSA from April 1, 2018 through March 31, 2019. The revisions to the NHMRR listings in this notice supersede and replace corresponding NHMRR listings published in the April 29, 2015 notice and corresponding revisions to the NHMRR listings published in the August 8, 2016 and August 9, 2018 notices. Continue to refer to the April 29, 2015 notice for additional background on the NHMRR and the August 8, 2016 notice for the procedures for State and Tribal government routing agencies to update their Route Registry listings and contact information.

The full current NHMRR for each state is posted on the FMCSA's internet website at: *https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry.*

Revisions to the NHMRR in This Notice

In accordance with the requirements of 49 CFR 397.73 and 397.103, the NHMRR is being revised as follows:

Table 2.—California—Designated NRHM Routes

Route Order Designator ''A6A–3.0–B3'' is revised to remove ''B'' designation.

Route Order Designator ''A10Q–3.0'' is deleted.

Route Order Designator ''A11P–1.0–A (''B'' designation)'' is revised to remove QA comment.

Route Order Designator ''A11P–1.0–B'' is revised.

Route Order Designator ''A11Q–3.0'' is deleted.

Route Order Designator ''A12P–1.0–A1'' is deleted.

Route Order Designator ''A12P–2.0–C1'' is revised.

Route Order Designator ''A12Q–3.0'' is deleted.

Route Order Designator ''A17Q–1.0–A'' is deleted.

Route Order Designator ''A18Q–1.0–A'' is deleted.

Route Order Designator ''A19Q–1.0–A'' is deleted.

Route Order Key

Each listing in the NHMRR includes codes to identify each route designation and each route restriction reported by the State. Designation codes identify the routes along which a driver may or must transport specified HM. Among the designation codes is one for preferred routes, which apply to the transportation of a highway route controlled quantity of Class 7

[1] 49 CFR 1.87(d)(2).

(radioactive) material. Restriction codes identify the routes along which a driver may not transport specified HM shipments. Table 1 presents information on each restriction and designation code.

TABLE 1—RESTRICTION/DESIGNATION KEY

Restrictions	Designations
0—ALL Hazardous Materials	A—ALL NRHM Hazardous Materials.
1—Class 1—Explosives	B—Class 1—Explosives.
2—Class 2—Gas	I—Poisonous Inhalation Hazard (PIH).
3—Class 3—Flammable	P—*Preferred Route* Class 7—Radioactive.
4—Class 4—Flammable Solid/Combustible.	
5—Class 5—Organic.	
6—Class 6—Poison.	
7—Class 7—Radioactive.	
8—Class 8—Corrosives.	
9—Class 9—Dangerous (Other).	
i—Poisonous Inhalation Hazard (PIH).	

Revisions to the National Hazardous Materials Route Registry (March 31, 2019)

TABLE 2—CALIFORNIA—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A,B, I,P)	FMCSA QA comment
10/28/92 and 04/16/92.	A6A–3.0–B3	Lenwood Rd. from State 58 to Interstate 15.	.....	San Bernardino.	I	This route will be considered by the California Highway Patrol for removal in a future rulemaking.
10/28/92	A11P–1.0–A	State 58 from State 33 [McKittrick] to Interstate 15 [Barstow].	.....	.....	B.	
10/28/92	A11P–1.0–B	State 180 from State 33 [Mendota] to McCall Ave. [Fresno].	.....	Fresno	B.	
10/28/92	A12P–2.0–C1	State 41 from State 46 [Cholame] to State 99.	.....	.....	B.	

End of Revisions to the National Hazardous Materials Route Registry

Issued on: September 17, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–20587 Filed 9–23–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Activities: Information Collection Renewal; Submission for OMB Review; General Reporting and Recordkeeping Requirements by Savings Associations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled ''General Reporting and Recordkeeping Requirements by Savings Associations.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before October 24, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0266, Office of the Comptroller of the Currency, 400 7th Street SW, suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0266'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0266, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0266'' or ''General Reporting and Recordkeeping Requirements by Savings Associations.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or disclose information to a third party. The OCC asks that OMB extend its approval of this information collection.

Title: General Reporting and Recordkeeping Requirements by Savings Associations.

OMB Control No.: 1557–0266.

Type of Review: Regular review.

Description: This information collection relates to reports and records required by the following regulations:

- 12 CFR 144.8 (communications between members of a federal mutual savings association);
- 12 CFR 163.47(e) (pension plan records); and
- 12 CFR 163.76(c) (offers and sales of securities of a federal savings association or its affiliates in any office of the savings association—form of certification).

Federal savings associations use the reports and records that the regulations require for internal management control purposes, and examiners use them to determine whether savings associations are being operated safely, soundly, and in compliance with regulations. An absence of the reporting and recordkeeping requirements would make it difficult for institutions to establish prudent internal controls and would limit the ability of examiners to determine the accurate performance and condition of federal savings associations.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 305.

Estimated Total Burden: 30,733 hours.

Frequency of Response: On occasion.

Comments: On July 15, 2019, the OCC issued a notice for 60 days of comment concerning this collection, 84 FR 33810. No comments were received. Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

Dated: September 17, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–20577 Filed 9–23–19; 8:45 am]

BILLING CODE 4810–33–P

[1] On July 15, 2019, the OCC published a 60-day notice for this information collection, 84 FR 33810.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the collection of information related to the disclosure requirements with respect to prohibited tax shelter transactions.

DATES: Written comments should be received on or before November 25, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Disclosure Requirements with Respect to Prohibited Tax Shelter Transactions.

OMB Number: 1545–2079.

Regulatory Number: TD 9334.

Abstract: This document contains final regulations that provide guidance under section 4965 of the Internal Revenue Code (''Code''), relating to excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties, and sections 6033(a)(2) and 6011(g) of the Code, relating to certain disclosure obligations with respect to such transactions.

Current Actions: There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 6,500.

Estimated Time per Respondent: 15 hrs., 9 mins.

Estimated Total Annual Burden Hours: 98,500.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: September 18, 2019.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2019–20641 Filed 9–23–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, William Paul, Deputy Chief Counsel (Technical)
2. Kathryn Zuba, Associate Chief Counsel (Produces & Administration)
3. Joseph Spires, Deputy Division Counsel (Small Business/Self Employed)
4. Richard Lunger, Deputy Division Counsel (Criminal Tax)
5. Victoria Judson, Associate Chief Counsel (Employee Benefits, Exempt Organizations, & Employment Taxes)

Alternate—Edward Patton, Deputy Associate Chief Counsel (General Legal Services)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 16, 2019.

Michael Desmond,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2019–20566 Filed 9–23–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Relating to FHA Loan Limits To Determine Average Area Purchase Prices

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the collection of information required to obtain the benefit of using revisions to FHA loan limits to determine average area purchase prices.

DATES: Written comments should be received on or before November 25, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Average Area Purchase Price Safe Harbors and Nationwide Purchase Prices under section 143.

OMB Number: 1545–1877.

Regulatory Number: RP 2019–14.

Abstract: The revenue procedure under this collection provides issuers of qualified mortgage bonds, as defined in section 143(a) of the Internal Revenue Code (Code), and issuers of mortgage credit certificates, as defined in section 25(c), with (1) the nationwide average purchase price for residences located in the United States, and (2) average area purchase price safe harbors for residences located in statistical areas in each state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Guam.

Current Actions: There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 60.

Estimated Time per Respondent: 15 mins.

Estimated Total Annual Burden Hours: 15.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: September 17, 2019.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2019–20637 Filed 9–23–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms: Exempt Organization—990, 990–BL, 990–EZ, 990–N, 990–PF, 990–T, 990–W, 990 SCH E, 990 SCH I, 990 SCH M, 990 SCH D, 990 SCH F, 990 SCH H, 990 SCH J, 990 SCH K, 990 SCH R, 990/990–EZ SCH A, 990/990–EZ SCH C, 990/990–EZ SCH G, 990/990–EZ SCH L, 990/990–EZ SCH N, 990/990–EZ SCH O, 990/990–EZ/990–PF SCH B, 1023, 1023–EZ, 1023–Interactive, 1024, 1024–A, 1028, 1120–POL, 4720, 5578, 5884–C, 6069, 6497, 8038, 8038–B, 8038–CP, 8038–G, 8038–GC, 8038–R, 8038–T, 8038–TC, 8282, 8328, 8330, 8453–E.O., 8453–X, 8718, 8868, 8870, 8871, 8872, 8879–E.O., 8886–T, 8899

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). This notice requests comments on all forms used by tax-exempt organizations.

DATES: Written comments should be received on or before November 25, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Forms

- Exempt Organization 990, 990–BL, 990–EZ, 990–N, 990–PF, 990–T, 990–W, 990 SCH E, 990 SCH I, 990 SCH M, 990 SCH D, 990 SCH F, 990 SCH H, 990 SCH J, 990 SCH K, 990 SCH R, 990/990–EZ SCH A, 990/990–EZ SCH C, 990/990–EZ SCH G, 990/990–EZ SCH L, 990/990–EZ SCH N, 990/990–EZ SCH O, 990/990–EZ/990–PF SCH B, 1023, 1023–EZ, 1023–Interactive, 1024, 1024–A, 1028, 1120–POL, 4720, 5578, 5884–C, 6069, 6497, 8038, 8038–B, 8038–CP, 8038–G, 8038–GC, 8038–R, 8038–T, 8038–TC, 8282, 8328, 8330, 8453–E.O., 8453–X, 8718, 8868, 8870, 8871, 8872, 8879–E.O., 8886–T, 8899 related and all attachments to these forms (see the Appendix-A to this notice). With this notice, the IRS is also announcing significant changes to (1) the manner in which tax forms used by tax-exempt organizations will be approved under the PRA and (2) its method of estimating the paperwork burden imposed on all tax-exempt organizations.

Related Internal Revenue Service and The Department of Treasury Guidance

Pub 1075, EE–111–80 (TD 8019—Final) Public Inspection of Exempt Organization Return
TD 8033 (TEMP) Tax Exempt Entity Leasing (REG–209274–85)
Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2)
REG–246256–96 (Final TD 8978) Excise Taxes on Excess Benefit Transactions
T.D. 8861, Private Foundation Disclosure Rules
Notice 2006–109—Interim Guidance Regarding Supporting Organizations and Donor Advised Funds
Disclosure by taxable party to the tax-exempt entity
Reinstatement and Retroactive Reinstatement for Reasonable Cause (Rev. Proc. 2014–11) and Transitional Relief for Small Organizations (Notice 2011–43) under IRC § 6033(j)
TD 8086—Election for $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (LR–185–84 Final)
Arbitrage Restrictions and Guidance on Issue Price Definition for Tax Exempt Bonds
TD 8712 (Final), Definition of Private Activity Bonds; TD 9741, General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds
FI–28–96 (Final) Arbitrage Restrictions on Tax-Exempt Bonds
REG–121475–03 (TD 9495-Final) Qualified Zone Academy Bonds: Obligations of States and Political Subdivisions
Notice 2009–26, Build America Bonds and Direct Payment Subsidy Implementation
Notice 2012–48: Tribal Economic Development Bonds
TD 7925 7952—Indian Tribal Governments Treated As States For Certain Purposes
Revenue Procedure 97–15, Section 103—Remedial Payment Closing Agreement Program
T.D. 8802—Certain Asset Transfers to a Tax-Exempt Entity
TD 7852—Registration Requirements with Respect to Debt Obligations (NPRM, LR–255–82)
Notice 2007–70—Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes. Reporting requirements under Sec. 170(f)(12)(D)
TD 8124—Time and Manner of Making Certain Elections Under the Tax Reform Act of 1986
Publication 1075 Tax Information Security Guidelines for Federal, State and Local Agencies

Today, over 70 percent of all tax-exempt organization returns other than Form 990–N and all Forms 990–N are prepared using software by the taxpayer or with preparer assistance.

There are 56 forms used by tax-exempt organizations. These include Forms *990, 990–PF, 990–N, and 990–T,* and related schedules tax-exempt organizations attach to their tax returns (see Appendix-A to this notice). In

addition, there are numerous regulations, notices and Treasury Decisions that are covered by the burden estimate provided in this notice. (See Appendix B for a list).

Taxpayer Burden Estimates

Note: These estimates are preliminary. They will be revised to incorporate a more comprehensive review of changes from legislative and regulatory changes since 2018 in the 30-day notice.

Proposed PRA Submission to OMB

Title: Tax-Exempt Organization Tax Compliance Burden.

OMB Number: 1545–0047.

Form Numbers: Forms 990, 990–EZ, 990–PF, 990–N, 990–T and all attachments to these forms and related forms (see the Appendix-A to this notice).

Abstract: OMB number 1545–0047 reports the estimated burden incurred by tax-exempt organizations to meet their tax-compliance-related reporting requirements. The estimate is preliminary and reflects only the change in burden related to technical adjustments related to updating the number of affected taxpayers to reflect the FY2020 forecast.

Affected Public: Tax-Exempt Organizations.

Estimated Number of Respondents: 1,548,500.

Total Estimated Time: 50.1 million hours.

Estimated Time per Respondent: 32.38 hours.

Total Estimated Out-of-Pocket Costs: $1.30 billion.

Estimated Out-of-Pocket Cost per Respondent: $841.

Total Estimated Monetized Burden: $3.61 billion.

Estimated Total Monetized Burden per Respondent: $2,331.

Note: Amounts below are for FY2020. Reported time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

Preliminary Fiscal Year 2020 ICB Estimates for the Form 990 Series of Returns and Related Forms and Schedules

	FY18	Program Change due to Technical Adjustment	FY20
Number of Taxpayers	1,413,200	135,300	1,548,500
Burden in Hours	50,450,000	(310,000)	50,140,000
Burden in Dollars	1,297,300,000	5,300,000	1,302,600,000
Monetized Total Burden	3,594,400,000	15,100,000	3,609,500,000

Source RAAS:KDA 9/3/2019 Note: FY18 is most recent approved burden estimate for OMB number 1545-0047.

Note: The average burden for Forms 990, 990–PF, 990–N and 990–T will be separately stated in the 30-day notice for this FRN when the burden estimate is finalized.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (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.

Approved: September 18, 2019.

Laurie Brimmer,

Senior Tax Analyst.

Appendix A

No.	Title	Description
990		Return of Organization Exempt From Income Tax.
990	BL	Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons.
990	EZ	Short Form Return of Organization Exempt From Income Tax.
990	N	Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990EZ.
990	PF	Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.
990	T	Exempt Organization Business Income Tax Return and Proxy Tax.
990	W	Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.
990	990–EZ, 990–PF SCH B	Schedule of Contributors.
990	OR 990–EZ SCH A	Public Charity Status and Public Support.
990	OR 990–EZ SCH C	Political Campaign and Lobbying Activities.
990	OR 990–EZ SCH E	Schools.

No.	Title	Description
990	OR 990–EZ SCH G	Supplemental Information Regarding Fundraising or Gaming Activities.
990	OR 990–EZ SCH L	Transactions With Interested Persons.
990	OR 990–EZ SCH N	Liquidation, Termination, Dissolution, or Significant Disposition of Assets.
990	OR 990–EZ SCH O	Supplemental Information to Form 990 or 990–EZ.
990	SCH D	Supplemental Financial Statements.
990	SCH F	Statement of Activities Outside the United States.
990	SCH H	Hospitals.
990	SCH I	Grants and Other Assistance to Organizations, Governments, and Individuals in the United States.
990	SCH J	Compensation Information.
990	SCH K	Supplemental Information on Tax-Exempt Bonds.
990	SCH M	Noncash Contributions.
990	SCH R	Related Organizations and Unrelated Partnerships.
1023		Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1023	EZ	Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1023	I	Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1024		Application for Recognition of Exemption Under Section 501(a).
1024	A	Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.
1028		Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.
1120	POL	U.S. Income Tax Return for Certain Political Organizations.
4720		Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.
5578		Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.
5884	C	Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans.
6069		Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.
6497		Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.
8038		Information Return for Tax-Exempt Private Activity Bond Issues.
8038	B	Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.
8038	CP	Return for Credit Payments to Issuers of Qualified Bonds.
8038	G	Information Return for Government Purpose Tax-Exempt Bond Issues.
8038	GC	Consolidated Information Return for Small Tax-Exempt Government Bond Issues.
8038	R	Request for Recovery of Overpayment Under Arbitrage Rebate Provisions.
8038	T	Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.
8038	TC	Information Return for Tax Credit and Specified Tax Credit Bonds as the result of the new Hire bill.
8282		Donee Information Return.
8328		Carry forward Election of Unused Private Activity Bond Volume.
8330		Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).
8453	EO	Exempt Organization Declaration and Signature for Electronic Filing.
8453	X	Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.
8718		User Fee for Exempt Organization Determination Letter Request.
8868		Application for Automatic Extension of Time To File an Exempt Organization Return.
8870		Information Return for Transfers Associated With Certain Personal Benefit Contracts.
8871		Political Organization Notice of Section 527 Status.
8872		Political Organization Report of Contributions and Expenditures.
8879	EO	IRS e-file Signature Authorization for an Exempt Organization.
8886	T	Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.
8899		Notice of Income From Donated Intellectual Property.

Appendix B

Title/description
EE–111–80 (TD 8019—Final) Public Inspection of Exempt Organization Return.
TD 8033 (TEMP) Tax Exempt Entity Leasing (REG–209274–85).
Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).
REG–246256–96 (Final TD 8978) Excise Taxes on Excess Benefit Transactions.
T.D. 8861, Private Foundation Disclosure Rules.
Notice 2006–109—Interim Guidance Regarding Supporting Organizations and Donor Advised Funds.
Disclosure by taxable party to the tax-exempt entity.
Reinstatement and Retroactive Reinstatement for Reasonable Cause (Rev. Proc. 2014–11) and Transitional Relief for Small Organizations (Notice 2011–43) under IRC § 6033(j).
TD 8086—Election for $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (LR–185–84 Final).
Arbitrage Restrictions and Guidance on Issue Price Definition for Tax Exempt Bonds.
TD 8712 (Final), Definition of Private Activity Bonds; TD 9741, General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds.
FI–28–96 (Final) Arbitrage Restrictions on Tax-Exempt Bonds.
REG–121475–03 (TD 9495-Final) Qualified Zone Academy Bonds: Obligations of States and Political Subdivisions.

Title/description
Notice 2009–26, Build America Bonds and Direct Payment Subsidy Implementation.
Notice 2012–48: Tribal Economic Development Bonds.
TD 7925—Indian Tribal Governments Treated As States For Certain Purposes.
Revenue Procedure 97–15, Section 103—Remedial Payment Closing Agreement Program.
T.D. 8802—Certain Asset Transfers to a Tax-Exempt Entity.
TD 7852—Registration Requirements with Respect to Debt Obligations (NPRM, LR–255–82).
Notice 2007–70—Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes. Reporting requirements under Sec. 170(f)(12)(D).
TD 8124—Time and Manner of Making Certain Elections Under the Tax Reform Act of 1986.
Publication 1075 Tax Information Security Guidelines for Federal, State and Local Agencies.

[FR Doc. 2019–20640 Filed 9–23–19; 8:45 a.m.]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Geriatrics and Gerontology Advisory Committee AMENDED

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Office of Geriatrics and Extended Care, is seeking nominations of qualified candidates to be considered for appointment as a member of the Geriatrics and Gerontology Advisory Committee (herein-after in this section referred to as ''the Committee''). The Committee advises the VA Secretary and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology.

DATES: Nominations of qualified candidates are being sought to fill two vacancies on the Committee. Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on October 31, 2019.

ADDRESSES: All nominations should be mailed to Marianne Shaughnessy, Ph.D., CRNP, Geriatrics and Gerontology Advisory Committee (GGAC), Department of Veterans Affairs, 810 Vermont Ave. NW, (10NC4), Washington, DC 20420 or emailed to *Marianne.Shaughnessy@va.gov.*

FOR FURTHER INFORMATION CONTACT: Marianne Shaughnessy, Ph.D., CRNP, GGAC, by phone at (202) 461–7217 or by email at *Marianne.Shaughnessy@va.gov.* A copy of the Committee charter and list of the current membership can also be obtained by contacting Dr. Shaughnessy.

SUPPLEMENTARY INFORMATION: The Committee's areas of interest include but are not limited to: (1) Assessing the capability of VA health care facilities to respond with the most effective and appropriate services possible to the medical, psychological and social needs of Veterans facing the consequences of aging, serious illness or disability; and (2) advancing scientific knowledge to meet those needs by enhancing geriatric care for older Veterans through geriatric and gerontology research, the training of health personnel in the provision of health care to older individuals, and the development of improved models of clinical services for older Veterans.

Membership Criteria and Qualifications: The Committee is comprised of not more than 12 members, each of whom have established interest and considerable vocation-related experiences bearing on health care for aging Veterans, including experience in areas such as: VA- and non-VA health systems, academic geriatric and gerontology programs, palliative medicine, home and community-based care, nursing home care, relevant policy issues, and grant-funded academic research.

The expertise required of GGAC members includes, but is not limited to, the following:

a. Familiarity or experience with clinical and health policies concerning the elderly; and/or

b. familiarity or experience with the partnerships between VA and health sciences academic programs; and/or

c. familiarity with the history of geriatrics in the VA and in the US, and the unique role that has been played in that evolution by the VA's Geriatric Research, Education, and Clinical Centers (GRECCs).

Membership Requirements: The Committee holds at least one face to face meeting in Washington, DC and conducts 4–5 site visits a year. The ideal candidate will be willing to travel 3–5 times per year to help the Committee fulfill its Chartered objectives.

The Committee's diverse membership is characterized by a range of backgrounds and knowledge sufficiently broad to provide adequate advice and guidance to the Secretary. VA strives to develop a Committee membership that includes diversity in military services, ranks, and deployments, military service, military deployments, working with Veterans, committee subject matter expertise, as well as diversity in race/ethnicity, gender, religion, disability, geographical background, and profession. We ask that nominations include information of this type so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating the willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae; and

(4) A summary of the nominee's experience and qualifications relative to the membership considerations described above.

Individuals selected for appointment to the Committee shall be invited to serve a four-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of VA federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identify, national origin, age, disability, or genetic information. 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.

Dated: September 19, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–20666 Filed 9–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Veterans Health Administration (VHA) Office of Community Care (OCC) Contractor Training Program Assessment Survey

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or send through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov*. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Veterans Health Administration (VHA) Office of Community Care (OCC) Contractor Training Program Assessment Survey.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The legal authority for this data collection is found under 38 U.S.C., part I, chapter 5, section 527, authorizing the collection of data that will allow measurement and evaluation of the Department of Veterans Affairs Programs, the goal of which is improved health care for Veterans. Further, pursuant to Section 122 of the MISSION Act of 2018, the VHA Office of Community Care (OCC) will use this data collection to improve its training program and report to Congress regarding the training program's effectiveness.

Section 122 of the MISSION Act of 2018 requires VA to develop and conduct a training program for VA employees and contractors on how to administer non-Department health care programs, reimbursement for non-Department emergency room care, and the management of prescriptions for opioids, as established under section 131. It also requires the VA to evaluate and report on the program annually. As part of this effort, the VHA OCC has developed a survey to assess its eLearning training modules with Patient-Centered Community Care (PC3) and Community Care Network contractors. The purpose of the survey is to evaluate and report the effectiveness of this training program for contractors. The results of the survey will allow OCC to refine and improve the various training modalities and associated materials for the most effective training program and provide an annual report to Congress.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 30809 on June 27, 2019, page 30809.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,833 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 23,000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–20582 Filed 9–23–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the National Research Advisory Council will hold a meeting on Wednesday, December 4, 2019, at 1100 1st Street NE, Room 104, Washington, DC 20002. The meeting will convene at 9:00 a.m. and end at 3:30 p.m. This meeting is open to the public.

The purpose of the National Research Advisory Council is to advise the Secretary on research development conducted by the Veterans Health Administration, including policies and programs targeting the high priority of Veterans' health care needs.

On December 4, 2019, the agenda will include briefing from Department of Defense/Veterans Affairs collaboration, briefings on various VA Research programs designed to enhance the research potential for Veterans. Additionally, the Committee will discuss outreach opportunities for high school students to gain experience in the occupational field of Research, the Committee will also explore potential recommendations to be included in the next annual report. No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend may contact Avery Rock, Designated Federal Officer, Office of Research and Development (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 461–9760, or by email at *Avery.Rock@va.gov* no later than close of business on November 27, 2019. Because the meeting is being held in a Government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Any member of the public seeking additional information should contact Avery Rock at the above phone number or email address noted above.

Dated: September 19, 2019,

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–20665 Filed 9–23–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 185 September 24, 2019

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1
Additional First Year Depreciation Deduction; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9874]

RIN 1545–BO74

Additional First Year Depreciation Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the additional first year depreciation deduction under section 168(k) of the Internal Revenue Code (Code). The final regulations reflect and clarify the increase of the benefit and expansion of the universe of qualifying property, particularly to certain classes of used property, authorized by the Tax Cuts and Jobs Act. The final regulations affect taxpayers who deduct depreciation for qualified property acquired and placed in service after September 27, 2017.

DATES:

Effective date: These regulations are effective on September 24, 2019.

Applicability date: For dates of applicability, see §§ 1.48–12(a)(2)(i), 1.167(a)–14(e)(3), 1.168(b)–1(b)(2), 1.168(d)–1(d)(2), 1.168(i)–4(g)(2), 1.168(i)–6(k)(4), 1.168(k)–2(h), 1.169–3(g), 1.179–6, 1.312–15(e), 1.704–1(b)(1)(ii)(*a*), 1.704–3(f), and 1.743–1(l). A taxpayer may choose to apply these final regulations, in their entirety, to qualified property acquired and placed in service or planted or grafted, as applicable, after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, provided the taxpayer consistently applies all rules in these final regulations. Additionally, a taxpayer may rely on the proposed regulations under section 168(k) in regulation project REG–104397–18 (2018–41 I.R.B. 558), for qualified property acquired and placed in service or planted or grafted, as applicable, after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before September 24, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Binder or Kathleen Reed at (202) 317–7005 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 168(k). On August 8, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–104397–18) in the **Federal Register** (83 FR 39292) containing proposed regulations under section 168(k) (the August Proposed Regulations). The Summary of Comments and Explanation of Revisions section summarizes the provisions of section 168(k) and the provisions of the August Proposed Regulations, which are explained in greater detail in the preamble to the August Proposed Regulations.

The Treasury Department and the IRS received written and electronic comments responding to the August Proposed Regulations and held a public hearing on the proposed regulations on November 28, 2018. After full consideration of the comments received on the August Proposed Regulations and the testimony heard at the public hearing, this Treasury decision adopts the August Proposed Regulations with modifications in response to certain comments and testimony, as described in the Summary of Comments and Explanation of Revisions section. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing in the Proposed Rule section of this edition of the **Federal Register** a notice of proposed rulemaking providing, also in response to the above-cited comments and testimony, additional proposed regulations under section 168(k) (REG–106808–19).

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received comments from approximately 20 commenters in response to the August Proposed Regulations. All comments were considered and are available at *https://www.regulations.gov* or upon request. The comments addressing the August Proposed Regulations are summarized in this Summary of Comments and Explanation of Revisions section.

Section 168(k) was amended on December 22, 2017, by sections 12001(b)(13), 13201, and 13204 of the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054) (the ''Act''). Because of these amendments, the August Proposed Regulations and these final regulations update existing regulations in § 1.168(k)–1 by providing a new section at § 1.168(k)–2 for property acquired and placed in service after September 27, 2017, and make conforming amendments to the existing regulations.

As discussed in the preamble to the August Proposed Regulations, the August Proposed Regulations and these final regulations describe and clarify the statutory requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by section 168(k). Further, the August Proposed Regulations and these final regulations provide guidance to taxpayers in determining the additional first year depreciation deduction and the amount of depreciation otherwise allowable for this property.

Part I of this section provides an overview of section 168(k). Part II of this section addresses the operational rules. Part III of this section addresses the computation of the additional first year depreciation deduction and the elections under section 168(k). Part IV addresses the special rules for certain situations described in § 1.168(k)–2(g) of the final regulations (§ 1.168(k)–2(f) of the August Proposed Regulations).

I. Overview

Section 167(a) allows as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or of property held for the production of income. The depreciation deduction allowable for tangible depreciable property placed in service after 1986 generally is determined under the Modified Accelerated Cost Recovery System provided by section 168 (MACRS property). The depreciation deduction allowable for computer software that is placed in service after August 10, 1993, and is not an amortizable section 197 intangible, is determined under section 167(f)(1).

Section 168(k) was added to the Code by section 101 of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21). Section 168(k) allows an additional first year depreciation deduction in the placed-in-service year of qualified property. Subsequent amendments to section 168(k) increased the percentage of the additional first year depreciation deduction from 30 percent to 50 percent (to 100 percent for property acquired and placed in service after September 8, 2010, and generally before January 1, 2012), extended the placed-in-service date generally through December 31, 2019, and made other changes.

Section 168(k), prior to amendment by the Act, allowed an additional first year depreciation deduction for the placed-in-service year equal to 50 percent of the adjusted basis of qualified property. Qualified property was

defined in part as property the original use of which begins with the taxpayer; that is, the property had to be new property.

Section 13201 of the Act made several amendments to the allowance for additional first year depreciation deduction in section 168(k). For example, the additional first year depreciation deduction percentage is increased from 50 to 100 percent. In addition, the property eligible for the additional first year depreciation deduction is expanded to include certain used depreciable property and certain film, television, or live theatrical productions. Also, the placed-in-service date is extended from before January 1, 2020, to before January 1, 2027 (from before January 1, 2021, to before January 1, 2028, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)). A final example of the amendments by the Act to section 168(k) is the date on which a specified plant is planted or grafted by the taxpayer is extended from before January 1, 2020, to before January 1, 2027.

Section 168(k), as amended by the Act, allows a 100-percent additional first year depreciation deduction for qualified property acquired and placed in service after September 27, 2017, and placed in service before January 1, 2023 (before January 1, 2024, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)). If a taxpayer elects to apply section 168(k)(5), the 100-percent additional first year depreciation deduction also is allowed for a specified plant planted or grafted after September 27, 2017, and before January 1, 2023. The 100-percent additional first year depreciation deduction is decreased by 20 percentage points annually for qualified property placed in service, or a specified plant planted or grafted, after December 31, 2022 (after December 31, 2023, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)).

Section 168(k)(2)(A), as amended by the Act, defines ''qualified property'' as meaning, in general, property (1) to which section 168 applies that has a recovery period of 20 years or less, (2) which is computer software as defined in section 167(f)(1)(B), for which a deduction is allowable under section 167(a) without regard to section 168(k), (3) which is water utility property, (4) which is a qualified film or television production as defined in section 181(d), for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) or (g) or section 168(k), or (5) which is a qualified live theatrical production as defined in section 181(e), for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) or (g) or section 168(k). ''Qualified property'' also is defined in section 168(k)(2)(A) as meaning property, the original use of which begins with the taxpayer or the acquisition of which by the taxpayer meets the requirements of section 168(k)(2)(E)(ii); and which is placed in service by the taxpayer before January 1, 2027. Section 168(k)(2)(E)(ii) requires that the acquired property was not used by the taxpayer at any time prior to such acquisition and the acquisition of such property meets the requirements of section 179(d)(2)(A), (B), and (C) and section 179(d)(3).

However, section 168(k)(2)(D) provides that qualified property does not include any property to which the alternative depreciation system specified in section 168(g) applies, determined without regard to section 168(g)(7) (relating to election to have the alternative depreciation system apply), and after application of section 280F(b) (relating to listed property with limited business use).

Section 13201(h) of the Act provides the effective dates of the amendments to section 168(k) made by section 13201 of the Act. Except as provided in section 13201(h)(2) of the Act, section 13201(h)(1) of the Act provides that these amendments apply to property acquired and placed in service after September 27, 2017. However, property is not treated as acquired after the date on which a written binding contract, as defined in § 1.168(k)–2(b)(5)(iii) of these final regulations, is entered into for such acquisition. Section 13201(h)(2) provides that the amendments apply to specified plants planted or grafted after September 27, 2017.

Additionally, section 12001(b)(13) of the Act repealed section 168(k)(4) (relating to the election to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction) for taxable years beginning after December 31, 2017. Further, section 13204(a)(4)(B)(ii) repealed section 168(k)(3) (relating to qualified improvement property) for property placed in service after December 31, 2017.

Unless otherwise indicated, all references to section 168(k) hereinafter are references to section 168(k) as amended by the Act.

II. Operational Rules

A. Eligibility Requirements for Additional First Year Depreciation Deduction

The August Proposed Regulations and these final regulations follow section 168(k)(2) and section 13201(h) of the Act to provide that depreciable property must meet four requirements to be qualified property. These requirements are (1) the depreciable property must be of a specified type; (2) the original use of the depreciable property must commence with the taxpayer or used depreciable property must meet the acquisition requirements of section 168(k)(2)(E)(ii); (3) the depreciable property must be placed in service by the taxpayer within a specified time period or must be planted or grafted by the taxpayer before a specified date; and (4) the depreciable property must be acquired by the taxpayer after September 27, 2017. The written and electronic comments that the Treasury Department and the IRS received with respect to each of these requirements are discussed below.

B. Property of a Specified Type

1. Property Eligible for the Additional First Year Depreciation Deduction

a. In General

The August Proposed Regulations and these final regulations follow the definition of qualified property in section 168(k)(2)(A)(i) and (k)(5) and provide that qualified property must be one of the following: (1) MACRS property that has a recovery period of 20 years or less; (2) computer software as defined in, and depreciated under, section 167(f)(1); (3) water utility property as defined in section 168(e)(5) and depreciated under section 168; (4) a qualified film or television production as defined in section 181(d) and for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g) or section 168(k); (5) a qualified live theatrical production as defined in section 181(e) and for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g) or section 168(k); or (6) a specified plant as defined in section 168(k)(5)(B) and for which the taxpayer has made an election to apply section 168(k)(5).

b. Qualified Improvement Property

The August Proposed Regulations and these final regulations provide that qualified property also includes qualified improvement property that is acquired by the taxpayer after

September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018. Multiple commenters requested clarification that qualified improvement property placed in service after 2017 also is qualified property eligible for the additional first year depreciation deduction. Another commenter requested that the IRS not challenge or audit taxpayers that treat qualified improvement property placed in service after 2017 as 15-year property eligible for the additional first year depreciation deduction.

For property placed in service after December 31, 2017, section 13204 of the Act amended section 168(k) to eliminate qualified improvement property as a specific category of qualified property, and amended section 168(e) to eliminate the 15-year MACRS property classification for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. The legislative history of section 13204 of the Act provides that the MACRS recovery period is 15 years for qualified improvement property. Conf. Rep. No. 115–466, at 367 (2017). However, section 168(e), as amended by section 13204 of the Act, does not classify qualified improvement property as having a recovery period of 20 years or less. Consequently, a legislative change must be enacted to provide for a recovery period of 20 years or less for qualified improvement property placed in service after 2017 to be qualified property. Accordingly, the Treasury Department and the IRS decline to adopt these comments.

c. Qualified Restaurant Property and Qualified Retail Improvement Property

The August Proposed Regulations and these final regulations provide that MACRS property with a recovery period of 20 years or less includes the following MACRS property that is acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018: (1) Qualified leasehold improvement property; (2) qualified restaurant property that is qualified improvement property; and (3) qualified retail improvement property. One commenter requested clarification that qualified retail improvement property, and qualified restaurant property that is qualified improvement property, also are qualified property eligible for the additional first year depreciation deduction. In making this request, the Treasury Department and the IRS assume the commenter is concerned about such property that is placed in service after 2017.

For property placed in service after December 31, 2017, section 13204 of the Act amended section 168(e) to eliminate the 15-year MACRS property classifications for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. Because these property classifications are no longer in effect for property placed in service after 2017, the Treasury Department and the IRS decline to adopt this comment.

d. Qualified Film, Television, or Live Theatrical Production

Consistent with section 168(k)(2)(A)(i)(IV) and (V), the August Proposed Regulations provide that qualified property includes a qualified film or television production, or a qualified live theatrical production, for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g), or section 168(k). One commenter requested guidance on when a qualified film had to be produced by an unrelated party so that a taxpayer acquiring the film now can claim additional first year depreciation. In making this request, the Treasury Department and the IRS assume the commenter interpreted the rule as allowing the additional first year depreciation deduction for a used film production. Another commenter requested clarification on whether a used film or television production qualifies for the additional first year depreciation deduction. These requests involve the interaction of sections 168(k) and 181.

Section 181 allows a taxpayer to elect to deduct up to $15 million of the aggregate production costs of a qualified film, television, or live theatrical production for the taxable year in which the costs are paid or incurred by the taxpayer instead of capitalizing the costs and recovering such costs through depreciation deductions. See § 1.181–1(a)(1). Pursuant to § 1.181–1(a)(3), production costs do not include the cost of obtaining a production after its initial release or broadcast. Further, § 1.181–1(a)(1) provides that only an owner of the qualified film or television production is eligible to a make a section 181 election. Section 1.181–1(a)(2)(i) defines an owner, for purposes of §§ 1.181–1 through –6, as any person that is required under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person. Pursuant to § 1.181–1(a)(2)(ii), a person that acquires a finished or partially-finished production is treated as an owner of that production for purposes §§ 1.181–1 through –6, but only if the production is acquired prior to its initial release or broadcast. Section 1.181–1(a)(7) defines initial release or broadcast, for purposes of §§ 1.181–1 through 1.181–6, as the first commercial exhibition or broadcast of a production to an audience.

The Treasury Department and the IRS agree that clarification is needed on whether section 168(k) applies to a used qualified film, television, or live theatrical production. The deduction which would have been allowable under section 181 and §§ 1.181–1 through1.181–6 for a qualified film, television, or live theatrical production is only for production costs paid or incurred by an owner of the qualified film or television production prior to its initial release or broadcast or by an owner of the qualified live theatrical production prior to its initial live staged performance. Accordingly, section 168(k) does not apply to a used qualified film, television, or live theatrical production (that is, such production acquired after its initial release or broadcast, or after its initial live staged performance, as applicable). However, the final regulations clarify that only production costs of the qualified film, television, or live theatrical production for which a deduction would have been allowable under section 181 and the regulations under section 181 are eligible for the additional first year depreciation deduction. The final regulations also clarify that the owner, as defined in § 1.181–1(a)(2), of the qualified film, television, or live theatrical production is the only taxpayer eligible to claim the additional first year depreciation for such production and must be the taxpayer that places such production in service.

A commenter requested clarification that a licensee may deduct the additional first year depreciation for the cost of acquiring a license to a qualified film (for example, the cost of acquiring a license of video on demand rights for a limited term or the cost of acquiring a license of rights in a foreign country for a limited term). As stated in the preceding paragraphs, only the owner of the qualified film, television, or live theatrical production is eligible to make a section 181 election. Section 1.181–1(a)(2)(ii) provides that a person that acquires only a limited license or right to exploit a production is not an owner of a production for purposes of §§ 1.181–1 through 1.181–6. Therefore, for the reasons stated above, the

Treasury Department and the IRS decline to adopt this comment.

One commenter suggested that the final regulations clarify when a qualified film, television, or live theatrical production had to be produced to be eligible for the additional first year depreciation deduction. Section 181 is effective for a qualified film or television production commencing after October 22, 2004, and for a qualified live theatrical production commencing after December 31, 2015. Because this suggestion concerns the effective dates of section 181, the suggestion is beyond the scope of these final regulations. Accordingly, the Treasury Department and the IRS decline to adopt this suggestion.

2. Property Not Eligible for the Additional First Year Depreciation Deduction

a. In General

The August Proposed Regulations and these final regulations provide that qualified property does not include (1) property excluded from the application of section 168 as a result of section 168(f); (2) property that is required to be depreciated under the alternative depreciation system of section 168(g) (ADS); (3) any class of property for which the taxpayer elects not to deduct the additional first year depreciation under section 168(k)(7); (4) a specified plant placed in service by the taxpayer in the taxable year and for which the taxpayer made an election to apply section 168(k)(5) for a prior year under section 168(k)(5)(D); (5) any class of property for which the taxpayer elects to apply section 168(k)(4), as in effect before the enactment of the Act, to property placed in service in any taxable year beginning before January 1, 2018; or (6) property described in section 168(k)(9)(A) or (B).

b. Property Required To Be Depreciated Under the ADS

Property described in section 168(g)(1)(A), (B), (C), (D), (F), or (G) is required to be depreciated under the ADS. In addition, other provisions of the Code require property to be depreciated under the ADS. For example, property described in section 263A(e)(2)(A) if the taxpayer or any related person (as defined in section 263A(e)(2)(B)) has made an election under section 263A(d)(3), and property described in section 280F(b)(1) is required to be depreciated under the ADS.

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether using the ADS to determine the adjusted basis of the taxpayer's qualified business asset investment pursuant to section 250(b)(2)(B) or 951A(d)(3) causes the taxpayer's tangible property to be ineligible for the additional first year depreciation deduction. The final regulations clarify that it does not make that property ineligible for the additional first year depreciation deduction. The final regulations also clarify that using the ADS to determine the adjusted basis of the taxpayer's tangible assets for allocating business interest expense between excepted and non-excepted trades or businesses under section 163(j) does not make that property ineligible for the additional first year depreciation deduction. In both instances, however, this rule does not apply if the property is required to be depreciated under the ADS pursuant to section 168(g)(1)(A), (B), (C), (D), (F), or (G), or other provisions of the Code other than section 163(j), 250(b)(2)(B), or 951A(d)(3).

If section 168(h)(6) applies (property owned by partnerships treated as tax-exempt use property), the Treasury Department and the IRS also are aware that taxpayers and practitioners have questioned whether only the tax-exempt entity's proportionate share of the property or the entire property is not eligible for the additional first year depreciation deduction. If section 168(h)(6) applies, section 168(h)(6)(A) provides that the tax-exempt entity's proportionate share of the property is treated as tax-exempt use property. Accordingly, the final regulations clarify that only the tax-exempt entity's proportionate share of the property is described in section 168(g)(1)(B) and is not eligible for the additional first year depreciation deduction.

c. Property Described in Section 168(k)(9)

i. In General

Consistent with section 168(k)(9)(A), the August Proposed Regulations and these final regulations provide that qualified property does not include any property that is primarily used in a trade or business described in section 163(j)(7)(A)(iv). Further, consistent with section 168(k)(9)(B), the August Proposed Regulations and these final regulations provide that qualified property does not include any property used in a trade or business that has had floor plan financing indebtedness if the floor plan financing interest related to such indebtedness is taken into account under section 168(j)(1)(C).

Because section 163(j) applies to taxable years beginning after December 31, 2017, the August Proposed Regulations and these final regulations also provide that these exclusions from the additional first year depreciation deduction apply to property placed in service in any taxable year beginning after December 31, 2017. The August Proposed Regulations did not provide any further guidance under section 168(k)(9).

Several commenters requested guidance on whether a taxpayer that leases property to a trade or business described in section 168(k)(9) is eligible to claim the additional first year depreciation for the property. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

ii. Property Described in Section 168(k)(9)(A) (Regulated Public Utility Property)

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned how to determine whether property is primarily used in a trade or business described in section 168(k)(9)(A). Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address this question.

Several commenters requested guidance on whether property acquired before September 28, 2017, by a trade or business described in section 168(k)(9)(A) is eligible for the additional first year depreciation deduction provided by section 168(k) as in effect before the enactment of the Act. This comment is related to the comment discussed in part II(D)(3) of this Summary of Comments and Explanation of Revisions section regarding the election provided in section 3.02(2)(b) of Rev. Proc. 2011–26 (2011–16 I.R.B. 664). Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address both comments.

Another commenter requested that the Treasury Department and the IRS change the position in the August Proposed Regulations so that qualified property does not include property that is primarily used in a trade business described in section 168(k)(9)(A), acquired after September 27, 2017, and

placed in service before January 1, 2018. The commenter asserted that the definition of a trade or business in section 163(j)(7)(A)(iv) is not new, and regulated public utility companies were not expecting such property to be eligible for the additional first year depreciation deduction. The definition of a trade or business under section 163(j)(7)(A)(iv) is outside the scope of these final regulations. Further, because section 163(j) applies to taxable years beginning after December 31, 2017, the Treasury Department and the IRS believe that the exclusion of property described in section 168(k)(9)(A) from the additional first year depreciation deduction applies to such property placed in service in taxable years beginning after December 31, 2017. Accordingly, the Treasury Department and the IRS decline to adopt this suggestion.

iii. Property Described in Section 168(k)(9)(B) (Floor Plan Financing Indebtedness)

A commenter requested guidance on when floor plan financing interest is ''taken into account'' for purposes of section 168(k)(9)(B). If section 168(k)(9)(B) applies for a taxable year, the Treasury Department and the IRS also are aware that taxpayers and practitioners have questioned whether ''has had floor plan financing indebtedness'' in section 168(k)(9)(B) means that the additional first year depreciation deduction is not allowed for property placed in service by a trade or business described in section 168(k)(9)(B) in any subsequent taxable year. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address both matters.

C. New and Used Property

1. New Property

The August Proposed Regulations and these final regulations generally retain the original use rules in § 1.168(k)–1(b)(3). Pursuant to section 168(k)(2)(A)(ii), the August Proposed Regulations and these final regulations do not provide any date by which the original use of the property must commence with the taxpayer.

The August Proposed Regulations and these final regulations define original use as meaning the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. A commenter requested that this definition be revised to provide that original use means the first use of the property within the United States. The definition of original use in the August Proposed Regulations and in § 1.168(k)–1(b)(3) is the same as the definition of such term in the legislative history of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21), that added section 168(k) to the Code. There is no indication in the legislative history of section 13201 of the Act that Congress intended to change the definition of original use. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

2. Used Property

a. In General

Pursuant to section 168(k)(2)(A)(ii) and (k)(2)(E)(ii), the August Proposed Regulations and these final regulations provide that the acquisition of used property is eligible for the additional first year depreciation deduction if such acquisition meets the following three requirements: (1) The property was not used by the taxpayer or a predecessor at any time prior to the acquisition; (2) the acquisition of the property meets the related party and carryover basis requirements of section 179(d)(2)(A), (B), and (C) and § 1.179–4(c)(1)(ii), (iii), and (iv), or § 1.179–4(c)(2); and (3) the acquisition of the property meets the cost requirements of section 179(d)(3) and § 1.179–4(d).

Several commenters requested a definition of ''predecessor.'' One commenter suggested that the term be limited to a transfer described in section 381. Another commenter suggested that the term be comprehensively defined, including transactions between partners and partnerships, or shareholders and corporations. This commenter also asserted that restrictions based on use by a predecessor should be removed because the language is not in section 168(k).

Besides the used property requirements in the August Proposed Regulations, the term ''predecessor'' is used in the acquisition requirements in the proposed regulations and in § 1.168(k)–1(b)(4). The Treasury Department and the IRS have determined that the inclusion of predecessor in both requirements is necessary and appropriate to prevent abuse by taxpayers to churn assets. Accordingly, the Treasury Department and the IRS do not adopt the suggestion to remove the term ''predecessor.''

However, the Treasury Department and the IRS agree that a definition of predecessor is needed. The final regulations provide that a predecessor includes (i) a transferor of an asset to a transferee in a transaction to which section 381(a) applies, (ii) a transferor of an asset to a transferee in a transaction in which the transferee's basis in the asset is determined, in whole or in part, by reference to the basis of the asset in the hands of the transferor, (iii) a partnership that is considered as continuing under section 708(b)(2), (iv) the decedent in the case of an asset acquired by an estate, or (v) a transferor of an asset to a trust.

b. Depreciable Interest

The August Proposed Regulations and these final regulations provide that the property is treated as used by the taxpayer or a predecessor at any time prior to acquisition by the taxpayer or predecessor if the taxpayer or the predecessor had a depreciable interest in the property at any time prior to such acquisition, whether or not the taxpayer or the predecessor claimed depreciation deductions for the property.

i. Definition

A commenter requested a definition of ''depreciable interest'' or a clarification that the term has the meaning as applied for purposes of section 167. The term ''depreciable interest'' in the August Proposed Regulations and these final regulations has the same meaning as that term is used for purposes of section 167. The property must be used in the taxpayer's trade or business or held by the taxpayer for the production of income pursuant to section 167(a). In addition, case law provides that the person who made the capital investment in the property is the person entitled to a return on that capital by means of claiming a depreciation deduction. *Gladding Dry Goods Co.* v. *Commissioner,* 2 B.T.A. 336, 338 (1925). Legal title and the right of possession are not determinative. *Hopkins Partners* v. *Commissioner,* T.C. Memo. 2009–107 (*citing Gladding Dry Goods,* 2 B.T.A. at 338). Instead, the question is which party actually invested in the property. Id.

The issue of whether a taxpayer has a depreciable interest in property generally arises when a lessor or a lessee makes improvements to property. If a lessor makes improvements at the lessor's own expense, the lessor is entitled to depreciation deductions even though the lessee has the use of the improvements. *Gladding Dry Goods,* 2 B.T.A. at 338–339; *Hopkins Partners.* If a lessee makes improvements and the title to the improvements vests immediately in the lessor, the lessor's bare legal title does not preclude the lessee from recovering its investment in

the improvements through depreciation deductions. *Hopkins Partners;* see also *McGrath* v. *Commissioner,* T.C. Memo. 2002–231. However, when the lessee makes improvements as a substitute for rent, the lessee has no depreciable interest in the leasehold improvement. *Hopkins Partners* (*citing Your Health Club, Inc.* v. *Commissioner,* 4 T.C. 385, 390 (1944), acq., 1945 C.B. 7). Because the determination of whether a person has a depreciable interest in the property depends on the facts and circumstances and concerns whether the property is eligible for the depreciation deduction under section 167, the request is beyond the scope of these final regulations. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

ii. Safe Harbor

The preamble to the August Proposed Regulations requested comments on whether a safe harbor should be provided on how many taxable years a taxpayer or a predecessor should look back to determine if the taxpayer or the predecessor previously had a depreciable interest in the property. Multiple commenters made suggestions. One commenter suggested a look-back period of five years from the placed-in-service date of the property, with a rebuttable presumption that neither the taxpayer nor a predecessor held a depreciable interest in the property prior to the 5-year period. Other commenters suggested a look-back period of three years, including the current taxable year. Another commenter suggested that the prior use rule apply only to property initially owned on or after the date of enactment of the Act and a look-back period that is the shorter of the applicable recovery period of the property or 10 years. Another commenter suggested no look-back period for used property to be used in the United States for the first time. Finally, another commenter suggested the following three alternatives for determining if property is previously used by the taxpayer or a predecessor: The prior use or disposition of the property occurred pursuant to a plan that included the taxpayer's reacquisition of the property; the person possesses actual or constructive knowledge of the prior use of the property; or provide a look-back period measured by reference to the property's recovery period, such as the lesser of the property's recovery period or a set number of years.

After considering these suggestions, the Treasury Department and the IRS have decided to provide a look-back period of five calendar years immediately prior to the taxpayer's current placed-in-service year of the property. We believe that five years is the appropriate number of years to reduce the potential for churning assets. Most assets have a recovery period of five or seven years under section 168(c). In addition, we believe that this bright-line test will be easy for both taxpayers and the IRS to administer. Therefore, the final regulations provide that to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition, only the five calendar years immediately prior to the taxpayer's current placed-in-service year of the property are taken into account. If the taxpayer and a predecessor have not been in existence for this entire 5-year period, only the number of calendar years the taxpayer and the predecessor have been in existence is taken into account.

iii. Used in the United States for the First Time

A commenter requested the August Proposed Regulations be revised to allow the used property requirements be met for property that will be used in the United States for the first time and that is acquired at its fair market value by a U.S. taxpayer from a non-U.S. related party, and for property that is acquired by a U.S. affiliate from a non-U.S. parent corporation in an arm's-length transaction. The statutory language of section 168(k)(2)(E)(ii) and the legislative history of section 13201 of the Act do not support such a rule. Conf. Rep. No. 115–466, at 353. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

iv. Substantial Renovation of Property

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether a taxpayer that purchases substantially renovated property is eligible to claim the additional first year depreciation deduction for such property (assuming all other requirements are met).

The August Proposed Regulations and these final regulations retain the original use rules in § 1.168(k)–1(b)(3)(i). Under these rules, the cost of reconditioned or rebuilt property does not satisfy the original use requirement. However, if the cost of the used parts in such property is not more than 20 percent of the total cost of the property, whether acquired or self-constructed, the property is treated as meeting the original use requirement.

Consistent with the original use rules, the final regulations provide that if a taxpayer acquires and places in service substantially renovated property and the taxpayer or a predecessor previously had a depreciable interest in the property before it was substantially renovated, that taxpayer's or predecessor's depreciable interest is not taken into account for determining whether the substantially renovated property was used by the taxpayer or a predecessor at any time before its acquisition by the taxpayer. For this purpose and consistent with the original use rules, property is substantially renovated if the cost of the used parts is not more than 20 percent of the total cost of the substantially renovated property, whether acquired or self-constructed.

c. Section 336(e) Election

Section 1.179–4(c)(2) provides that property deemed to have been acquired by a new target corporation as a result of a section 338 election will be considered acquired by purchase for purposes of § 1.179–4(c)(1). Upon a section 338 election, the target corporation (old target) is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the discharge of its liabilities, and a different corporation (new target) is treated as acquiring all of its assets from an unrelated person in exchange for consideration that includes the assumption of those liabilities. Section 1.338–1(a)(1). Although both old target and new target are a single corporation under corporate law, § 1.338–1(a)(1) provides that they generally are considered to exist as separate corporations for purposes of subtitle A of the Code.

The Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2) are similar to the Federal income tax consequences of a section 338 election. See § 1.336–2(b)(1). Accordingly, the August Proposed Regulations and these final regulations modify § 1.179–4(c)(2) to include property deemed to have been acquired by a new target corporation pursuant to a section 336(e) election made with respect to such a qualified stock disposition. Thus, property deemed to have been acquired by a new target corporation as a result of either a section 338 election or a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2) is considered acquired by purchase for purposes of § 1.179–4(c)(1).

Conversely, if a section 336(e) election is made with respect to a qualified stock disposition that is described, in whole or in part, in section 355(d)(2) or (e)(2), old target is treated as selling its assets to an unrelated person but then purchasing the assets back (sale-to-self model). Section 1.336–2(b)(2). Because the sale-to-self model does not deem a new target corporation to acquire the assets from an unrelated person, commenters have questioned whether assets deemed purchased in such a qualified stock disposition should be considered acquired by purchase for purposes of § 1.179–4(c)(1). The final regulations clarify that the reference to section 336(e) in § 1.179–4(c)(2) does not include dispositions described in section 355(d)(2) or (e)(2) because, under the sale-to-self model, old target will be treated as acquiring the assets in which it previously had a depreciable interest.

d. Rules Applying to Consolidated Groups

The August Proposed Regulations treat a member of a consolidated group as previously having a depreciable interest in all property in which the consolidated group is treated as previously having a depreciable interest. For purposes of this proposed rule, a consolidated group is treated as having a depreciable interest in property if any current or previous member of the group had a depreciable interest in the property while a member of the group. The August Proposed Regulations also do not allow the additional first year depreciation deduction when, as part of a series of related transactions, one or more members of a consolidated group acquire both the stock of a corporation that previously had a depreciable interest in the property and the property itself. Additionally, if the acquisition of property is part of a series of related transactions that also includes one or more transactions in which the transferee of the property ceases to be a member of a consolidated group, then whether the taxpayer is a member of a consolidated group is tested immediately after the last transaction in the series.

Multiple commenters requested clarification of these rules. Concurrently with the publication of the final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

e. Series of Related Transactions

Section 1.168(k)–2(b)(3)(iii)(C) of the August Proposed Regulations provides that, in the case of a series of related transactions, property is treated as directly transferred from the original transferor to the ultimate transferee, and the relation between the original transferor and the ultimate transferee is tested immediately after the last transaction in the series (related transactions rule). We received comments requesting clarification on the application of the related transactions rule in certain circumstances. Concurrently with the publication of the final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

f. Application to Partnerships

The August Proposed Regulations and these final regulations address whether certain section 704(c) allocations, the basis of distributed property determined under section 732, and basis adjustments under sections 734(b) and 743(b) qualify for the additional first year depreciation deduction. One commenter recommended applying the principles underlying section 197(f)(9) to analyze these issues under section 168(k). The Treasury Department and the IRS considered this approach and determined that it was not appropriate for purposes of section 168(k). Although the regulations under section 197(f)(9) apply an aggregate approach with respect to basis adjustments under sections 732, 734, and 743 (as well as certain section 704(c) allocations), the Treasury Department and the IRS looked to the purpose of section 168(k), not section 197(f)(9), to determine how to best approach the entity versus aggregate theory question. Furthermore, the statutory language found in section 197(f)(9)(E), which treats each partner in a partnership as having owned and used the partner's proportionate share of the partnership's assets for purposes of determining basis increases under sections 732, 734, and 743, is not in section 168(k). Therefore, the August Proposed Regulations and these final regulations determine the proper treatment of each basis adjustment under section 168(k) on a case-by-case basis.

One commenter to the August Proposed Regulations asked for clarification regarding a partner's depreciable interest in property held by a partnership. Concurrently with the publication of the final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address this comment.

i. Section 704(c) Remedial Allocations

The August Proposed Regulations and these final regulations provide that remedial allocations under section 704(c) do not qualify for the additional first year depreciation deduction. The same rule applies in the case of revaluations of partnership property (reverse section 704(c) allocations).

One commenter requested that the final regulations permit immediate expensing of excess book basis under the remedial allocation method in § 1.704–3(d) and corresponding remedial allocations of income and depreciation. The Treasury Department and the IRS decline to adopt this comment because the underlying property that gives rise to remedial allocations was contributed to the partnership in a section 721 transaction and has a basis described in section 179(d)(2)(C), which is in violation of section 168(k)(2)(E)(ii)(I), as well as the original use requirement.

ii. Section 734(b) Adjustments

The August Proposed Regulations and these final regulations provide that section 734(b) basis adjustments are not eligible for the additional first year depreciation deduction.

One commenter suggested that the Treasury Department and the IRS should permit immediate expensing of basis adjustments under section 734(b)(1)(A) allocable to qualified property. Section 734(b)(1)(A) provides that, in the case of a distribution of property to a partner with respect to which a section 754 election is in effect (or when there is a substantial basis reduction under section 734(d)), the partnership will increase the adjusted basis of partnership property by the amount of any gain recognized to the distributee partner under section 731(a)(1). The Treasury Department and the IRS decline to adopt this comment because section 734(b) adjustments are made to the common basis of partnership property and do not satisfy the original use clause of section 168(k)(2)(A)(ii) or the used property requirement of section 168(k)(2)(E)(ii)(I).

iii. Section 743(b) Adjustments

The August Proposed Regulations and these final regulations provide that, in determining whether a section 743(b) basis adjustment meets the used property acquisition requirements of section 168(k)(2)(E)(ii), each partner is

treated as having owned and used the partner's proportionate share of partnership property. In the case of a transfer of a partnership interest, section 168(k)(2)(E)(ii)(I) will be satisfied if the partner acquiring the interest, or a predecessor of such partner, has not used the portion of the partnership property to which the section 743(b) basis adjustment relates at any time prior to the acquisition (that is, the transferee has not used the transferor's portion of partnership property prior to the acquisition), notwithstanding the fact that the partnership itself has previously used the property. Similarly, for purposes of applying section 179(d)(2)(A), (B), and (C), the partner acquiring a partnership interest is treated as acquiring a portion of partnership property, and the partner who is transferring a partnership interest is treated as the person from whom the property is acquired.

The August Proposed Regulations provide that a section 743(b) basis adjustment in a class of property (not including the property class for section 743(b) basis adjustments) may be recovered using the additional first year depreciation deduction under section 168(k) without regard to whether the partnership elects out of the additional first year depreciation deduction under section 168(k)(7) for all other qualified property in the same class of property and placed in service in the same taxable year. Similarly, a partnership may make the election out of the additional first year depreciation deduction under section 168(k)(7) for a section 743(b) basis adjustment in a class of property (not including the property class for section 743(b) basis adjustments), and this election will not bind the partnership to such election for all other qualified property of the partnership in the same class of property and placed in service in the same taxable year.

One commenter recommended that the final regulations require consistent treatment for section 743(b) adjustments in a class of property and all other qualified property in the same class and placed in service in the same taxable year. The Treasury Department and the IRS believe that taxpayers should have the flexibility to use or elect out of the additional first year depreciation deduction for section 743(b) adjustments in a class of property without being bound to that choice for all other qualified property in the same class and placed in service in the same taxable year. Therefore, the final regulations retain the rule of the August Proposed Regulations.

One commenter requested that upper-tier partnerships be able to make an election under section 168(k)(7), or not, for both qualified property held directly by the upper-tier partnership and qualified property held indirectly through lower-tier partnerships. The Treasury Department and the IRS believe that a system of upper-tier partnerships making this election on behalf of lower-tier partnerships would be difficult to administer, and decline to adopt this comment. Lower-tier partnerships can make a section 168(k)(7) separately or may choose not to make that election.

One commenter suggested that there could be potential confusion with the language that would be added to § 1.743–1(j)(4)(i)(B)(*1*) by the August Proposed Regulations. This commenter stated that the addition of ''notwithstanding the above'' to that provision could be read to negate other provisions of § 1.743–1(j)(4)(i)(B). The Treasury Department and the IRS did not intend this implication. In these final regulations, the Treasury Department and the IRS have clarified this section by removing ''notwithstanding the above.''

The preamble to the August Proposed Regulations provides that a section 743(b) basis adjustment is eligible for the additional first year depreciation deduction provided all of the requirements of section 168(k) are met and assuming § 1.743–1(j)(4)(i)(B)(*2*) does not apply. Some commenters asked for clarification regarding the application of § 1.743–1(j)(4)(i)(B)(*2*). Section 1.743–1(j)(4)(i)(B)(*2*) provides that, if a partnership uses the remedial allocation method under § 1.704–3(d) with respect to an item of the partnership's recovery property, then the portion of any section 743(b) basis increase for that property that is attributable to section 704(c) built-in gain is recovered over the remaining recovery period for the partnership's excess book basis in the property as determined in the final sentence of § 1.704–3(d)(2). This would preclude the partner from taking the additional first year depreciation deduction for the portion of the section 743(b) basis increase attributable to section 704(c) built-in gain. Section 1.743–1(j)(4)(i)(B)(*2*) further provides that any remaining portion of a section 743(b) basis increase is recovered under § 1.743–1(j)(4)(i)(B)(*1*), which treats a section 743(b) basis increase as newly-purchased property placed in service when the transfer of the partnership interest occurs. Section 1.743–1(j)(4)(i)(B)(*1*) also provides that any applicable recovery period and method may be used for the basis increase. Therefore, under the August Proposed Regulations, the additional first year depreciation deduction is available for the portion of a section 743(b) basis increase that is not attributable to section 704(c) built-in gain, regardless of the section 704(c) method used, assuming all the requirements of section 168(k) are satisfied.

One commenter requested that the final regulations permit a partnership to use the additional first year depreciation deduction with respect to the portion of the section 743(b) basis increase that is attributable to section 704(c) built-in gain, even if the partnership is using the remedial allocation method with respect to the property. The Treasury Department and the IRS agree with this comment. However, an exception to this rule is needed in the case of publicly traded partnerships (within the meaning of section 7704(b)) to maintain fungibility for publicly traded partnership units. Thus, the final regulations amend § 1.743–1(j)(4)(i)(B)(*2*) to provide an exception to the rule that the portion of a section 743(b) basis increase that is attributable to section 704(c) built-in gain is recovered over the remaining recovery period for the partnership's excess book basis in the property. This exception applies only in the case of a partnership that is not a publicly traded partnership and that is recovering a section 743(b) basis increase using the additional first year depreciation deduction under section 168(k). If this exception applies, the entire section 743(b) basis increase is eligible for the additional first year depreciation. For publicly traded partnerships, the rules of the August Proposed Regulations described in the preceding paragraph continue to apply.

g. Syndication Transaction

The syndication transaction rule in the August Proposed Regulations and these final regulations is based on the rules in section 168(k)(2)(E)(iii) for syndication transactions.

For new or used property, the August Proposed Regulations provide that if (1) a lessor has a depreciable interest in the property and the lessor and any predecessor did not previously have a depreciable interest in the property, (2) the property is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time

the last unit is placed in service does not exceed 12 months), and (3) the user (lessee) of the property after the last sale during the three-month period remains the same as when the property was originally placed in service by the lessor, then the purchaser of the property in the last sale during the three-month period is considered the taxpayer that acquired the property, has a depreciable interest in the property, and the taxpayer that originally placed the property in service, but not earlier than the date of the last sale. Thus, if a transaction is within the rules described above, the purchaser of the property in the last sale during the three-month period is eligible to claim the additional first year depreciation for the property assuming all requirements are met, and the earlier purchasers of the property are not.

If the lessor reacquires the property, a commenter requested that the August Proposed Regulations be clarified to provide that the lessor did not previously have a depreciable interest in the property. The Treasury Department and the IRS agree with this suggestion. Accordingly, the final regulations clarify that, if a transaction is within the rules described in the preceding paragraph, the purchaser of the property in the last sale during the three-month period is the original user of the property, if the lessor acquired and placed in service new property, and is the taxpayer having a depreciable interest in the property, if the lessor acquired and placed in service used property. Neither the lessor nor any intermediate purchaser is treated as previously having a depreciable interest in the property.

h. Sale-Leaseback Transaction

Because section 13201 of the Act removed the rules regarding sale-leasebacks, the August Proposed Regulations did not retain the original use rules in § 1.168(k)–1(b)(3)(iii)(A) and (C) regarding such transactions, including a sale-leaseback transaction followed by a syndication transaction. A commenter requested that the depreciable interest rule in the August Proposed Regulations be changed to a never-have-depreciated test so that a seller-lessee in a sale-leaseback transaction that exercises the option to purchase the property at the end of the lease term will meet the used property rules in the proposed regulations. Alternatively, the commenter suggested § 1.168(k)–2(f)(1) of the August Proposed Regulations be revised to allow the additional first year depreciation deduction in the situation described in the preceding sentence provided the sale-leaseback occurred in the same taxable year in which the seller-lessee placed the property in service. The commenter asserted that leased assets should not be treated differently than other used property. Another commenter asserted that a rule similar to the one in § 1.168(k)–1(b)(3)(iii)(A) should be provided when the sale-leaseback occurs within a very short period of time after the property is placed in service by the seller-lessee.

The Treasury Department and the IRS have decided not to adopt these comments, because section 13201 of the Act removed the rules regarding sale-leasebacks. However, the Treasury Department and the IRS believe that an exception to the depreciable interest rule is appropriate when the taxpayer disposes of property within a short period of time after the taxpayer placed such property in service. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that provide this proposed rule.

D. Date of Acquisition

1. In General

The August Proposed Regulations and these final regulations provide rules applicable to the acquisition requirements of the effective date under section 13201(h) of the Act. The August Proposed Regulations and these final regulations provide that these rules apply to all property, including self-constructed property or property described in section 168(k)(2)(B) or (C).

Pursuant to section 13201(h)(1)(A) of the Act, the August Proposed Regulations and these final regulations provide that the property must be acquired by the taxpayer after September 27, 2017, or, acquired by the taxpayer pursuant to a written binding contract entered into by the taxpayer after September 27, 2017.

The August Proposed Regulations also provide that property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is acquired pursuant to a written binding contract. Many commenters disagreed with this position because it is not supported by the legislative history of section 13201 of the Act, it is a departure from the self-constructed property rules in § 1.168(k)–1(b)(4)(iii), and it is administratively burdensome. The Treasury Department and the IRS have reconsidered their decision. Accordingly, § 1.168(k)–2(b)(5)(ii)(A) and (b)(5)(iv) of the final regulations provide that property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is not acquired pursuant to a written binding contract but is self-constructed property.

The August Proposed Regulations also provide that if the written binding contract states the date on which the contract was entered into and a closing date, delivery date, or other similar date, the date on which the contract was entered into is the date the taxpayer acquired the property. The Treasury Department and the IRS are aware that some contracts are not binding contracts on the date the contract is entered into (for example, due to a contingency clause). Accordingly, § 1.168(k)–2(b)(5)(ii)(B) of the final regulations provides that the acquisition date of property that the taxpayer acquired pursuant to a written binding contract is the later of (1) the date on which the contract was entered into; (2) the date on which the contract is enforceable under State law; (3) if the contract has one or more cancellation periods, the date on which all cancellation periods end; or (4) if the contract has one or more contingency clauses, the date on which all conditions subject to such clauses are satisfied. For this purpose, a cancellation period is the number of days stated in the contract for any party to cancel the contract without penalty, and a contingency clause is one that provides for a condition (or conditions) or action (or actions) that is within the control of any party or a predecessor.

2. Written Binding Contract

A commenter requested clarification on whether the liquidated damages rule in § 1.168(k)–2(b)(5)(iii)(A) in the August Proposed Regulations applies only to a breach by the purchaser. A similar question was raised in comments on § 1.168(k)–1T regarding the rule stating that if the contract provided for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation, the contract is not considered binding. At that time, the Treasury Department and the IRS decided that the limitations should fall on both parties, the purchaser and the seller. The same should apply in the

instant case. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned how to apply the 5-percent liquidated damages rule in the August Proposed Regulations when the contract has multiple damage provisions. The Treasury Department and the IRS intended that only the provision with the highest damages be taken into account in determining whether the contract limits damages. The final regulations clarify this intention.

Another commenter requested clarification on whether any of the costs of property acquired before September 28, 2017, pursuant to a written binding contract, and placed in service after 2017 are eligible for the additional first year depreciation deduction under section 168(k). If some, but not all, of the costs are eligible, or if the costs are subject to the different applicable percentages, the commenter also requested that a basis allocation rule be provided. This comment is related to the comment discussed in part II(D)(3) of this Summary of Comments and Explanation of Revisions section regarding the election provided in section 3.02(2)(b) of Rev. Proc. 2011–26 (2011–16 I.R.B. 664). Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

The Treasury Department and the IRS are aware that taxpayers and practitioners are having difficulty applying the binding contract rules in the August Proposed Regulations to transactions involving the acquisition of an entity. Because those rules were written to apply to the purchase of an asset instead of an entity, the Treasury Department and the IRS recognize that a binding contract rule for an acquisition of a trade or business, or an entity, is needed. The Treasury Department and the IRS also are aware that, in some cases, a taxpayer did not acquire property pursuant to a written binding contract. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these issues.

3. Self-Constructed Property

If a taxpayer manufactures, constructs, or produces property for its own use, the Treasury Department and the IRS recognize that the written binding contract rule in section 13201(h)(1) of the Act does not apply. In such case, the August Proposed Regulations and these final regulations provide that the acquisition rules in section 13201(h)(1) of the Act are treated as met if the taxpayer begins manufacturing, constructing, or producing the property after September 27, 2017. As stated in part II(D)(1) of this Summary of Comments and Explanation of Revisions section, the final regulations provide that property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property is self-constructed property by the taxpayer. In this case, these final regulations also provide that the acquisition rules in section 13201(h)(1) of the Act are treated as met if the taxpayer begins manufacturing, constructing, or producing such property after September 27, 2017. The August Proposed Regulations and these final regulations provide rules similar to those in § 1.168(k)–1(b)(4)(iii)(B) for defining when manufacturing, construction, or production begins, including the safe harbor, and in § 1.168(k)–1(b)(4)(iii)(C) for a contract to acquire, or for the manufacture, construction, or production of, a component of the larger self-constructed property.

Two commenters requested clarification on whether the cost of a component of a larger self-constructed property that is acquired under a binding contract entered into before September 28, 2017, is included in the safe harbor for determining when manufacturing, construction, or production of the larger self-constructed property begins. Consistent with § 1.168(k)–1(b)(4)(iii)(B)(*2*), the safe harbor in the August Proposed Regulations and these final regulations do not provide a date restriction for calculation of the 10 percent. Accordingly, examples in § 1.168(k)–2(d)(3)(iv), which has the same safe harbor as in § 1.168(k)–2(b)(5)(iv), illustrate that the cost of such component is taken into account for determining whether the taxpayer has paid or incurred more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching) under the safe harbor. If the cost of the acquired component is more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching), the manufacture, construction, or production of the larger self-constructed property begins on the date on which the taxpayer paid or incurred the cost of such component.

A commenter requested clarification on whether the 100-percent additional first year depreciation deduction is allowable for self-constructed property owned by a trade or business described in section 163(j)(7)(A)(iv) (regulated public utility) where the construction of such property begins after September 27, 2017, and the property is placed in service in a taxable year beginning after 2017. In such case, the property is not eligible for the 100-percent additional first year depreciation deduction pursuant to section 168(k)(9)(A). *Example 11* is provided in § 1.168(k)–2(b)(5)(viii)(K) of these final regulations to illustrate this point.

Multiple commenters requested that the final regulations provide an election similar to the one provided in section 3.02(2)(b) of Rev. Proc. 2011–26 for components acquired or self-constructed after September 27, 2017, of larger self-constructed property when the manufacture, construction, or production of the larger self-constructed property begins before September 28, 2017. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

III. Computation of Additional First Year Depreciation Deduction and Elections Under Section 168(k)

A. Computation of Additional First Year Depreciation Deduction

Pursuant to section 168(k)(1)(A), the August Proposed Regulations and these final regulations provide that the allowable additional first year depreciation deduction for qualified property is equal to the applicable percentage (as defined in section 168(k)(6)) of the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of the property. For qualified property described in section 168(k)(2)(B), the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of the property is limited to the property's basis attributable to manufacture, construction, or production of the property before January 1, 2027, as provided in section 168(k)(2)(B)(ii).

Pursuant to section 168(k)(2)(G), the August Proposed Regulations and these final regulations also provide that the additional first year depreciation deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes. The August Proposed Regulations and these final regulations provide rules similar to those in § 1.168(k)–1(d)(2) for determining the amount of depreciation otherwise allowable for qualified property.

A commenter requested clarification on whether the deduction under section 181 for a qualified film, television, or live theatrical production is taken before the additional first year depreciation deduction for the same production. Section 181(b) provides that with respect to the basis of any qualified film or television production or any qualified live theatrical production to which an election under section 181(a) is made, no other depreciation or amortization deduction shall be allowable. Consequently, if the owner of the qualified film, television, or live theatrical production makes an election under section 181(a), the basis of the production is reduced by the amount of the section 181 deduction before the additional first year depreciation deduction is computed. Accordingly, the final regulations revise the definition of unadjusted depreciable basis in § 1.168(b)–1(a)(3) to reflect the reduction in basis for the amount the taxpayer elects to treat as an expense under section 181.

B. Elections Under Section 168(k)

The August Proposed Regulations and these final regulations provide rules for making the election out of the additional first year depreciation deduction pursuant to section 168(k)(7) and for making the election to apply section 168(k)(5) to a specified plant. Additionally, the August Proposed Regulations and these final regulations provide rules for making the election under section 168(k)(10) to deduct 50 percent, instead of 100 percent, additional first year depreciation for qualified property acquired after September 27, 2017, by the taxpayer and placed in service or planted or grafted, as applicable, by the taxpayer during its taxable year that includes September 28, 2017.

Several commenters requested relief to make late elections under section 168(k)(7) or (10) for property placed in service during the taxpayer's taxable year that includes September 28, 2017, because some taxpayers already filed their Federal tax returns for that taxable year before the proposed regulations were issued. The commenters also noted that a taxpayer with a due date, with extensions, of September 15, 2018, or October 15, 2018, for its Federal tax return for the taxable year that includes September 28, 2017, may not have had sufficient time to analyze the proposed regulations to make a timely election under section 168(k)(7) or (10). The IRS issued Revenue Procedure 2019–33 (2019–34 I.R.B. 662) to address this request by providing an additional period of time for taxpayers to make an election, or revoke an election, under section 168(k)(5), (7), or (10) for property acquired after September 27, 2017, and placed in service during the taxpayer's taxable year that includes September 28, 2017.

IV. Special Rules

The August Proposed Regulations and these final regulations provide special rules similar to those in § 1.168(k)–1(f) for the following situations: (1) Qualified property placed in service or planted or grafted, as applicable, and disposed of in the same taxable year; (2) redetermination of basis of qualified property; (3) recapture of additional first year depreciation for purposes of section 1245 and section 1250; (4) a certified pollution control facility that is qualified property; (5) like-kind exchanges and involuntary conversions of qualified property; (6) a change in use of qualified property; (7) the computation of earnings and profits; (8) the increase in the limitation of the amount of depreciation for passenger automobiles; (9) the rehabilitation credit under section 47; and (10) computation of depreciation for purposes of section 514(a)(3).

The August Proposed Regulations and these final regulations provide a special rule for qualified property that is placed in service in a taxable year and then contributed to a partnership under section 721(a) in the same taxable year when one of the other partners previously had a depreciable interest in the property. Situation 1 of Rev. Rul. 99–5 (1999–1 C.B. 434) is an example of such a fact pattern. In this situation, the August Proposed Regulations provide that the additional first year depreciation deduction with respect to the contributed property is not allocated under the general rules of § 1.168(d)–1(b)(7)(ii). Instead, the additional first year depreciation deduction is allocated entirely to the contributing partner prior to the section 721(a) transaction and not to the partnership.

In the fact pattern described in the preceding paragraph, a commenter requested clarification on whether the property is placed in service by the contributing partner prior to the section 721(a) transaction. Another commenter requested clarification on whether the contributing partner deducts the additional first year depreciation for the qualified property or the partnership allocates the additional first year depreciation deduction for the qualified property to the contributing partner. The final regulations provide that the contributing partner is deemed to place in service the qualified property prior to the section 721(a) transaction, and that the contributing partner deducts the entire additional first year depreciation for such property. The contributing partner will contribute the property to the partnership with a zero basis, and the contributed property will be section 704(c) property in the hands of the partnership.

Several commenters questioned how the August Proposed Regulations apply to a section 743(b) adjustment when there is a purchase of a partnership interest followed by a subsequent transfer of that partnership interest. Under the August Proposed Regulations, if qualified property is placed into service or planted or grafted, as applicable, and disposed of in the same taxable year, the additional first year depreciation deduction generally is not allowed. However, there is an exception to this rule in the case of nonrecognition transfers under section 168(i)(7). These rules in the August Proposed Regulations apply only to transfers of qualified property and not to section 743(b) adjustments resulting from transfers of partnership interests. Several commenters recommended that parallel rules should apply to transfers of partnership interests. The Treasury Department and the IRS agree with this comment.

These final regulations provide that, if a partnership interest is acquired and disposed of during the same taxable year, the additional first year depreciation deduction is not allowed for any section 743(b) adjustment arising from the initial acquisition. However, if a partnership interest is purchased and disposed of in a section 168(i)(7) transaction in the same taxable year, the section 743(b) adjustment is allowable, provided all of the requirements of section 168(k) are satisfied. The section 743(b) adjustment is apportioned between the purchaser/transferor and the transferee under the same rules that apply to transfers of qualified property.

A commenter requested a rule allowing dealerships that purchase replacement vehicles for use in their fleet of rental or leased vehicles to deduct the additional first year depreciation deduction in transactions

that are similar to like-kind exchanges when at least 10 vehicles are traded in during the same taxable year. The treatment requested is similar to that given to like-kind exchanges under section 1031 as in effect before the enactment of the Act. The Treasury Department and the IRS decline to adopt this comment because it is outside the scope of these final regulations.

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether the unadjusted basis of qualified property for which the additional first year depreciation deduction is claimed is taken into account in determining whether the mid-quarter convention under section 168(d) and § 1.168(d)–1 applies for the taxable year. Consistent with the definition of depreciable basis in § 1.168(d)–1(b)(4), the basis is not reduced by the allowed or allowable additional first year depreciation deduction in determining whether the mid-quarter convention applies for the taxable year. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that provide this proposed rule.

Statement of Availability of IRS Documents

The IRS Revenue Procedures and Revenue Rulings cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Effective/Applicability Date

These final regulations apply to qualified property placed in service or planted or grafted, as applicable, by the taxpayer during or after the taxpayer's taxable year that includes September 24, 2019. However, a taxpayer may choose to apply these final regulations, in their entirety, to qualified property acquired and placed in service or planted or grafted, as applicable, after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, provided the taxpayer consistently applies all rules in these final regulations. Additionally, a taxpayer may rely on the proposed regulations under section 168(k) in regulation project REG–104397–18 (2018–41 I.R.B. 558), to qualified property acquired and placed in service or planted or grafted, as applicable, after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before September 24, 2019.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these regulations as economically significant under section 1(c) of the MOA. Accordingly, the OMB has reviewed these regulations.

A. Background

1. Bonus Depreciation Generally

In general, section 167 allows taxpayers to claim a ''reasonable allowance for the exhaustion, wear and tear'' of property used in a trade or business or held for the production of income. For most tangible property, the amount of the deduction is determined under section 168, which effectively provides schedules of deductions (as a share of the initial basis) for different types of assets. The baseline schedule generally provides for the deduction to be spread over a number of years.

In the Job Creation and Worker Assistance Act of 2002, Congress put in place section 168(k), creating what is colloquially known as ''bonus depreciation.'' Under this initial legislation, firms were allowed to take a deduction equal to 30 percent of the initial basis of qualified property in the year in which it was placed in service; the remaining 70 percent was depreciated according to the usual schedule. Broadly speaking, ''qualified property'' included personal property that had a class life of 20 years or less; additionally, the property was required to be ''new,'' meaning that the original use of the property must have commenced with the taxpayer in question. By shifting depreciation deductions forward in time, section 168(k) generally increased the present value of the depreciation deductions attributable to a given piece of property, increasing the incentive to invest in new property. Since 2001, Congress has changed the ''bonus percentage'' several times, in accordance with the following table, including the 2005–2007 period when bonus depreciation was not in effect for most property.

TABLE 1—PERCENT ADDITIONAL DEPRECIATION (FOR MOST QUALIFIED PROPERTY), BY DATE PLACED IN SERVICE

[Property placed in service]

Beginning date	End date	Bonus percentage
9/11/2001	5/4/2003	30
5/5/2003	12/31/2004	50
1/1/2005	12/31/2007	0
1/1/2008	9/8/2010	50
9/9/2010	12/31/2011	100
1/1/2012	12/31/2017	50

2. Bonus Depreciation Under the Act

The Act changed section 168(k) in several ways. First, the Act increased the bonus percentage. Under the pre-Act section 168(k), the bonus percentage for most property was 50 percent in 2017, 40 percent in 2018, 30 percent in 2019, and zero thereafter. The Act amended these percentages to 100 percent for most property placed in service between September 28, 2017 and the end of 2022, 80 percent in 2023, 60 percent in 2024, 40 percent in 2025, 20 percent in 2026, and 0 thereafter. The Act also removed the ''original use'' requirement, meaning that taxpayers could claim bonus depreciation on ''used'' property.

The Act made several other modest changes to the operation of section 168(k). First, it excluded from the definition of qualified property any property used by rate-regulated utilities and firms (primarily automobile dealerships) with ''floor plan financing indebtedness'' as defined under section 163(j). Similarly, section 168(g)(1)(G) provides that certain property used by real property and agricultural businesses that make an election to be excluded from the section 163(j) limitation are required to use the Alternative Depreciation System (ADS) for certain property which does not qualify for bonus depreciation. Furthermore, section 168(k)(2)(a)(ii)(IV) and (V) allowed qualified film, television, and live theatrical

productions (as defined under section 181) to qualify for bonus depreciation.

3. Proposed and Final Regulations

The August Proposed Regulations and these final regulations create § 1.168(k)–2 which applies generally to property acquired and placed in service after September 27, 2017. The August Proposed Regulations and these final regulations largely draw upon language in existing § 1.168(k)–1, which generally continues to apply to property acquired or placed in service prior to September 27, 2017, with minor edits being made to conform to changes made by the Act. For provisions of section 168 that were generally unchanged by the Act, § 1.168(k)–2 predominantly follows § 1.168(k)–1 directly, with only minor changes. Additionally, § 1.168(k)–2 provides rules that clarify how the changes to section 168 made by the Act apply to property acquired after September 27, 2017.

In some instances the final regulations repeat unambiguous rules provided in the statute. However, there were a number of areas where clarification was necessary, and the analysis below focuses on these substantive portions of the regulation. These final regulations finalize certain provisions of the August Proposed Regulations with no change. In addition, these final regulations include provisions from the August Proposed Regulations that were modified to take into account comments received. The provisions discussed in this special analysis include (1) rules regarding film, television, and live theatrical performances, (2) clarifications regarding property depreciated under ADS for purposes other than section 168, (3) the eligibility of partnership basis adjustments under section 743(b) for bonus depreciation, (4) the treatment of tax-exempt use property, as defined by section 168(h)(6), (5) the definition of ''prior use'' for determining whether ''used'' property is eligible for bonus depreciation, and (6) clarifications regarding the date at which property is considered to be acquired in the case of self-constructed property.

B. No-Action Baseline

The Treasury Department and the IRS have assessed the benefits and costs of these final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these final regulations.

C. Economic Analysis of Regulation

This section describes the main provisions of these final regulations, (including those finalized with no change from the August Proposed Regulations) and analyzes the economic effects of each one.

1. Film, Television, and Live Theatrical Performances

Sections 168(k)(2)(A)(i)(IV) and (V) provide that a qualified film or television production, or a qualified live theatrical production, is eligible for bonus depreciation, borrowing definitions from section 181. There was ambiguity in determining whether ''used'' film, television, and theatrical performances were eligible—*i.e.,* those properties whose production began under a different taxpayer. Following existing rules under section 181, these final regulations provide that direct production costs and acquisition costs are eligible for bonus depreciation in the hands of the owner, so long as the production was acquired before the initial date of release (or initial live staged performance). The Treasury Department and the IRS have determined that this is the proper interpretation of the statute, and that other statutory readings were not legally supportable. Nevertheless, this result provides a middle ground between two extreme positions: One in which only the initial owner was eligible for bonus depreciation, and one in which all acquisition costs of film, television, or live theatrical performances were eligible for section 168(k) under nearly all circumstances. Thus, the incentives for investment—and therefore the potential link to economic growth and efficiency—created by this interpretation are also in the middle of these two extremes. The Treasury Department and IRS expect that most taxpayers would have come to a similar interpretation of the treatment of used television, film, and theatrical performances in the absence of these final regulations. Therefore, the Treasury Department and IRS project that this clarification will have only small economic effects.

Additionally, while section 181 and the regulations thereunder provide a definition for when a film or television production is placed in service, they do not do so for live theatrical performances. The August Proposed Regulations and these final regulations provide such a definition for live theatrical performances, directly adapting the rules for film and television productions to live theatrical performances. Specifically, a live theatrical performance is considered placed in service when it begins commercial exhibition (*i.e.,* performances in front of paying audiences); an exhibition designed to attract further funding, or to determine whether the production should proceed, does not qualify as a commercial exhibition. This rule delays the placed in service date relative to the alternative choice (in which such an earlier exhibition would cause a live theatrical performance to be placed in service). This choice has two potential offsetting economic effects. First, this choice potentially delays the date in which the taxpayer could claim bonus depreciation for the performance, which could slightly reduce the incentive to invest in such a performance. Second, this choice increases the length of time over which a potential buyer could acquire the performance and remain eligible to claim bonus depreciation (since the acquisition of a production is only eligible until the date of its initial live staged performance); this could slightly increase the incentive to invest in such productions by increasing resale opportunities. The Treasury Department and the IRS project that these offsetting effects will have only small net effects on investment in live theatrical performances.

2. Depreciation Using ADS for Purposes Other Than Section 168

In general, property that is required to be depreciated under the ADS is not eligible for bonus depreciation. Additionally, some provisions of the code (such as sections 250(b)(2)(B) and 951A(d)(3)) require the use of ADS to determine aggregate basis for the purpose of that provision (but not for the purpose of calculating depreciation deductions under section 168). These final regulations clarifies that such a requirement does not cause a property to be ineligible for bonus depreciation. The Treasury Department and the IRS project that most taxpayers would have come to this interpretation in the absence of this final regulation, so this provision is likely to have modest economic effects. Nevertheless, this decision might give certainty to a small number of taxpayers that their property is, in fact, eligible for bonus depreciation despite interactions with other Code provisions, potentially creating a small incentive for additional investment.

3. Eligibility of Partnership Basis Adjustments Under Section 743(b)

Under the August Proposed Regulations, basis increases under section 743(b) (which generally occur when partnership interests are transferred) are generally eligible for bonus depreciation. These final regulations generally finalize this rule with only minor clarifications.

The effect of allowing a section 743(b) adjustment to be eligible for bonus depreciation can best be explained by the following example. Suppose taxpayers A and B contribute $100,000 each in cash to start Partnership X. Partnership X purchases a $150,000 piece of equipment Y (of a character that is eligible for bonus depreciation) and holds a $50,000 non-depreciable asset. After some number of years, the basis of Partnership X in Y (that is, the ''inside basis'' of Y in the hands of Partnership X) has been adjusted down to 0 through depreciation, but the fair market value (FMV) of Y is $60,000. Assume no other earnings of the partnership or fluctuations in asset FMV. At this point, total FMV of the assets held by Partnership X are $110,000, and A and B each have a $25,000 basis in their interest in Partnership X.

Suppose, at this point, that B sells her interest to C, an unrelated party, for $55,000 (equal to half of the FMV of the assets held by the partnership). As a result, C has basis of $55,000 in his interest in Partnership X, and B realizes a gain of $30,000 (equal to $55,000 minus her basis of $25,000). Under the usual rules of partnership taxation, this would cause a disconnect between C's outside basis—that is, the basis of C in Partnership X, which in this case is $55,000—and C's inside basis in the assets held by Partnership X, which in this case equals $25,000. This disconnect can produce undesired results, such as a certain gain being converted from capital to ordinary, or being taxed sooner than economically realized. Therefore, section 754 allows taxpayers to make certain adjustments, if elected. Assuming that a section 754 election is in place for Partnership X, section 743(b) causes the basis of Y to be increased by $30,000, equal to the gain recognized by B, and this basis adjustment would explicitly be assigned to C (meaning that any future cost recovery, through depreciation or otherwise, would be allocated to C). This causes C's inside basis and outside basis to come back into alignment, at $55,000 in this example.

Under section 168(k) prior to the Act, such section 743(b) adjustments were determined to be ineligible for bonus depreciation, since the tangible property acquired was, by construction, not ''new.'' Economically, this meant that the transfer of the partnership interest caused an immediate realization of gain by the seller, and a deferred realization of deduction items by the buyer. This created a modest incentive for sellers to hold onto their assets for longer periods of time, in order to defer tax payments. As has been well studied, this incentive can lead to portfolio misallocation, hindering the allocation of capital to its most efficient use. (This problem is often referred to as ''lock-in.'')

The Treasury Department and the IRS concluded that the Act's allowance of ''used'' property to qualify for bonus depreciation (subject to the other restrictions discussed in detail in the August Proposed Regulations and these final regulations) should extend to section 743(b) adjustments as well. This has the economic effect of mitigating the lock-in problem for transfers of certain partnership interests with built-in gains (to the extent that the section 743(b) adjustment is attributable to property that is of a character that qualifies for bonus depreciation). In the previous example discussed in this part I(C)(3) of this Special Analysis section, this would have the effect of allowing Partnership X to claim an immediate $30,000 deduction (which would be allocated to C) for its $30,000 section 743(b) adjustment. This $30,000 deduction precisely equals the $30,000 in gain realized by B. Therefore, the aggregate tax consequences faced by B and C cancel out, eliminating the lock-in effect in this simple example.

Reducing the lock-in effect for transfers of partnership interests can improve the efficiency of capital allocations throughout the economy. The Treasury Department and the IRS engaged in an analysis of the potential increase in output due to this potential increase in allocative efficiency. Based on projections regarding which partnerships will make adjustments under section 743(b) and assumptions about frictions to adjusting the capital stock, the Treasury Department and the IRS have concluded that the total economy-wide gain to output caused by this reduction in lock-in would be less than $5 million per year.

Relatedly, allowing section 743(b) adjustments to be eligible for bonus depreciation increases the incentive for a new partner to acquire an interest in a partnership from another partner, potentially increasing the value of the partnership slightly. This can have the effect of making a previous investment in tangible property more attractive, which has an effect similar to a small reduction in the cost of capital for such partnerships. Based on an analysis of tax data, and applying estimates of the elasticity of capital with respect to the cost of capital, the Treasury Department and the IRS project that this effect will increase investment by no more than $20 million in any year, with smaller effects in most years.

4. Property Owned by Partnerships Treated as Tax-Exempt Use Property

Section 168(h)(6) provides that property held by a partnership in which one partner is a tax-exempt entity and another partner is not is ''tax-exempt use property.'' Section 168(g)(1)(B) requires tax-exempt use property to be depreciated according to the ADS, which renders tax-exempt use property ineligible for bonus depreciation. These final regulations clarify that only the tax-exempt entity's proportional share of the property is ineligible for bonus depreciation, which is consistent with other rules in the August Proposed Regulations and these final regulations providing that partners have a depreciable interest in only their proportionate share of assets held by a partnership. Relative to an interpretation defining all property held by such a partnership with a tax-exempt partner to be ineligible, this provision will generally have the effect of increasing the amount of property eligible for bonus depreciation, which will slightly increase the incentive for such partnerships to invest in physical capital.

Based on entities filing Form 990 (for certain tax-exempt entities) and Form 5500 (for certain pension plans), the Treasury Department and the IRS have determined that there were approximately 100,000 partnerships in 2015 (out of nearly 4 million partnerships total) that were owned directly by at least one tax-exempt partner and at least one taxable partner. This figure could potentially be an underestimate, as it will not count partnerships that have a common structure in which the tax-exempt partner owns the partnership through a ''blocker'' C corporation (which could be treated tax-exempt under the rules of section 168(h)(6)(F)). Furthermore, this estimate does not take account of multi-tiered partnership structures. On the other hand, not all such partnerships would make depreciable investments that are affected by this final regulation.

5. New and Used Property

In order for a property to be eligible for bonus depreciation, it must generally satisfy one of two conditions: (1) The original use of the property begins with the taxpayer, or (2) ''such property was not used by the taxpayer at any time prior to such acquisition'' (section 168(k)(2)(E)(ii)(I)). Neither the August Proposed Regulations nor these final regulations make any substantial changes to the ''original use'' rules in § 1.168(k)–1(b)(3). However, clarification was needed regarding the

determination of whether ''such property was . . . used by the taxpayer . . . prior to such acquisition''. One common circumstance in which this could be ambiguous is when a lessee uses (but does not own) a piece of property and then purchases that property upon the expiration of the lease. These final regulations follow the intent of Congress (as indicated by the Joint Committee on Taxation, General Explanation of Public Law 115–97 (JCS–1–18) at 125 fn. 542 (Dec. 20, 2018)) to define ''used'' as meaning that the taxpayer previously held a ''depreciable interest'' in the property. In general, this would allow the former lessee in such an example to claim bonus depreciation upon the subsequent purchase of the property in question (assuming all other requirements are met).

These final regulations make several additional clarifications regarding what is meant by ''prior depreciable interest.'' First, these final regulations provide that a taxpayer will be considered to have had a prior depreciable interest in a piece of property if his/her predecessor had such a prior depreciable interest; likewise, these final regulations provide a definition of ''predecessor,'' as requested by commenters. Second, these final regulations provide a safe harbor look-back period of five calendar years for determining whether a taxpayer had a prior depreciable interest. The Treasury Department and the IRS chose a five-year period because the vast majority of bonus-eligible assets have General Depreciation Schedule (GDS) lives of 5 years or more (3-year property is uncommon), and thus taxpayers will tend to have readily accessible records for these assets.

These rules will help ease administrative and compliance burdens: Taxpayers will be able to more clearly identify their predecessors, if any, and the limited look-back period will mitigate the infeasibility of the implicit infinite lookback period some might interpret as a requirement of the statute. Both of these rules should help provide clarity and help reassure taxpayers that they will not accidentally run afoul of the prior depreciable interest rules, potentially encouraging more firms to take advantage of the investment incentives created by section 168(k).

Third, these final regulations provide that ''substantially renovated property'' can be eligible for bonus depreciation, even if the taxpayer had a prior depreciable interest in the property prior to the renovation. For this purpose, a property is a ''substantially renovated property'' if the cost of the used parts is less than or equal to 20 percent of the total cost of the (post-renovation) property, whether acquired or self-constructed. The Treasury Department and the IRS project that this provision will have limited economic effects, as it will come into play only in the relatively rare circumstance in which a taxpayer is purchasing substantially renovated property and held a prior depreciable interest in the pre-renovation property. Nevertheless, this provision will generally increase the amount of property eligible for bonus depreciation, increasing the incentive to invest.

6. Date of Acquisition

The Act provides that property must be acquired by the taxpayer after September 27, 2017, or acquired by the taxpayer pursuant to a ''written binding contract'' entered into after September 27, 2017, in order for the property to be eligible for the 100 percent bonus depreciation rate. There was some ambiguity regarding whether third-party constructed property—that is, property that is produced for the taxpayer by a third party under a written binding contract—is acquired ''pursuant to a written binding contract'' or whether it is considered self-constructed property. The August Proposed Regulations reflected the interpretation that third party constructed property is not self-constructed property and the contract for such property must have been entered into after September 27, 2017, in order to be eligible for 100 percent bonus depreciation. However, the final regulations under § 1.168(k)–1 took a different interpretation, such that the acquisition date of all self-constructed property (including third party constructed property) is equal to the (usually later) date when substantial construction begins.

These final regulations provide for the latter interpretation: Third-party constructed property is treated as self-constructed property, meaning that more taxpayers will be eligible for 100 percent bonus depreciation for property where contracts were entered into prior to September 27, 2017, but for which substantial construction began after that date. Given that this provision affects only investment that has already been made, the Treasury Department and the IRS expect it to have virtually no effect on economic growth or efficiency going forward, except to the extent that it changes taxpayers' expectations about future policy.

II. Paperwork Reduction Act

These final regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure requirements. However, taxpayers that want to make or revoke the election under section 168(k)(5), (7), or (10), are required to attach a statement to their Federal tax returns pursuant to the instructions for Form 4562, ''Depreciation and Amortization (Including Information on Listed Property)''. Also, pursuant to Rev. Proc. 2019–33 (2019–34 I.R.B. 662), taxpayers may make or revoke the election under section 168(k)(5), (7), or (10) by filing, within a specified time period, amended Federal tax returns, or Form 3115, ''Application for Change in Accounting Method,'' with their Federal tax returns and submit a copy of the Form 3115 to the IRS office in Ogden, Utah.

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), the reporting burden associated with these collections of information will be reflected in the PRA submission associated with income tax returns in the Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series (see chart at the end of this part II for OMB control numbers). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 141,550 respondents. Historical data was not available to directly estimate the number of impacted filers. This estimate assumes that no more than 5 percent of income tax return filers with a Form 4562 and relevant activity on lines 14 and/or 19(a–f) will make these elections, due to the limited scope of the elections. The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(f)(1) Election not to deduct additional first year depreciation.	0–41,685	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

TAX FORMS IMPACTED—Continued

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(f)(2) Election to apply section 168(k)(5) for specified plants.	0–790	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.
Section 1.168(k)–2(f)(3) Election for qualified property placed in service during the 2017 taxable year.	0–90,275	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.
Section 1.168(k)–2(f)(5)(ii) (Revocation of election—Automatic 6-month extension) and § 1.168(k)–2(f)(6) (Special rules for 2016 and 2017 returns).	0–8,800	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

Source: IRS:RAAS:KDA (CDW 6–1–19).

If the time under Rev. Proc. 2019–33 for filing amended returns or Form 3115 has expired to revoke the election under section 168(k)(5), (7), or (10), taxpayers then are required to submit a request for a private letter ruling to revoke such election in accordance with Rev. Proc. 2019–1 (2019–1 I.R.B. 1) (or its successors). For purposes of the PRA, the reporting burden associated with these collections of information will be reflected in the PRA submission associated with income tax returns in the Form 1120 series and Form 1065 series (see chart at the end of this part II for OMB control numbers). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 10 respondents. This estimate is based on the number of private letter ruling requests filed by taxpayers from 2005 through 2018 to revoke elections under section 168(k). The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(f)(5)(i) Revocation of election	0–10	Form 1120 series and Form 1065 series.

Source: IRS:CC:ITA (CASE–MIS 5–21–19).

The current status of the PRA submissions related to the tax forms and the revenue procedure that will be revised as a result of the information collections in these final regulations is provided in the accompanying table. As described above, the reporting burdens associated with the information collections in the regulations are included in the aggregated burden estimates for OMB control numbers 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)), 1545–0074 (which represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), and 1545–0092 (which represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016)).

The overall burden estimates provided in the preceding paragraph for the OMB control numbers below are aggregate amounts that relate to the entire package of forms or revenue procedure, as applicable, associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms or the revenue procedure, as applicable, that will be created or revised as a result of the information collections in the regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the regulations. These burdens have been reported for other regulations that rely on the same OMB control numbers to conduct information collections under the PRA, and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against over counting the burden that the regulations that cite these OMB control numbers imposed prior to the Act. No burden estimates specific to the forms affected by the regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the regulations. For the OMB control numbers discussed in the preceding paragraphs, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture both changes made by the Act and those that arise out of discretionary authority exercised in these final regulations and other regulations that affect the compliance burden for those forms.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form or revenue procedure, as applicable, and ways for the IRS to minimize the paperwork burden. In addition, when available, drafts of IRS forms are posted for comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm.* IRS forms are available at *https://www.irs.gov/forms-instructions.* Forms will not be finalized until after they have been approved by OMB under the PRA.

Form	Type of filer	OMB No.(s)	Status
Form 1040	Individual (NEW Model).	1545–0074	Published in the **Federal Register** on 7/20/18. Public Comment period closed on 9/18/18.
	Link: *https://www.federalregister.gov/documents/2018/07/20/2018-15627/proposed-collection-comment-request-for-regulation-project*		
Form 1041	Trusts and estates	1545–0092	Published in the **Federal Register** on 4/4/18. Public Comment period closed on 6/4/18.
	Link: *https://www.federalregister.gov/documents/2018/04/04/2018-06892/proposed-collection-comment-request-for-form-1041*		
Forms 1065 and 1120	Business (NEW Model).	1545–0123	Published in the **Federal Register** on 10/8/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd*		
Form 3115	All other Filers (mainly trusts and estates) (Legacy system).	1545–2070	Published in the **Federal Register** on 2/15/17 by IRS. Public Comment period closed on 4/17/17.
	Link: *https://www.federalregister.gov/documents/2017/02/15/2017-02985/proposed-information-collection-comment-request*		
	Business (NEW Model).	1545–0123	Published in the **Federal Register** on 10/8/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd*		
	Individual (NEW Model).	1545–0074	Published in the **Federal Register** on 7/20/18. Public Comment period closed on 9/18/18.
	Link: *https://www.federalregister.gov/documents/2018/07/20/2018-15627/proposed-collection-comment-request-for-regulation-project*		
Revenue Procedure 2019–1 (previously 2018–1).	Business (NEW Model).	1545–0123	Published in the **Federal Register** on 10/8/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd*		

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 168(k) generally affects taxpayers that own and use depreciable property in their trades or businesses or for their production of income. The reporting burdens in § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) generally affect taxpayers that elect to make or revoke certain elections under section 168(k). For purposes of the PRA, the Treasury Department and the IRS estimate that there are 0 to 141,550 respondents of all sizes that are likely to be impacted by these collections of information. Most of these filers are likely to be small entities (business entities with gross receipts of $25 million or less pursuant to section 448(c)(1)). The Treasury Department and the IRS estimate the number of filers affected by § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) to be the following:

Form	Gross receipts of $25 million or less	Gross receipts over $25 million
Form 1040	0–59,000 Respondents (estimated)	0–70 Respondents (estimated).
Form 1065	0–30,125 Respondents (estimated)	0–935 Respondents (estimated).
Form 1120	0–11,400 Respondents (estimated)	0–1,560 Respondents (estimated).
Form 1120S	0–35,900 Respondents (estimated)	0–2,560 Respondents (estimated).
Total	0–136,425 Respondents (estimated)	0–5,125 Respondents (estimated).

Source: IRS:RAAS:KDA (CDW 6–1–19).

Regardless of the number of small entities potentially affected by these final regulations, the Treasury Department and the IRS have concluded that § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that: (1) Many small businesses are not required to capitalize under section 263(a) the amount paid or incurred for

the acquisition of depreciable tangible property that costs $5,000 or less if the business has an applicable financial statement or costs $500 or less if the business does not have an applicable financial statement, pursuant to § 1.263(a)–1(f)(1); (2) many small businesses are no longer required to capitalize under section 263A the costs to construct, build, manufacture, install, improve, raise, or grow depreciable property if their average annual gross receipts are $25,000,000 or less; and (3) a small business that capitalizes costs of depreciable tangible property may deduct under section 179 up to $1,020,000 (2019 inflation adjusted amount) of the cost of such property placed in service during the taxable year if the total cost of depreciable tangible property placed in service during the taxable year does not exceed $2,550,000 (2019 inflation adjusted amount). Further, § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) apply only if the taxpayer chooses to make an election or revoke an election under section 168(k). Finally, no comments regarding the economic impact of these regulations on small entities were received. Consequently, the Treasury Department and the IRS hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the proposed rule preceding this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These final regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (''CRA''). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Notwithstanding this requirement, section 808(2) of the CRA allows agencies to dispense with the requirements of section 801 of the CRA when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and that the rule shall take effect at such time as the agency promulgating the rule determines.

Pursuant to section 808(2) of the CRA, the Treasury Department and the IRS find, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest. The statutory provisions to which these rules relate were enacted on December 22, 2017 and apply to property acquired and placed in service after September 27, 2017. In most cases, two taxable years in which such property may have been placed in service have ended. This means that the statutory provisions are currently effective, and taxpayers may be subject to Federal income tax liability for their 2017 or 2018 taxable years reflecting these provisions. In many cases, taxpayers may be required to file returns reflecting this Federal income liability during the 60-day period that begins after this rule is published in the **Federal Register**.

These final regulations provide crucial guidance for taxpayers on how to apply the relevant statutory rules, compute their tax liability and accurately file their Federal income tax returns. These final regulations resolve statutory ambiguity, prevent abuse and grant taxpayer relief that would not be available based solely on the statute. Because taxpayers must already comply with the statute, a 60-day delay in the effective date of the final regulations is unnecessary and contrary to the public interest. A delay would place certain taxpayers in the unusual position of having to determine whether to file tax returns during the pre-effective date period based on final regulations that are not yet effective. If taxpayers chose not to follow the final regulations and did not amend their returns after the regulations became effective, it would place significant strain on the IRS to ensure that taxpayers correctly calculated their tax liabilities. For example, in cases where taxpayers self-construct property, a delayed effective date may hamper the IRS' ability to determine if such property was acquired after September 27, 2017. Moreover, a delayed effective date could create uncertainty and possible restatements with respect to financial statement audits. Therefore, the rules in this Treasury decision are effective on the date of publication in the **Federal Register** and taxpayers may apply these rules to qualified property acquired and placed in service after September 27, 2017 in a taxable year ending on or after September 28, 2017.

The foregoing good cause statement only applies to the 60-day delayed effective date provision of section 801(3) of the CRA and is permitted under section 808(2) of the CRA. The Treasury Department and the IRS hereby comply with all aspects of the CRA and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

Drafting Information

The principal authors of these final regulations are Kathleen Reed and Elizabeth R. Binder of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.48–12 is amended:
■ 1. In the last sentence in paragraph (a)(2)(i), by removing ''The last sentence'' and adding ''The next to last sentence'' in its place;
■ 2. By adding three sentences at the end of paragraph (a)(2)(i); and
■ 3. By adding a sentence to the end of paragraph (c)(8)(i).

The additions read as follows:

§ 1.48–12 Qualified rehabilitated building; expenditures incurred after December 31, 1981.

(a) * * *

(2) * * *

(i) * * * The last sentence of paragraph (c)(8)(i) of this section applies to qualified rehabilitation expenditures that are qualified property under section 168(k)(2) and placed in service by a taxpayer during or after the taxpayer's taxable year that includes September 24, 2019. However, a taxpayer may choose to apply the last sentence in paragraph (c)(8)(i) of this section for qualified rehabilitation expenditures that are qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017. A taxpayer may rely on the last sentence in paragraph (c)(8)(i) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for qualified rehabilitation expenditures that are qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

* * * * *

(c) * * *

(8) * * *

(i) * * * Further, see § 1.168(k)–2(g)(9) if the qualified rehabilitation expenditures are qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)).

* * * * *

■ **Par. 3.** Section 1.167(a)–14 is amended:

■ 1. In the third sentence in paragraph (b)(1), by removing ''under section 168(k)(2) or § 1.168(k)–1,'' and adding ''under section 168(k)(2) and § 1.168(k)–1 or § 1.168(k)–2, as applicable,'' in its place;

■ 2. In the last sentence in paragraph (e)(3), by removing ''and before 2010''; and

■ 3. By adding three sentences at the end of paragraph (e)(3).

The additions read as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

* * * * *

(e) * * *

(3) * * * The language ''or § 1.168(k)–2, as applicable,'' in the third sentence in paragraph (b)(1) of this section applies to computer software that is qualified property under section 168(k)(2) and placed in service by a taxpayer during or after the taxpayer's taxable year that includes September 24, 2019. However, a taxpayer may choose to apply the language ''or § 1.168(k)–2, as applicable,'' in the third sentence in paragraph (b)(1) of this section for computer software that is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017. A taxpayer may rely on the language ''or § 1.168(k)–2, as applicable,'' in the third sentence in paragraph (b)(1) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for computer software that is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ Par. 4. Section 1.168(b)–1 is amended:

■ 1. In the second sentence in paragraph (a)(3), by removing ''under section 179, section 179C, or any similar provision,'' and adding ''under section 179, section 179C, section 181, or any similar provision,'' in its place;

■ 2. By adding paragraph (a)(5); and

■ 3. By revising paragraph (b).

The addition and revision read as follows:

§ 1.168(b)–1 Definitions.

(a) * * *

(5) *Qualified improvement property.* (i) Is any improvement that is section 1250 property to an interior portion of a building, as defined in § 1.48–1(e)(1), that is nonresidential real property, as defined in section 168(e)(2)(B), if the improvement is placed in service by the taxpayer after the date the building was first placed in service by any person and if—

(A) For purposes of section 168(e)(6), the improvement is placed in service by the taxpayer after December 31, 2017;

(B) For purposes of section 168(k)(3) as in effect on the day before amendment by section 13204(a)(4)(B) of the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)) (''Act''), the improvement is acquired by the taxpayer before September 28, 2017, the improvement is placed in service by the taxpayer before January 1, 2018, and the improvement meets the original use requirement in section 168(k)(2)(A)(ii) as in effect on the day before amendment by section 13201(c)(1) of the Act; or

(C) For purposes of section 168(k)(3) as in effect on the day before amendment by section 13204(a)(4)(B) of the Act, the improvement is acquired by the taxpayer after September 27, 2017; the improvement is placed in service by the taxpayer after September 27, 2017, and before January 1, 2018; and the improvement meets the requirements in section 168(k)(2)(A)(ii) as amended by section 13201(c)(1) of the Act; and

(ii) Does not include any qualified improvement for which an expenditure is attributable to—

(A) The enlargement, as defined in § 1.48–12(c)(10), of the building;

(B) Any elevator or escalator, as defined in § 1.48–1(m)(2); or

(C) The internal structural framework, as defined in § 1.48–12(b)(3)(iii), of the building.

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section is applicable on or after February 27, 2004.

(2) *Application of paragraph (a)(5) of this section and addition of ''section 181'' in paragraph (a)(3) of this section*—(i) *In general.* Except as provided in paragraphs (b)(2)(ii) and (iii) of this section, paragraph (a)(5) of this section and the language ''section 181,'' in the second sentence in paragraph (a)(3) of this section are applicable on or after September 24, 2019.

(ii) *Early application of paragraph (a)(5) of this section and addition of ''section 181'' in paragraph (a)(3) of this section.* A taxpayer may choose to apply paragraph (a)(5) of this section and the language ''section 181,'' in the second sentence in paragraph (a)(3) of this section for the taxpayer's taxable years ending on or after September 28, 2017.

(iii) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the provisions of paragraph (a)(5) of this section in regulation project REG–104397–18 (2018–41 I.R.B 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the taxpayer's taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ **Par. 5.** Section 1.168(d)–1 is amended by adding a sentence at the end of paragraphs (b)(3)(ii) and (b)(7)(ii) and adding three sentences at the end of paragraph (d)(2) to read as follows:

§ 1.168(d)–1 Applicable conventions—half-year and mid-quarter conventions.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Further, see § 1.168(k)–2(g)(1) for rules relating to qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)), that is placed in service by the taxpayer in the same taxable year in which either a partnership is terminated as a result of a technical termination under section 708(b)(1)(B) or the property is transferred in a transaction described in section 168(i)(7).

* * * * *

(7) * * *

(ii) * * * However, see § 1.168(k)–2(g)(1)(iii) for a special rule regarding the allocation of the additional first year depreciation deduction in the case of certain contributions of property to a partnership under section 721.

* * * * *

(d) * * *

(2) * * * The last sentences in paragraphs (b)(3)(ii) and (b)(7)(ii) of this section apply to qualified property under section 168(k)(2) placed in service by a taxpayer during or after the taxpayer's taxable year that includes September 24, 2019. However, a taxpayer may choose to apply the last sentences in paragraphs (b)(3)(ii) and (b)(7)(ii) of this section to qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017. A taxpayer may rely on the last sentences in paragraphs (b)(3)(ii) and (b)(7)(ii) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

* * * * *

■ **Par. 6.** Section 1.168(i)–4 is amended:

■ 1. In the penultimate sentence in paragraph (b)(1), by removing ''§§ 1.168(k)–1T(f)(6)(iii) and 1.1400L(b)–1T(f)(6)'' and adding ''§ 1.168(k)–1(f)(6)(iii) or 1.168(k)–2(g)(6)(iii), as applicable, and § 1.1400L(b)–1(f)(6)'' in its place;

■ 2. In the fifth sentence in paragraph (c), by removing ''§§ 1.168(k)–1T(f)(6)(ii) and 1.1400L(b)–1T(f)(6)'' and adding ''§ 1.168(k)–1(f)(6)(ii) or 1.168(k)–2(g)(6)(ii), as applicable, and § 1.1400L(b)–1(f)(6)'' in its place;

■ 3. In the second sentence in paragraph (d)(3)(i)(C), by removing ''§§ 1.168(k)–1T(f)(6)(iv) and 1.400L(b)–1T(f)(6)'' and adding ''§ 1.168(k)–1(f)(6)(iv) or 1.168(k)–2(g)(6)(iv), as applicable, and § 1.400L(b)–1(f)(6)'' in its place;

■ 4. In the last sentence in paragraph (d)(4)(i), by removing ''§§ 1.168(k)–1T(f)(6)(iv) and 1.1400L(b)–1T(f)(6)'' and adding ''§ 1.168(k)–1(f)(6)(iv) or 1.168(k)–2(g)(6)(iv), as applicable, and § 1.400L(b)–1(f)(6)'' in its place;

■ 5. By revising the first sentence in paragraph (g)(1); and

■ 6. By redesignating paragraph (g)(2) as paragraph (g)(3) and adding new paragraph (g)(2).

The revision and addition read as follows:

§ 1.168(i)–4 Changes in use.

* * * * *

(g) * * *

(1) * * * Except as provided in paragraph (g)(2) of this section, this section applies to any change in the use of MACRS property in a taxable year ending on or after June 17, 2004. * * *

(2) *Qualified property under section 168(k) acquired and placed in service after September 27, 2017*—(i) *In general.* The language ''or § 1.168(k)–2(g)(6)(iii), as applicable'' in paragraph (b)(1) of this section, the language ''or § 1.168(k)–2(g)(6)(ii), as applicable'' in paragraph (c) of this section, and the language ''or § 1.168(k)–2(g)(6)(iv), as applicable'' in paragraphs (d)(3)(i)(C) and (d)(4)(i) of this section applies to any change in use of MACRS property, which is qualified property under section 168(k)(2), by a taxpayer during or after the taxpayer's taxable year that includes September 24, 2019.

(ii) *Early application.* A taxpayer may choose to apply the language ''or § 1.168(k)–2(g)(6)(iii), as applicable'' in paragraph (b)(1) of this section, the language ''or § 1.168(k)–2(g)(6)(ii), as applicable'' in paragraph (c) of this section, and the language ''or § 1.168(k)–2(g)(6)(iv), as applicable'' in paragraphs (d)(3)(i)(C) and (d)(4)(i) of this section for any change in use of MACRS property, which is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017.

(iii) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the language ''or § 1.168(k)–2(f)(6)(iii), as applicable'' in paragraph (b)(1) of this section, the language ''or § 1.168(k)–2(f)(6)(ii), as applicable'' in paragraph (c) of this section, and the language ''or § 1.168(k)–2(f)(6)(iv), as applicable'' in paragraphs (d)(3)(i)(C) and (d)(4)(i) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for any change in use of MACRS property, which is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

* * * * *

■ **Par. 7.** Section 1.168(i)–6 is amended:

■ 1. In paragraph (d)(3)(ii)(B), by removing ''1.168(k)–1(f)(5) or § 1.1400L(b)–1(f)(5)'' wherever it appears and adding ''1.168(k)–1(f)(5), § 1.168(k)–2(g)(5), or § 1.1400L(b)–1(f)(5)'' in its place;

■ 2. In paragraph (d)(3)(ii)(E), by removing ''1.168(k)–1(f)(5) or § 1.1400L(b)–1(f)(5)'' and adding ''1.168(k)–1(f)(5), § 1.168(k)–2(g)(5), or § 1.1400L(b)–1(f)(5)'' in its place;

■ 3. By adding a sentence at the end of paragraph (d)(4);

■ 4. By adding a sentence at the end of paragraph (h);

■ 5. By revising paragraph (k)(1); and

■ 6. By adding paragraph (k)(4).

The additions and revision read as follows:

§ 1.168(i)–6 Like-kind exchanges and involuntary conversions.

* * * * *

(d) * * *

(4) * * * Further, see § 1.168(k)–2(g)(5)(iv) for replacement MACRS property that is qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)).

* * * * *

(h) * * * Further, see § 1.168(k)–2(g)(5) for qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)).

* * * * *

(k) * * *

(1) *In general.* Except as provided in paragraphs (k)(3) and (4) of this section, this section applies to a like-kind exchange or an involuntary conversion of MACRS property for which the time of disposition and the time of replacement both occur after February 27, 2004.

* * * * *

(4) *Qualified property under section 168(k) acquired and placed in service after September 27, 2017*—(i) *In general.* The language ''1.168(k)–2(g)(5),'' in paragraphs (d)(3)(ii)(B) and (E) of this section and the final sentence in paragraphs (d)(4) and (h) of this section apply to a like-kind exchange or an involuntary conversion of MACRS property, which is qualified property

under section 168(k)(2), for which the time of replacement occurs on or after September 24, 2019.

(ii) *Early application.* A taxpayer may choose to apply the language ''1.168(k)–2(g)(5),'' in paragraphs (d)(3)(ii)(B) and (E) of this section and the final sentence in paragraphs (d)(4) and (h) of this section to a like-kind exchange or an involuntary conversion of MACRS property, which is qualified property under section 168(k)(2), for which the time of replacement occurs on or after September 28, 2017.

(iii) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the language ''1.168(k)–2(f)(5),'' in paragraphs (d)(3)(ii)(B) and (E) of this section and the final sentence in paragraphs (d)(4) and (h) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for a like-kind exchange or an involuntary conversion of MACRS property, which is qualified property under section 168(k)(2), for which the time of replacement occurs on or after September 28, 2017, and occurs before September 24, 2019.

■ **Par. 8.** Section 1.168(k)–0 is amended by revising the introductory text and adding an entry for § 1.168(k)–2 in numerical order to the table of contents to read as follows:

§ 1.168(k)–0 Table of contents.

This section lists the major paragraphs contained in §§ 1.168(k)–1 and 1.168(k)–2.

* * * * *

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

(a) Scope and definitions.
(1) Scope.
(2) Definitions.
(b) Qualified property.
(1) In general.
(2) Description of qualified property.
(i) In general.
(ii) Property not eligible for additional first year depreciation deduction.
(iii) Examples.
(3) Original use or used property acquisition requirements.
(i) In general.
(ii) Original use.
(A) In general.
(B) Conversion to business or income-producing use.
(C) Fractional interests in property.
(iii) Used property acquisition requirements.
(A) In general.
(B) Property was not used by the taxpayer at any time prior to acquisition.
(C) [Reserved]
(iv) Application to partnerships.
(A) Section 704(c) remedial allocations.
(B) Basis determined under section 732.
(C) Section 734(b) adjustments.
(D) Section 743(b) adjustments.
(v) [Reserved]
(vi) Syndication transaction.
(vii) Examples.
(4) Placed-in-service date.
(i) In general.
(ii) Specified plant.
(iii) Qualified film, television, or live theatrical production.
(A) Qualified film or television production.
(B) Qualified live theatrical production.
(iv) Syndication transaction.
(v) Technical termination of a partnership.
(vi) Section 168(i)(7) transactions.
(5) Acquisition of property.
(i) In general.
(ii) Acquisition date.
(A) In general.
(B) Determination of acquisition date for property acquired pursuant to a written binding contract.
(iii) Definition of binding contract.
(A) In general.
(B) Conditions.
(C) Options.
(D) Letter of intent.
(E) Supply agreements.
(F) Components.
(G) [Reserved]
(iv) Self-constructed property.
(A) In general.
(B) When does manufacture, construction, or production begin.
(C) Components of self-constructed property.
(v) [Reserved]
(vi) Qualified film, television, or live theatrical production.
(A) Qualified film or television production.
(B) Qualified live theatrical production.
(vii) Specified plant.
(viii) Examples.
(c) [Reserved]
(d) Property described in section 168(k)(2)(B) or (C).
(1) In general.
(2) Definition of binding contract.
(3) Self-constructed property.
(i) In general.
(ii) When does manufacture, construction, or production begin.
(A) In general.
(B) Safe harbor.
(iii) Components of self-constructed property.
(A) Acquired components.
(B) Self-constructed components.
(iv) Examples.
(e) Computation of depreciation deduction for qualified property.
(1) Additional first year depreciation deduction.
(i) Allowable taxable year.
(ii) Computation.
(iii) Property described in section 168(k)(2)(B).
(iv) Alternative minimum tax.
(A) In general.
(B) Special rules.
(2) Otherwise allowable depreciation deduction.
(i) In general.
(ii) Alternative minimum tax.
(3) Examples.
(f) Elections under section 168(k).
(1) Election not to deduct additional first year depreciation.
(i) In general.
(ii) Definition of class of property.
(iii) Time and manner for making election.
(A) Time for making election.
(B) Manner of making election.
(iv) Failure to make election.
(2) Election to apply section 168(k)(5) for specified plants.
(i) In general.
(ii) Time and manner for making election.
(A) Time for making election.
(B) Manner of making election.
(iii) Failure to make election.
(3) Election for qualified property placed in service during the 2017 taxable year.
(i) In general.
(ii) Time and manner for making election.
(A) Time for making election.
(B) Manner of making election.
(iii) Failure to make election.
(4) Alternative minimum tax.
(5) Revocation of election.
(i) In general.
(ii) Automatic 6-month extension.
(6) Special rules for 2016 and 2017 returns.
(g) Special rules.
(1) Property placed in service and disposed of in the same taxable year.
(i) In general.
(ii) Technical termination of a partnership.
(iii) Section 168(i)(7) transactions.
(iv) Examples.
(2) Redetermination of basis.
(i) Increase in basis.
(ii) Decrease in basis.
(iii) Definitions.
(iv) Examples.
(3) Sections 1245 and 1250 depreciation recapture.
(4) Coordination with section 169.
(5) Like-kind exchanges and involuntary conversions.
(i) Scope.
(ii) Definitions.
(iii) Computation.
(A) In general.
(B) Year of disposition and year of replacement.
(C) Property described in section 168(k)(2)(B).
(D) Effect of § 1.168(i)-6(i)(1) election.
(E) Alternative minimum tax.
(iv) Replacement MACRS property or replacement computer software that is acquired and placed in service before disposition of relinquished MACRS property or relinquished computer software.
(v) Examples.
(6) Change in use.
(i) Change in use of MACRS property.
(ii) Conversion to personal use.
(iii) Conversion to business or income-producing use.
(A) During the same taxable year.
(B) Subsequent to the acquisition year.
(iv) Depreciable property changes use subsequent to the placed-in-service year.
(v) Examples.
(7) Earnings and profits.
(8) Limitation of amount of depreciation for certain passenger automobiles.
(9) Coordination with section 47.

(i) In general.
(ii) Example.
(10) Coordination with section 514(a)(3).
(11) [Reserved]
(h) Applicability dates.
(1) In general.
(2) Early application of this section.
(3) Early application of regulation project REG–104397–18.

■ **Par. 9.** Section 1.168(k)–2 is added to read as follows:

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

(a) *Scope and definitions*—(1) *Scope.* This section provides rules for determining the additional first year depreciation deduction allowable under section 168(k) for qualified property acquired and placed in service after September 27, 2017.

(2) *Definitions.* For purposes of this section—

(i) *Act* is the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017));

(ii) *Applicable percentage* is the percentage provided in section 168(k)(6);

(iii) *Initial live staged performance* is the first commercial exhibition of a production to an audience. However, the term *initial live staged performance* does not include limited exhibition prior to commercial exhibition to general audiences if the limited exhibition is primarily for purposes of publicity, determining the need for further production activity, or raising funds for the completion of production. For example, an initial live staged performance does not include a preview of the production if the preview is primarily to determine the need for further production activity; and

(iv) *Predecessor* includes—

(A) A transferor of an asset to a transferee in a transaction to which section 381(a) applies;

(B) A transferor of an asset to a transferee in a transaction in which the transferee's basis in the asset is determined, in whole or in part, by reference to the basis of the asset in the hands of the transferor;

(C) A partnership that is considered as continuing under section 708(b)(2) and § 1.708–1;

(D) The decedent in the case of an asset acquired by the estate; or

(E) A transferor of an asset to a trust.

(b) *Qualified property*—(1) *In general.* Qualified property is depreciable property, as defined in § 1.168(b)–1(a)(1), that meets all the following requirements in the first taxable year in which the property is subject to depreciation by the taxpayer whether or not depreciation deductions for the property are allowable:

(i) The requirements in § 1.168(k)–2(b)(2) (description of qualified property);

(ii) The requirements in § 1.168(k)–2(b)(3) (original use or used property acquisition requirements);

(iii) The requirements in § 1.168(k)–2(b)(4) (placed-in-service date); and

(iv) The requirements in § 1.168(k)–2(b)(5) (acquisition of property).

(2) *Description of qualified property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(2) if the property is—

(A) MACRS property, as defined in § 1.168(b)–1(a)(2), that has a recovery period of 20 years or less. For purposes of this paragraph (b)(2)(i)(A) and section 168(k)(2)(A)(i)(I), the recovery period is determined in accordance with section 168(c) regardless of any election made by the taxpayer under section 168(g)(7). This paragraph (b)(2)(i)(A) includes the following MACRS property that is acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018:

(*1*) Qualified leasehold improvement property as defined in section 168(e)(6) as in effect on the day before amendment by section 13204(a)(1) of the Act;

(*2*) Qualified restaurant property, as defined in section 168(e)(7) as in effect on the day before amendment by section 13204(a)(1) of the Act, that is qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(C) and (a)(5)(ii); and

(*3*) Qualified retail improvement property as defined in section 168(e)(8) as in effect on the day before amendment by section 13204(a)(1) of the Act;

(B) Computer software as defined in, and depreciated under, section 167(f)(1) and § 1.167(a)–14;

(C) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(D) Qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(C) and (a)(5)(ii) and depreciated under section 168;

(E) A qualified film or television production, as defined in section 181(d) and § 1.181–3, for which a deduction would have been allowable under section 181 and §§ 1.181–1 through 1.181–6 without regard to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i), or section 168(k). Only production costs of a qualified film or television production are allowable as a deduction under section 181 and §§ 1.181–1 through 1.181–6 without regard, for purposes of section 168(k), to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i). The taxpayer that claims the additional first year depreciation deduction under this section for the production costs of a qualified film or television production must be the owner, as defined in § 1.181–1(a)(2), of the qualified film or television production. See § 1.181–1(a)(3) for the definition of production costs;

(F) A qualified live theatrical production, as defined in section 181(e), for which a deduction would have been allowable under section 181 and §§ 1.181–1 through 1.181–6 without regard to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i), or section 168(k). Only production costs of a qualified live theatrical production are allowable as a deduction under section 181 and §§ 1.181–1 through 1.181–6 without regard, for purposes of section 168(k), to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i). The taxpayer that claims the additional first year depreciation deduction under this section for the production costs of a qualified live theatrical production must be the owner, as defined in § 1.181–1(a)(2), of the qualified live theatrical production. In applying § 1.181–1(a)(2)(ii) to a person that acquires a finished or partially-finished qualified live theatrical production, such person is treated as an owner of that production, but only if the production is acquired prior to its initial live staged performance. Rules similar to the rules in § 1.181–1(a)(3) for the definition of production costs of a qualified film or television production apply for defining production costs of a qualified live theatrical production; or

(G) A specified plant, as defined in section 168(k)(5)(B), for which the taxpayer has properly made an election to apply section 168(k)(5) for the taxable year in which the specified plant is planted, or grafted to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4) (for further guidance, see paragraph (f) of this section).

(ii) *Property not eligible for additional first year depreciation deduction.* Depreciable property will not meet the requirements of this paragraph (b)(2) if the property is—

(A) Described in section 168(f) (for example, automobiles for which the taxpayer uses the optional business standard mileage rate);

(B) Required to be depreciated under the alternative depreciation system of section 168(g) pursuant to section 168(g)(1)(A), (B), (C), (D), (F), or (G), or

other provisions of the Internal Revenue Code (for example, property described in section 263A(e)(2)(A) if the taxpayer or any related person, as defined in section 263A(e)(2)(B), has made an election under section 263A(d)(3), or property described in section 280F(b)(1)). If section 168(h)(6) applies to the property, only the tax-exempt entity's proportionate share of the property, as determined under section 168(h)(6), is treated as tax-exempt use property described in section 168(g)(1)(B) and in this paragraph (b)(2)(ii)(B). This paragraph (b)(2)(ii)(B) does not apply to property for which the adjusted basis is required to be determined using the alternative depreciation system of section 168(g) pursuant to section 250(b)(2)(B) or 951A(d)(3), as applicable, or to property for which the adjusted basis is required to be determined using the alternative depreciation system of section 168(g) for allocating business interest expense between excepted and non-excepted trades or businesses under section 163(j), but only if the property is not required to be depreciated under the alternative depreciation system of section 168(g) pursuant to section 168(g)(1)(A), (B), (C), (D), (F), or (G), or other provisions of the Code, other than section 163(j), 250(b)(2)(B), or 951A(d)(3), as applicable;

(C) Included in any class of property for which the taxpayer elects not to deduct the additional first year depreciation (for further guidance, see paragraph (f) of this section);

(D) A specified plant that is placed in service by the taxpayer during the taxable year and for which the taxpayer made an election to apply section 168(k)(5) for a prior taxable year;

(E) Included in any class of property for which the taxpayer elects to apply section 168(k)(4). This paragraph (b)(2)(ii)(E) applies to property placed in service by the taxpayer in any taxable year beginning before January 1, 2018;

(F) Primarily used in a trade or business described in section 163(j)(7)(A)(iv), and placed in service by the taxpayer in any taxable year beginning after December 31, 2017; or

(G) Used in a trade or business that has had floor plan financing indebtedness, as defined in section 163(j)(9), if the floor plan financing interest, as defined in section 163(j)(9), related to such indebtedness is taken into account under section 163(j)(1)(C) for the taxable year. Such property also must be placed in service by the taxpayer in any taxable year beginning after December 31, 2017.

(iii) *Examples.* The application of this paragraph (b)(2) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the parties are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), and are not described in section 163(j)(3):

(A) *Example 1.* On February 8, 2018, *A* finishes the production of a qualified film, as defined in § 1.181–3. On June 4, 2018, *B* acquires this finished production from *A.* The initial release or broadcast, as defined in § 1.181–1(a)(7), of this qualified film is on July 28, 2018. Because *B* acquired the qualified film before its initial release or broadcast, *B* is treated as the owner of the qualified film for purposes of section 181 and § 1.181–1(a)(2). Assuming all other requirements of this section are met and all requirements of section 181 and §§ 1.181–1 through 1.181–6, other than section 181(a)(2) and (g), and § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i), are met, *B*'s acquisition cost of the qualified film qualifies for the additional first year depreciation deduction under this section.

(B) *Example 2.* The facts are the same as in *Example 1* of paragraph (b)(2)(iii)(A) of this section, except that *B* acquires a limited license or right to release the qualified film in Europe. As a result, *B* is not treated as the owner of the qualified film pursuant to § 1.181–1(a)(2). Accordingly, paragraph (b)(2)(i)(E) of this section is not satisfied, and *B*'s acquisition cost of the license or right does not qualify for the additional first year depreciation deduction.

(C) *Example 3. C* owns a film library. All of the films in this film library are completed and have been released or broadcasted. In 2018, *D* buys this film library from *C.* Because *D* acquired the films after their initial release or broadcast, *D*'s acquisition cost of the film library does not qualify for a deduction under section 181. As a result, paragraph (b)(2)(i)(E) of this section is not satisfied, and *D*'s acquisition cost of the film library does not qualify for the additional first year depreciation deduction.

(D) *Example 4.* During 2019, E Corporation, a domestic corporation, acquired new equipment for use in its manufacturing trade or business in Mexico. To determine its qualified business asset investment for purposes of section 250, E Corporation must determine the adjusted basis of the new equipment using the alternative depreciation system of section 168(g) pursuant to sections 250(b)(2)(B) and 951A(d)(3). E Corporation also is required to depreciate the new equipment under the alternative depreciation system of section 168(g) pursuant to section 168(g)(1)(A). As a result, the new equipment does not qualify for the additional first year depreciation deduction pursuant to paragraph (b)(2)(ii)(B) of this section.

(E) *Example 5.* The facts are the same as in *Example 4* of paragraph (b)(2)(iii)(D) of this section, except E Corporation acquired the new equipment for use in its manufacturing trade or business in California. The new equipment is not described in section 168(g)(1)(A), (B), (C), (D), (F), or (G). No other provision of the Internal Revenue Code, other than section 250(b)(2)(B) or 951A(d)(3), requires the new equipment to be depreciated using the alternative depreciation system of section 168(g). To determine its qualified business asset investment for purposes of section 250, E Corporation must determine the adjusted basis of the new equipment using the alternative depreciation system of section 168(g) pursuant to sections 250(b)(2)(B) and 951A(d)(3). Because E Corporation is not required to depreciate the new equipment under the alternative depreciation system of section 168(g), paragraph (b)(2)(ii)(B) of this section does not apply to this new equipment. Assuming all other requirements are met, the new equipment qualifies for the additional first year depreciation deduction under this section.

(3) *Original use or used property acquisition requirements*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(3) if the property meets the original use requirements in paragraph (b)(3)(ii) of this section or if the property meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section.

(ii) *Original use*—(A) *In general.* Depreciable property will meet the requirements of this paragraph (b)(3)(ii) if the original use of the property commences with the taxpayer. Except as provided in paragraphs (b)(3)(ii)(B) and (C) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Additional capital expenditures paid or incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property does not satisfy the original use requirement (but may satisfy the used property acquisition requirements in paragraph (b)(3)(iii) of this section). The question of whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(ii)(A), property that contains used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property, whether acquired or self-constructed.

(B) *Conversion to business or income-producing use*—(*1*) *Personal use to business or income-producing use.* If a taxpayer initially acquires new property for personal use and subsequently uses the property in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property for personal use and a taxpayer subsequently acquires the property from the person for use in the taxpayer's trade or business or for the

taxpayer's production of income, the taxpayer is not considered the original user of the property.

(*2*) *Inventory to business or income-producing use.* If a taxpayer initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the taxpayer's business and subsequently withdraws the property from inventory and uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the person's business and a taxpayer subsequently acquires the property from the person for use primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. For purposes of this paragraph (b)(3)(ii)(B)(*2*), the original use of the property by the taxpayer commences on the date on which the taxpayer uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income.

(C) *Fractional interests in property.* If, in the ordinary course of its business, a taxpayer sells fractional interests in new property to third parties unrelated to the taxpayer, each first fractional owner of the property is considered as the original user of its proportionate share of the property. Furthermore, if the taxpayer uses the property before all of the fractional interests of the property are sold but the property continues to be held primarily for sale by the taxpayer, the original use of any fractional interest sold to a third party unrelated to the taxpayer subsequent to the taxpayer's use of the property begins with the first purchaser of that fractional interest. For purposes of this paragraph (b)(3)(ii)(C), persons are not related if they do not have a relationship described in section 267(b) and § 1.267(b)–1, or section 707(b) and § 1.707–1.

(iii) *Used property acquisition requirements*—(A) *In general.* Depreciable property will meet the requirements of this paragraph (b)(3)(iii) if the acquisition of the used property meets the following requirements:

(*1*) Such property was not used by the taxpayer or a predecessor at any time prior to such acquisition;

(*2*) The acquisition of such property meets the requirements of section 179(d)(2)(A), (B), and (C), and § 1.179–4(c)(1)(ii), (iii), and (iv); or § 1.179–4(c)(2) (property is acquired by purchase); and

(*3*) The acquisition of such property meets the requirements of section 179(d)(3) and § 1.179–4(d) (cost of property) (for further guidance regarding like-kind exchanges and involuntary conversions, see paragraph (g)(5) of this section).

(B) *Property was not used by the taxpayer at any time prior to acquisition*—(*1*) *In general.* Solely for purposes of paragraph (b)(3)(iii)(A)(*1*) of this section, the property is treated as used by the taxpayer or a predecessor at any time prior to acquisition by the taxpayer or predecessor if the taxpayer or the predecessor had a depreciable interest in the property at any time prior to such acquisition, whether or not the taxpayer or the predecessor claimed depreciation deductions for the property. To determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition, only the five calendar years immediately prior to the taxpayer's current placed-in-service year of the property is taken into account. If the taxpayer and a predecessor have not been in existence for this entire five-year period, only the number of calendar years the taxpayer and the predecessor have been in existence is taken into account. If a lessee has a depreciable interest in the improvements made to leased property and subsequently the lessee acquires the leased property of which the improvements are a part, the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the acquired property that is eligible for the additional first year depreciation deduction, assuming all other requirements are met, must not include the unadjusted depreciable basis attributable to the improvements.

(*2*) *Taxpayer has a depreciable interest in a portion of the property.* If a taxpayer initially acquires a depreciable interest in a portion of the property and subsequently acquires a depreciable interest in an additional portion of the same property, such additional depreciable interest is not treated as used by the taxpayer at any time prior to its acquisition by the taxpayer under paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. This paragraph (b)(3)(iii)(B)(*2*) does not apply if the taxpayer or a predecessor previously had a depreciable interest in the subsequently acquired additional portion. For purposes of this paragraph (b)(3)(iii)(B)(*2*), a portion of the property is considered to be the percentage interest in the property. If a taxpayer holds a depreciable interest in a portion of the property, sells that portion or a part of that portion, and subsequently acquires a depreciable interest in another portion of the same property, the taxpayer will be treated as previously having a depreciable interest in the property up to the amount of the portion for which the taxpayer held a depreciable interest in the property before the sale.

(*3*) *Substantial renovation of property.* If a taxpayer acquires and places in service substantially renovated property and the taxpayer or a predecessor previously had a depreciable interest in the property before it was substantially renovated, the taxpayer's or predecessor's depreciable interest in the property before it was substantially renovated is not taken into account for determining whether the substantially renovated property was used by the taxpayer or a predecessor at any time prior to its acquisition by the taxpayer under paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. For purposes of this paragraph (b)(3)(iii)(B)(*3*), property is substantially renovated if the cost of the used parts is not more than 20 percent of the total cost of the substantially renovated property, whether acquired or self-constructed.

(C) [Reserved]

(iv) *Application to partnerships*—(A) *Section 704(c) remedial allocations.* Remedial allocations under section 704(c) do not satisfy the requirements of paragraph (b)(3) of this section. See § 1.704–3(d)(2).

(B) *Basis determined under section 732.* Any basis of distributed property determined under section 732 does not satisfy the requirements of paragraph (b)(3) of this section.

(C) *Section 734(b) adjustments.* Any increase in basis of depreciable property under section 734(b) does not satisfy the requirements of paragraph (b)(3) of this section.

(D) *Section 743(b) adjustments*—(*1*) *In general.* For purposes of determining whether the transfer of a partnership interest meets the requirements of paragraph (b)(3)(iii)(A) of this section, each partner is treated as having a depreciable interest in the partner's proportionate share of partnership property. Any increase in basis of depreciable property under section 743(b) satisfies the requirements of paragraph (b)(3)(iii)(A) of this section if—

(*i*) At any time prior to the transfer of the partnership interest that gave rise to such basis increase, neither the transferee partner nor a predecessor of the transferee partner had any depreciable interest in the portion of the property deemed acquired to which the

section 743(b) adjustment is allocated under section 755 and § 1.755–1; and

(*ii*) The transfer of the partnership interest that gave rise to such basis increase satisfies the requirements of paragraphs (b)(3)(iii)(A)(*2*) and (*3*) of this section.

(*2*) *Relatedness tested at partner level.* Solely for purposes of paragraph (b)(3)(iv)(D)(*1*)(*ii*) of this section, whether the parties are related or unrelated is determined by comparing the transferor and the transferee of the transferred partnership interest.

(v) [Reserved]

(vi) *Syndication transaction.* If new property is acquired and placed in service by a lessor, or if used property is acquired and placed in service by a lessor and the lessor or a predecessor did not previously have a depreciable interest in the used property, and the property is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and the user of the property after the last sale during the three-month period remains the same as when the property was originally placed in service by the lessor, the purchaser of the property in the last sale during the three-month period is considered the taxpayer that acquired the property for purposes of applying paragraphs (b)(3)(ii) and (iii) of this section. The purchaser of the property in the last sale during the three-month period is treated, for purposes of applying paragraph (b)(3) of this section, as—

(A) The original user of the property in this transaction if the lessor acquired and placed in service new property; or

(B) The taxpayer having the depreciable interest in the property in this transaction if the lessor acquired and placed in service used property.

(vii) *Examples.* The application of this paragraph (b)(3) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the parties are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), no corporation is a member of a consolidated or controlled group, and the parties do not have predecessors:

(A) *Example 1.* (*1*) On August 1, 2018, *A* buys a new machine for $35,000 from an unrelated party for use in *A*'s trade or business. On July 1, 2020, *B* buys that machine from *A* for $20,000 for use in *B*'s trade or business. On October 1, 2020, *B* makes a $5,000 capital expenditure to recondition the machine. *B* did not have any depreciable interest in the machine before *B* acquired it on July 1, 2020.

(*2*) *A*'s purchase price of $35,000 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements are met, qualifies for the additional first year depreciation deduction under this section.

(*3*) *B*'s purchase price of $20,000 does not satisfy the original use requirement of paragraph (b)(3)(ii) of this section, but it does satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, the $20,000 purchase price qualifies for the additional first year depreciation deduction under this section. Further, *B*'s $5,000 expenditure satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements are met, qualifies for the additional first year depreciation deduction under this section, regardless of whether the $5,000 is added to the basis of the machine or is capitalized as a separate asset.

(B) *Example 2. C,* an automobile dealer, uses some of its automobiles as demonstrators in order to show them to prospective customers. The automobiles that are used as demonstrators by *C* are held by *C* primarily for sale to customers in the ordinary course of its business. On November 1, 2017, *D* buys from *C* an automobile that was previously used as a demonstrator by *C. D* will use the automobile solely for business purposes. The use of the automobile by *C* as a demonstrator does not constitute a ''use'' for purposes of the original use requirement and, therefore, *D* will be considered the original user of the automobile for purposes of paragraph (b)(3)(ii) of this section. Assuming all other requirements are met, *D*'s purchase price of the automobile qualifies for the additional first year depreciation deduction for *D* under this section, subject to any limitation under section 280F.

(C) *Example 3.* On April 1, 2015, *E* acquires a horse to be used in *E*'s thoroughbred racing business. On October 1, 2018, *F* buys the horse from *E* and will use the horse in *F*'s horse breeding business. *F* did not have any depreciable interest in the horse before *F* acquired it on October 1, 2018. The use of the horse by *E* in its racing business prevents *F* from satisfying the original use requirement of paragraph (b)(3)(ii) of this section. However, *F*'s acquisition of the horse satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *F*'s purchase price of the horse qualifies for the additional first year depreciation deduction for *F* under this section.

(D) *Example 4.* In the ordinary course of its business, *G* sells fractional interests in its aircraft to unrelated parties. *G* holds out for sale eight equal fractional interests in an aircraft. On October 1, 2017, *G* sells five of the eight fractional interests in the aircraft to *H* and *H* begins to use its proportionate share of the aircraft immediately upon purchase. On February 1, 2018, *G* sells to *I* the remaining unsold 3/8 fractional interests in the aircraft. *H* is considered the original user as to its 5/8 fractional interest in the aircraft and *I* is considered the original user as to its 3/8 fractional interest in the aircraft. Thus, assuming all other requirements are met, *H*'s purchase price for its 5/8 fractional interest in the aircraft qualifies for the additional first year depreciation deduction under this section and *I*'s purchase price for its 3/8 fractional interest in the aircraft qualifies for the additional first year depreciation deduction under this section.

(E) *Example 5.* On September 1, 2017, *J,* an equipment dealer, buys new tractors that are held by *J* primarily for sale to customers in the ordinary course of its business. On October 15, 2017, *J* withdraws the tractors from inventory and begins to use the tractors primarily for producing rental income. The holding of the tractors by *J* as inventory does not constitute a ''use'' for purposes of the original use requirement and, therefore, the original use of the tractors commences with *J* on October 15, 2017, for purposes of paragraph (b)(3)(ii) of this section. However, the tractors are not eligible for the additional first year depreciation deduction under this section because *J* acquired the tractors before September 28, 2017.

(F) *Example 6. K* is in the trade or business of leasing equipment to others. During 2016, *K* buys a new machine (Machine #1) and then leases it to *L* for use in *L*'s trade or business. The lease between *K* and *L* for Machine #1 is a true lease for Federal income tax purposes. During 2018, *L* enters into a written binding contract with *K* to buy Machine #1 at its fair market value on May 15, 2018. *L* did not have any depreciable interest in Machine #1 before *L* acquired it on May 15, 2018. As a result, *L*'s acquisition of Machine #1 satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *L*'s purchase price of Machine #1 qualifies for the additional first year depreciation deduction for *L* under this section.

(G) *Example 7.* The facts are the same as in *Example 6* of paragraph (b)(3)(vii)(F) of this section, except that *K* and *L* are related parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). As a result, *L*'s acquisition of Machine #1 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Thus, Machine #1 is not eligible for the additional first year depreciation deduction for *L.*

(H) *Example 8.* The facts are the same as in *Example 6* of paragraph (b)(3)(vii)(F) of this section, except *L* incurred capital expenditures of $5,000 to improve Machine #1 on September 5, 2017, and has a depreciable interest in such improvements. *L*'s purchase price of $5,000 for the improvements to Machine #1 satisfies the original use requirement of § 1.168(k)–1(b)(3)(i) and, assuming all other requirements are met, qualifies for the 50-percent additional first year depreciation deduction. Because *L* had a depreciable interest only in the improvements to Machine #1, *L*'s acquisition of Machine #1,

excluding *L*'s improvements to such machine, satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *L*'s unadjusted depreciable basis of Machine #1, excluding the amount of such unadjusted depreciable basis attributable to *L*'s improvements to Machine #1, qualifies for the additional first year depreciation deduction for *L* under this section.

(I) *Example 9.* During 2016, *M* and *N* purchased used equipment for use in their trades or businesses and each own a 50 percent interest in such equipment. Prior to this acquisition, *M* and *N* did not have any depreciable interest in the equipment. Assume this ownership arrangement is not a partnership. During 2018, *N* enters into a written binding contract with *M* to buy *M*'s interest in the equipment. Pursuant to paragraph (b)(3)(iii)(B)(*2*) of this section, *N* is not treated as using *M*'s interest in the equipment prior to *N*'s acquisition of *M*'s interest. As a result, *N*'s acquisition of *M*'s interest in the equipment satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *N*'s purchase price of *M*'s interest in the equipment qualifies for the additional first year depreciation deduction for *N* under this section.

(J) *Example 10.* The facts are the same as in *Example 9* of paragraph (b)(3)(vii)(I) of this section, except *N* had a 100-percent depreciable interest in the equipment during 2011 through 2015, and *M* purchased from *N* a 50-percent interest in the equipment during 2016. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013 through 2017 to determine if *N* had a depreciable interest in *M*'s 50-percent interest in the equipment *N* acquired from *M* in 2018. Because *N* had a 100-percent depreciable interest in the equipment during 2013 through 2015, *N* had a depreciable interest in *M*'s 50-percent interest in the equipment during the lookback period. As a result, *N*'s acquisition of *M*'s interest in the equipment during 2018 does not satisfy the used property acquisition requirements of paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. Paragraph (b)(3)(iii)(B)(*2*) of this section does not apply because *N* initially acquired a 100-percent depreciable interest in the equipment. Accordingly, *N*'s purchase price of *M*'s interest in the equipment during 2018 does not qualify for the additional first year depreciation deduction for *N.*

(K) *Example 11.* The facts are the same as in *Example 9* of paragraph (b)(3)(vii)(I) of this section, except *N* had a 100-percent depreciable interest in the equipment only during 2011, and *M* purchased from *N* a 50-percent interest in the equipment during 2012. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013 through 2017 to determine if *N* had a depreciable interest in *M*'s 50-percent interest in the equipment *N* acquired from *M* in 2018. Because *N* had a depreciable interest in only its 50-percent interest in the equipment during this lookback period, *N*'s acquisition of *M*'s interest in the equipment during 2018 satisfies the used property acquisition requirements of paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. Assuming all other requirements are met, *N*'s purchase price of *M*'s interest in the equipment during 2018 qualifies for the additional first year depreciation deduction for *N* under this section.

(L) *Example 12.* The facts are the same as in *Example 9* of paragraph (b)(3)(vii)(I) of this section, except during 2018, *M* also enters into a written binding contract with *N* to buy *N*'s interest in the equipment. Pursuant to paragraph (b)(3)(iii)(B)(*2*) of this section, both *M* and *N* are treated as previously having a depreciable interest in a 50-percent portion of the equipment. Accordingly, the acquisition by *M* of *N*'s 50-percent interest and the acquisition by *N* of *M*'s 50-percent interest in the equipment during 2018 do not qualify for the additional first year depreciation deduction.

(M) *Example 13. O* and *P* form an equal partnership, *OP,* in 2018. *O* contributes cash to *OP,* and *P* contributes equipment to *OP. OP*'s basis in the equipment contributed by *P* is determined under section 723. Because *OP*'s basis in such equipment is determined in whole or in part by reference to *P*'s adjusted basis in such equipment, *OP*'s acquisition of such equipment does not satisfy section 179(d)(2)(C) and § 1.179–4(c)(1)(iv) and, thus, does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, *OP*'s acquisition of such equipment is not eligible for the additional first year depreciation deduction.

(N) *Example 14. Q, R,* and *S* form an equal partnership, *QRS,* in 2019. Each partner contributes $100, which *QRS* uses to purchase a retail motor fuels outlet for $300. Assume this retail motor fuels outlet is *QRS'* only property and is qualified property under section 168(k)(2)(A)(i). *QRS* makes an election not to deduct the additional first year depreciation for all qualified property placed in service during 2019. *QRS* has a section 754 election in effect. *QRS* claimed depreciation of $15 for the retail motor fuels outlet for 2019. During 2020, when the retail motor fuels outlet's fair market value is $600, *Q* sells all of its partnership interest to *T* in a fully taxable transaction for $200. *T* never previously had a depreciable interest in the retail motor fuels outlet. *T* takes an outside basis of $200 in the partnership interest previously owned by *Q. T*'s share of the partnership's previously taxed capital is $95. Accordingly, *T*'s section 743(b) adjustment is $105 and is allocated entirely to the retail motor fuels outlet under section 755. Assuming all other requirements are met, *T*'s section 743(b) adjustment qualifies for the additional first year depreciation deduction under this section.

(O) *Example 15.* The facts are the same as in *Example 14* of paragraph (b)(3)(vii)(N) of this section, except that *Q* sells his partnership interest to *U,* a related person within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). *U*'s section 743(b) adjustment does not qualify for the additional first year depreciation deduction.

(P) *Example 16.* The facts are the same as in *Example 14* of paragraph (b)(3)(vii)(N) of this section, except that *Q* dies and his partnership interest is transferred to *V. V* takes a basis in *Q*'s partnership interest under section 1014. As a result, section 179(d)(2)(C)(ii) and § 1.179–4(c)(1)(iv) are not satisfied, and *V*'s section 743(b) adjustment does not qualify for the additional first year depreciation deduction.

(Q) *Example 17.* The facts are the same as in *Example 14* of paragraph (b)(3)(vii)(N) of this section, except that *QRS* purchased the retail motor fuels outlet from *T* prior to *T* purchasing *Q*'s partnership interest in *QRS. T* had a depreciable interest in such retail motor fuels outlet. Because *T* had a depreciable interest in the retail motor fuels outlet before *T* acquired its interest in *QRS, T*'s section 743(b) adjustment does not qualify for the additional first year depreciation deduction.

(R) *Example 18.* (*1*) *W,* a freight transportation company, acquires and places in service a used aircraft during 2019 (Airplane #1). Prior to this acquisition, *W* never had a depreciable interest in this aircraft. During September 2020, *W* enters into a written binding contract with a third party to renovate Airplane #1. The third party begins to renovate Airplane #1 in October 2020 and delivers the renovated aircraft (Airplane #2) to *W* in February 2021. To renovate Airplane #1, the third party used mostly new parts but also used parts from Airplane #1. The cost of the used parts is not more than 20 percent of the total cost of the renovated airplane, Airplane #2. *W* uses Airplane #2 in its trade or business.

(*2*) Although Airplane #2 contains used parts, the cost of the used parts is not more than 20 percent of the total cost of Airplane #2. As a result, Airplane #2 is not treated as reconditioned or rebuilt property, and *W* is considered the original user of Airplane #2, pursuant to paragraph (b)(3)(ii)(A) of this section. Accordingly, assuming all other requirements are met, the amount paid or incurred by *W* for Airplane #2 qualifies for the additional first year depreciation deduction for *W* under this section.

(S) *Example 19.* (*1*) *X,* a freight transportation company, acquires and places in service a new aircraft in 2019 (Airplane #1). During 2022, *X* sells Airplane #1 to *AB* and *AB* uses Airplane #1 in its trade or business. Prior to this acquisition, *AB* never had a depreciable interest in Airplane #1. During January 2023, *AB* enters into a written binding contract with a third party to renovate Airplane #1. The third party begins to renovate Airplane #1 in February 2023 and delivers the renovated aircraft (Airplane #2) to *AB* in June 2023. To renovate Airplane #1, the third party used mostly new parts but also used parts from Airplane #1. The cost of the used parts is not more than 20 percent of the total cost of the renovated airplane, Airplane #2. *AB* uses Airplane #2 in its trade or business. During 2025, *AB* sells Airplane #2 to *X* and *X* uses Airplane #2 in its trade or business.

(*2*) With respect to *X*'s purchase of Airplane #1 in 2019, *X* is the original user of this airplane pursuant to paragraph (b)(3)(ii)(A) of this section. Accordingly, assuming all other requirements are met, *X*'s purchase price for Airplane #1 qualifies for

the additional first year depreciation deduction for *X* under this section.

(*3*) Because *AB* never had a depreciable interest in Airplane #1 prior to its acquisition in 2022, the requirements of paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(ii)(B)(*1*) of this section are satisfied. Accordingly, assuming all other requirements are met, *AB*'s purchase price for Airplane #1 qualifies for the additional first year depreciation deduction for *AB* under this section.

(*4*) Although Airplane #2 contains used parts, the cost of the used parts is not more than 20 percent of the total cost of Airplane #2. As a result, Airplane #2 is not treated as reconditioned or rebuilt property, and *AB* is considered the original user of Airplane #2, pursuant to paragraph (b)(3)(ii)(A) of this section. Accordingly, assuming all other requirements are met, the amount paid or incurred by *AB* for Airplane #2 qualifies for the additional first year depreciation deduction for *AB* under this section.

(*5*) With respect to *X*'s purchase of Airplane #2 in 2025, Airplane #2 is substantially renovated property pursuant to paragraph (b)(3)(iii)(B)(*3*) of this section. Also, pursuant to paragraph (b)(3)(iii)(B)(*3*) of this section, *X*'s depreciable interest in Airplane #1 is not taken into account for determining if *X* previously had a depreciable interest in Airplane #2 prior to its acquisition during 2025. As a result, Airplane #2 is not treated as used by *X* at any time before its acquisition of Airplane #2 in 2025 pursuant to paragraph (b)(3)(iii)(B)(*3*) of this section. Accordingly, assuming all other requirements are met, *X*'s purchase price of Airplane #2 qualifies for the additional first year depreciation deduction for *X* under this section.

(T) *Example 20.* In November 2017, AA Corporation purchases a used drill press costing $10,000 and is granted a trade-in allowance of $2,000 on its old drill press. The used drill press is qualified property under section 168(k)(2)(A)(i). The old drill press had a basis of $1,200. Under sections 1012 and 1031(d), the basis of the used drill press is $9,200 ($1,200 basis of old drill press plus cash expended of $8,000). Only $8,000 of the basis of the used drill press satisfies the requirements of section 179(d)(3) and § 1.179–4(d) and, thus, satisfies the used property acquisition requirement of paragraph (b)(3)(iii) of this section. The remaining $1,200 of the basis of the used drill press does not satisfy the requirements of section 179(d)(3) and § 1.179–4(d) because it is determined by reference to the old drill press. Accordingly, assuming all other requirements are met, only $8,000 of the basis of the used drill press is eligible for the additional first year depreciation deduction under this section.

(U) *Example 21.* (*1*) M Corporation acquires and places in service a used airplane on March 26, 2018. Prior to this acquisition, M Corporation never had a depreciable interest in this airplane. On March 26, 2018, M Corporation also leases the used airplane to N Corporation, an airline company. On May 27, 2018, M Corporation sells to O Corporation the used airplane subject to the lease with N Corporation. M Corporation and O Corporation are related parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). As of May 27, 2018, N Corporation is still the lessee of the used airplane. Prior to this acquisition, O Corporation never had a depreciable interest in the used airplane. O Corporation is a calendar-year taxpayer.

(*2*) The sale transaction of May 27, 2018, satisfies the requirements of a syndication transaction described in paragraph (b)(3)(vi) of this section. As a result, O Corporation is considered the taxpayer that acquired the used airplane for purposes of applying the used property acquisition requirements in paragraph (b)(3)(iii) of this section. In applying these rules, the fact that M Corporation and O Corporation are related parties is not taken into account because O Corporation, not M Corporation, is treated as acquiring the used airplane. Also, O Corporation, not M Corporation, is treated as having the depreciable interest in the used airplane. Further, pursuant to paragraph (b)(4)(iv) of this section, the used airplane is treated as originally placed in service by O Corporation on May 27, 2018. Because O Corporation never had a depreciable interest in the used airplane and assuming all other requirements are met, O Corporation's purchase price of the used airplane qualifies for the additional first year depreciation deduction for O Corporation under this section.

(V) *Example 22.* (*1*) The facts are the same as in *Example 21* of paragraph (b)(3)(vii)(U)(*1*) of this section. Additionally, on September 5, 2018, O Corporation sells to P Corporation the used airplane subject to the lease with N Corporation. Prior to this acquisition, P Corporation never had a depreciable interest in the used airplane.

(*2*) Because O Corporation, a calendar-year taxpayer, placed in service and disposed of the used airplane during 2018, the used airplane is not eligible for the additional first year depreciation deduction for O Corporation pursuant to paragraph (g)(1)(i) of this section.

(*3*) Because P Corporation never had a depreciable interest in the used airplane and assuming all other requirements are met, P Corporation's purchase price of the used airplane qualifies for the additional first year depreciation deduction for P Corporation under this section.

(W) *Example 23.* (*1*) The facts are the same as in *Example 21* of paragraph (b)(3)(vii)(U)(*1*) of this section, except M Corporation and O Corporation are not related parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). Additionally, on March 26, 2020, O Corporation sells to M Corporation the used airplane subject to the lease with N Corporation.

(*2*) The sale transaction of May 27, 2018, satisfies the requirements of a syndication transaction described in paragraph (b)(3)(vi) of this section. As a result, O Corporation is considered the taxpayer that acquired the used airplane for purposes of applying the used property acquisition requirements in paragraph (b)(3)(iii) of this section. Also, O Corporation, not M Corporation, is treated as having the depreciable interest in the used airplane. Further, pursuant to paragraph (b)(4)(iv) of this section, the used airplane is treated as originally placed in service by O Corporation on May 27, 2018. Because O Corporation never had a depreciable interest in the used airplane before its acquisition in 2018 and assuming all other requirements are met, O Corporation's purchase price of the used airplane qualifies for the additional first year depreciation deduction for O Corporation under this section.

(*3*) Prior to its acquisition of the used airplane on March 26, 2020, M Corporation never had a depreciable interest in the used airplane pursuant to paragraph (b)(3)(vi) of this section. Assuming all other requirements are met, M Corporation's purchase price of the used airplane on March 26, 2020, qualifies for the additional first year depreciation deduction for M Corporation under this section.

(X) *Example 24.* (*1*) J, K, and L are corporations that are unrelated parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). None of J, K, or L is a member of a consolidated group. J has a depreciable interest in Equipment #5. During 2018, J sells Equipment #5 to K. During 2020, J merges into L in a transaction described in section 368(a)(1)(A). In 2021, L acquires Equipment #5 from K.

(*2*) Because J is the predecessor of L, and because J previously had a depreciable interest in Equipment #5, L's acquisition of Equipment #5 does not satisfy paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. Thus, L's acquisition of Equipment #5 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, L's acquisition of Equipment #5 is not eligible for the additional first year depreciation deduction.

(4) *Placed-in-service date*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer for use in its trade or business or for production of income after September 27, 2017; and, except as provided in paragraphs (b)(2)(i)(A) and (D) of this section, before January 1, 2027, or, in the case of property described in section 168(k)(2)(B) or (C), before January 1, 2028.

(ii) *Specified plant.* If the taxpayer has properly made an election to apply section 168(k)(5) for a specified plant, the requirements of this paragraph (b)(4) are satisfied only if the specified plant is planted before January 1, 2027, or is grafted before January 1, 2027, to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4).

(iii) *Qualified film, television, or live theatrical production*—(A) *Qualified film or television production.* For purposes of this paragraph (b)(4), a qualified film or television production is treated as placed in service at the time of initial release or broadcast as defined

under § 1.181–1(a)(7). The taxpayer that places in service a qualified film or television production must be the owner, as defined in § 1.181–1(a)(2), of the qualified film or television production.

(B) *Qualified live theatrical production.* For purposes of this paragraph (b)(4), a qualified live theatrical production is treated as placed in service at the time of the initial live staged performance. The taxpayer that places in service a qualified live theatrical production must be the owner, as defined in paragraph (b)(2)(i)(F) of this section and in § 1.181–1(a)(2), of the qualified live theatrical production.

(iv) *Syndication transaction.* If new property is acquired and placed in service by a lessor, or if used property is acquired and placed in service by a lessor and the lessor and any predecessor did not previously have a depreciable interest in the used property, and the property is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and the user of the property after the last sale during this three-month period remains the same as when the property was originally placed in service by the lessor, the property is treated as originally placed in service by the purchaser of the property in the last sale during the three-month period but not earlier than the date of the last sale for purposes of sections 167 and 168, and §§ 1.46–3(d) and 1.167(a)–11(e)(1).

(v) *Technical termination of a partnership.* For purposes of this paragraph (b)(4), in the case of a technical termination of a partnership under section 708(b)(1)(B) occurring in a taxable year beginning before January 1, 2018, qualified property placed in service by the terminated partnership during the taxable year of termination is treated as originally placed in service by the new partnership on the date the qualified property is contributed by the terminated partnership to the new partnership.

(vi) *Section 168(i)(7) transactions.* For purposes of this paragraph (b)(4), if qualified property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property is placed in service by the transferor, the transferred property is treated as originally placed in service on the date the transferor placed in service the qualified property. In the case of multiple transfers of qualified property in multiple transactions described in section 168(i)(7) in the same taxable year, the placed-in-service date of the transferred property is deemed to be the date on which the first transferor placed in service the qualified property.

(5) *Acquisition of property*—(i) *In general.* This paragraph (b)(5) provides rules for the acquisition requirements in section 13201(h) of the Act. These rules apply to all property, including self-constructed property or property described in section 168(k)(2)(B) or (C).

(ii) *Acquisition date*—(A) *In general.* Except as provided in paragraph (b)(5)(vi) of this section, depreciable property will meet the requirements of this paragraph (b)(5) if the property is acquired by the taxpayer after September 27, 2017, or is acquired by the taxpayer pursuant to a written binding contract entered into by the taxpayer after September 27, 2017. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is not acquired pursuant to a written binding contract but is considered to be self-constructed property under this paragraph (b)(5). For determination of acquisition date, see paragraph (b)(5)(ii)(B) of this section for property acquired pursuant to a written binding contract and paragraph (b)(5)(iv) of this section for self-constructed property.

(B) *Determination of acquisition date for property acquired pursuant to a written binding contract.* Except as provided in paragraphs (b)(5)(vi) and (vii) of this section, the acquisition date of property that the taxpayer acquired pursuant to a written binding contract is the later of—

(*1*) The date on which the contract was entered into;

(*2*) The date on which the contract is enforceable under State law;

(*3*) If the contract has one or more cancellation periods, the date on which all cancellation periods end. For purposes of this paragraph (b)(5)(ii)(B)(*3*), a cancellation period is the number of days stated in the contract for any party to cancel the contract without penalty; or

(*4*) If the contract has one or more contingency clauses, the date on which all conditions subject to such clauses are satisfied. For purposes of this paragraph (b)(5)(ii)(B)(*4*), a contingency clause is one that provides for a condition (or conditions) or action (or actions) that is within the control of any party or a predecessor.

(iii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, any contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. If a contract has multiple provisions that limit damages, only the provision with the highest damages is taken into account in determining whether the contract limits damages. Also, in determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account. For example, if a taxpayer entered into an irrevocable written contract to purchase an asset for $100 and the contract did not contain a provision for liquidated damages, the contract is considered binding notwithstanding the fact that the asset had a fair market value of $99 and under local law the seller would only recover the difference in the event the purchaser failed to perform. If the contract provided for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation, the contract is not considered binding.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or a predecessor. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding notwithstanding the fact that certain terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Letter of intent.* A letter of intent for an acquisition is not a binding contract.

(E) *Supply agreements.* A binding contract does not include a supply or similar agreement if the amount and design specifications of the property to

be purchased have not been specified. The contract will not be a binding contract for the property to be purchased until both the amount and the design specifications are specified. For example, if the provisions of a supply or similar agreement state the design specifications of the property to be purchased, a purchase order under the agreement for a specific number of assets is treated as a binding contract.

(F) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire the component does not satisfy the requirements of this paragraph (b)(5), the component does not qualify for the additional first year depreciation deduction under this section.

(G) [Reserved]

(iv) *Self-constructed property*—(A) *In general.* If a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business or for its production of income, the acquisition rules in paragraph (b)(5)(ii) of this section are treated as met for the property if the taxpayer begins manufacturing, constructing, or producing the property after September 27, 2017. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is considered to be manufactured, constructed, or produced by the taxpayer. If a taxpayer enters into a written binding contract, as defined in paragraph (b)(5)(iii) of this section, before September 28, 2017, with another person to manufacture, construct, or produce property and the manufacture, construction, or production of this property begins after September 27, 2017, the acquisition rules in paragraph (b)(5)(ii) of this section are met.

(B) *When does manufacture, construction, or production begin*—(*1*) *In general.* For purposes of paragraph (b)(5)(iv)(A) of this section, manufacture, construction, or production of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For example, if a retail motor fuels outlet is to be constructed on-site, construction begins when physical work of a significant nature commences at the site; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if a retail motor fuels outlet is to be assembled on-site from modular units manufactured off-site and delivered to the site where the outlet will be used, manufacturing begins when physical work of a significant nature commences at the off-site location.

(*2*) *Safe harbor.* For purposes of paragraph (b)(5)(iv)(B)(*1*) of this section, a taxpayer may choose to determine when physical work of a significant nature begins in accordance with this paragraph (b)(5)(iv)(B)(*2*). Physical work of a significant nature will be considered to begin at the time the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching. When property is manufactured, constructed, or produced for the taxpayer by another person, this safe harbor test must be satisfied by the taxpayer. For example, if a retail motor fuels outlet or other facility is to be constructed for an accrual basis taxpayer by another person for the total cost of $200,000, excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching, construction is deemed to begin for purposes of this paragraph (b)(5)(iv)(B)(*2*) when the taxpayer has incurred more than 10 percent (more than $20,000) of the total cost of the property. A taxpayer chooses to apply this paragraph (b)(5)(iv)(B)(*2*) by filing a Federal income tax return for the placed-in-service year of the property that determines when physical work of a significant nature begins consistent with this paragraph (b)(5)(iv)(B)(*2*).

(C) *Components of self-constructed property*—(*1*) *Acquired components.* If a binding contract, as defined in paragraph (b)(5)(iii) of this section, to acquire a component does not satisfy the requirements of paragraph (b)(5)(ii) of this section, the component does not qualify for the additional first year depreciation deduction under this section. A binding contract described in the preceding sentence to acquire one or more components of a larger self-constructed property will not preclude the larger self-constructed property from satisfying the acquisition rules in paragraph (b)(5)(iv)(A) of this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction under this section, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not satisfy the requirements of paragraph (b)(5)(ii) of this section. If the manufacture, construction, or production of the larger self-constructed property begins before September 28, 2017, the larger self-constructed property and any acquired components related to the larger self-constructed property do not qualify for the additional first year depreciation deduction under this section. If a binding contract to acquire the component is entered into after September 27, 2017, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2027, the component qualifies for the additional first year depreciation deduction under this section, assuming all other requirements are met, but the larger self-constructed property does not.

(*2*) *Self-constructed components.* If the manufacture, construction, or production of a component does not satisfy the requirements of this paragraph (b)(5)(iv), the component does not qualify for the additional first year depreciation deduction under this section. However, if the manufacture, construction, or production of a component does not satisfy the requirements of this paragraph (b)(5)(iv), but the manufacture, construction, or production of the larger self-constructed property satisfies the requirements of this paragraph (b)(5)(iv), the larger self-constructed property qualifies for the additional first year depreciation deduction under this section, assuming all other requirements are met, even though the component does not qualify for the additional first year depreciation deduction under this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction under this section, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not

qualify for the additional first year depreciation deduction under this section. If the manufacture, construction, or production of the larger self-constructed property began before September 28, 2017, the larger self-constructed property and any self-constructed components related to the larger self-constructed property do not qualify for the additional first year depreciation deduction under this section. If the manufacture, construction, or production of a component begins after September 27, 2017, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2027, the component qualifies for the additional first year depreciation deduction under this section, assuming all other requirements are met, but the larger self-constructed property does not.

(v) [Reserved]

(vi) *Qualified film, television, or live theatrical production*—(A) *Qualified film or television production.* For purposes of section 13201(h)(1)(A) of the Act, a qualified film or television production is treated as acquired on the date principal photography commences.

(B) *Qualified live theatrical production.* For purposes of section 13201(h)(1)(A) of the Act, a qualified live theatrical production is treated as acquired on the date when all of the necessary elements for producing the live theatrical production are secured. These elements may include a script, financing, actors, set, scenic and costume designs, advertising agents, music, and lighting.

(vii) *Specified plant.* If the taxpayer has properly made an election to apply section 168(k)(5) for a specified plant, the requirements of this paragraph (b)(5) are satisfied if the specified plant is planted after September 27, 2017, or is grafted after September 27, 2017, to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4).

(viii) *Examples.* The application of this paragraph (b)(5) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the parties are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), and the parties do not have predecessors:

(A) *Example 1.* On September 1, 2017, *BB,* a corporation, entered into a written agreement with *CC,* a manufacturer, to purchase 20 new lamps for $100 each within the next two years. Although the agreement specifies the number of lamps to be purchased, the agreement does not specify the design of the lamps to be purchased. Accordingly, the agreement is not a binding contract pursuant to paragraph (b)(5)(iii)(E) of this section.

(B) *Example 2.* The facts are the same as in *Example 1* of paragraph (b)(5)(viii)(A) of this section. On December 1, 2017, *BB* placed a purchase order with *CC* to purchase 20 new model XPC5 lamps for $100 each for a total amount of $2,000. Because the agreement specifies the number of lamps to be purchased and the purchase order specifies the design of the lamps to be purchased, the purchase order placed by *BB* with *CC* on December 1, 2017, is a binding contract pursuant to paragraph (b)(5)(iii)(E) of this section. Accordingly, assuming all other requirements are met, the cost of the 20 lamps qualifies for the 100-percent additional first year depreciation deduction.

(C) *Example 3.* The facts are the same as in *Example 1* of paragraph (b)(5)(viii)(A) of this section, except that the written agreement between *BB* and *CC* is to purchase 100 model XPC5 lamps for $100 each within the next two years. Because this agreement specifies the amount and design of the lamps to be purchased, the agreement is a binding contract pursuant to paragraph (b)(5)(iii)(E) of this section. However, because the agreement was entered into before September 28, 2017, no lamp acquired by *BB* under this contract qualifies for the 100-percent additional first year depreciation deduction.

(D) *Example 4.* On September 1, 2017, *DD* began constructing a retail motor fuels outlet for its own use. On November 1, 2018, *DD* ceases construction of the retail motor fuels outlet prior to its completion. Between September 1, 2017, and November 1, 2018, *DD* incurred $3,000,000 of expenditures for the construction of the retail motor fuels outlet. On May 1, 2019, *DD* resumed construction of the retail motor fuels outlet and completed its construction on August 31, 2019. Between May 1, 2019, and August 31, 2019, *DD* incurred another $1,600,000 of expenditures to complete the construction of the retail motor fuels outlet and, on September 1, 2019, *DD* placed the retail motor fuels outlet in service. None of *DD*'s total expenditures of $4,600,000 qualify for the 100-percent additional first year depreciation deduction because, pursuant to paragraph (b)(5)(iv)(A) of this section, *DD* began constructing the retail motor fuels outlet before September 28, 2017.

(E) *Example 5.* The facts are the same as in *Example 4* of paragraph (b)(5)(viii)(D) of this section except that *DD* began constructing the retail motor fuels outlet for its own use on October 1, 2017, and *DD* incurred the $3,000,000 between October 1, 2017, and November 1, 2018. *DD*'s total expenditures of $4,600,000 qualify for the 100-percent additional first year depreciation deduction because, pursuant to paragraph (b)(5)(iv)(A) of this section, *DD* began constructing the retail motor fuels outlet after September 27, 2017, and *DD* placed the retail motor fuels outlet in service on September 1, 2019. Accordingly, assuming all other requirements are met, the additional first year depreciation deduction for the retail motor fuels outlet will be $4,600,000, computed as $4,600,000 multiplied by 100 percent.

(F) *Example 6.* On August 15, 2017, *EE,* an accrual basis taxpayer, entered into a written binding contract with *FF* to manufacture an aircraft described in section 168(k)(2)(C) for use in *EE*'s trade or business. *FF* begins to manufacture the aircraft on October 1, 2017. The completed aircraft is delivered to *EE* on February 15, 2018, at which time *EE* incurred the total cost of the aircraft. *EE* places the aircraft in service on March 1, 2018. Pursuant to paragraphs (b)(5)(ii)(A) and (b)(5)(iv)(A) of this section, the aircraft is considered to be manufactured by *EE.* Because *EE* began manufacturing the aircraft after September 27, 2017, the aircraft qualifies for the 100-percent additional first year depreciation deduction, assuming all other requirements are met.

(G) *Example 7.* On June 1, 2017, *HH* entered into a written binding contract with GG to acquire a new component part of property that is being constructed by *HH* for its own use in its trade or business. *HH* commenced construction of the property in November 2017, and placed the property in service in November 2018. Because *HH* entered into a written binding contract to acquire a component part prior to September 28, 2017, pursuant to paragraphs (b)(5)(ii) and (b)(5)(iv)(C)(*1*) of this section, the component part does not qualify for the 100-percent additional first year depreciation deduction. However, pursuant to paragraphs (b)(5)(iv)(A) and (b)(5)(iv)(C)(*1*) of this section, the property constructed by *HH* will qualify for the 100-percent additional first year depreciation deduction, because construction of the property began after September 27, 2017, assuming all other requirements are met. Accordingly, the unadjusted depreciable basis of the property that is eligible for the 100-percent additional first year depreciation deduction must not include the unadjusted depreciable basis of the component part.

(H) *Example 8.* The facts are the same as in *Example 7* of paragraph (b)(5)(viii)(G) of this section except that *HH* entered into the written binding contract with GG to acquire the new component part on September 30, 2017, and *HH* commenced construction of the property on August 1, 2017. Pursuant to paragraphs (b)(5)(iv)(A) and (C) of this section, neither the property constructed by *HH* nor the component part will qualify for the 100-percent additional first year depreciation deduction, because *HH* began construction of the property prior to September 28, 2017.

(I) *Example 9.* On September 1, 2017, *II* acquired and placed in service equipment. On January 15, 2018, *II* sells the equipment to *JJ* and leases the property back from *JJ* in a sale-leaseback transaction. Pursuant to paragraph (b)(5)(ii) of this section, *II*'s cost of the equipment does not qualify for the 100-percent additional first year depreciation deduction because *II* acquired the equipment prior to September 28, 2017. However, *JJ* acquired used equipment from an unrelated party after September 27, 2017, and, assuming all other requirements are met, *JJ*'s cost of the used equipment qualifies for the 100-percent additional first year depreciation deduction for *JJ.*

(J) *Example 10.* On July 1, 2017, *KK* began constructing property for its own use in its

trade or business. *KK* placed this property in service on September 15, 2017. On January 15, 2018, *KK* sells the property to *LL* and leases the property back from *LL* in a sale-leaseback transaction. Pursuant to paragraph (b)(5)(iv) of this section, *KK*'s cost of the property does not qualify for the 100-percent additional first year depreciation deduction because *KK* began construction of the property prior to September 28, 2017. However, *LL* acquired used property from an unrelated party after September 27, 2017, and, assuming all other requirements are met, *LL*'s cost of the used property qualifies for the 100-percent additional first year depreciation deduction for *LL.*

(K) *Example 11. MM,* a calendar year taxpayer, is engaged in a trade or business described in section 163(j)(7)(A)(iv). In December 2018, *MM* began constructing a new electric generation power plant for its own use. *MM* placed in service this new power plant, including all component parts, in 2020. Even though *MM* began constructing the power plant after September 27, 2017, none of *MM*'s total expenditures of the power plant qualify for the additional first year depreciation deduction under this section because, pursuant to paragraph (b)(2)(ii)(F) of this section, the power plant is property that is primarily used in a trade or business described in section 163(j)(7)(A)(iv) and the power plant was placed in service in *MM*'s taxable year beginning after 2017.

(c) [Reserved]

(d) *Property described in section 168(k)(2)(B) or (C)*—(1) *In general.* Property described in section 168(k)(2)(B) or (C) will meet the acquisition requirements of section 168(k)(2)(B)(i)(III) or (k)(2)(C)(i) if the property is acquired by the taxpayer before January 1, 2027, or acquired by the taxpayer pursuant to a written binding contract that is entered into before January 1, 2027. Property described in section 168(k)(2)(B) or (C), including its components, also must meet the acquisition requirement in section 13201(h)(1)(A) of the Act (for further guidance, see paragraph (b)(5) of this section).

(2) *Definition of binding contract.* For purposes of this paragraph (d), the rules in paragraph (b)(5)(iii) of this section for a binding contract apply.

(3) *Self-constructed property*—(i) *In general.* If a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business or for its production of income, the acquisition rules in paragraph (d)(1) of this section are treated as met for the property if the taxpayer begins manufacturing, constructing, or producing the property before January 1, 2027. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is considered to be manufactured, constructed, or produced by the taxpayer. If a taxpayer enters into a written binding contract, as defined in paragraph (b)(5)(iii) of this section, before January 1, 2027, with another person to manufacture, construct, or produce property described in section 168(k)(2)(B) or (C) and the manufacture, construction, or production of this property begins after December 31, 2026, the acquisition rule in paragraph (d)(1) of this section is met.

(ii) *When does manufacture, construction, or production begin*—(A) *In general.* For purposes of this paragraph (d)(3), manufacture, construction, or production of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For example, if a retail motor fuels outlet is to be constructed on-site, construction begins when physical work of a significant nature commences at the site; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if a retail motor fuels outlet is to be assembled on-site from modular units manufactured off-site and delivered to the site where the outlet will be used, manufacturing begins when physical work of a significant nature commences at the off-site location.

(B) *Safe harbor.* For purposes of paragraph (d)(3)(ii)(A) of this section, a taxpayer may choose to determine when physical work of a significant nature begins in accordance with this paragraph (d)(3)(ii)(B). Physical work of a significant nature will be considered to begin at the time the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching. When property is manufactured, constructed, or produced for the taxpayer by another person, this safe harbor test must be satisfied by the taxpayer. For example, if a retail motor fuels outlet is to be constructed for an accrual basis taxpayer by another person for the total cost of $200,000, excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching, construction is deemed to begin for purposes of this paragraph (d)(3)(ii)(B) when the taxpayer has incurred more than 10 percent (more than $20,000) of the total cost of the property. A taxpayer chooses to apply this paragraph (d)(3)(ii)(B) by filing a Federal income tax return for the placed-in-service year of the property that determines when physical work of a significant nature begins consistent with this paragraph (d)(3)(ii)(B).

(iii) *Components of self-constructed property*—(A) *Acquired components.* If a binding contract, as defined in paragraph (b)(5)(iii) of this section, to acquire a component does not satisfy the requirements of paragraph (d)(1) of this section, the component does not qualify for the additional first year depreciation deduction under this section. A binding contract described in the preceding sentence to acquire one or more components of a larger self-constructed property will not preclude the larger self-constructed property from satisfying the acquisition rules in paragraph (d)(3)(i) of this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction under this section, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not satisfy the requirements of paragraph (d)(1) of this section. If a binding contract to acquire the component is entered into before January 1, 2027, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2027, the component qualifies for the additional first year depreciation deduction under this section, assuming all other requirements are met, but the larger self-constructed property does not.

(B) *Self-constructed components.* If the manufacture, construction, or production of a component by the taxpayer does not satisfy the requirements of paragraph (d)(3)(i) of this section, the component does not qualify for the additional first year depreciation deduction under this section. However, if the manufacture, construction, or production of a component does not satisfy the requirements of paragraph (d)(3)(i) of

this section, but the manufacture, construction, or production of the larger self-constructed property satisfies the requirements of paragraph (d)(3)(i) of this section, the larger self-constructed property qualifies for the additional first year depreciation deduction under this section, assuming all other requirements are met, even though the component does not qualify for the additional first year depreciation deduction under this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction under this section, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not qualify for the additional first year depreciation deduction under this section. If the manufacture, construction, or production of a component begins before January 1, 2027, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2027, the component qualifies for the additional first year depreciation deduction under this section, assuming all other requirements are met, but the larger self-constructed property does not.

(iv) *Examples.* The application of this paragraph (d) is illustrated by the following examples:

(A) *Example 1.* (*1*) On June 1, 2016, *NN* decided to construct property described in section 168(k)(2)(B) for its own use. However, one of the component parts of the property had to be manufactured by another person for *NN.* On August 15, 2016, *NN* entered into a written binding contract with *OO* to acquire this component part of the property for $100,000. *OO* began manufacturing the component part on November 1, 2016, and delivered the completed component part to *NN* on September 1, 2017, at which time *NN* incurred $100,000 for the cost of the component. The cost of this component part is 9 percent of the total cost of the property to be constructed by *NN. NN* did not incur any other cost of the property to be constructed before *NN* began construction. *NN* began constructing the property described in section 168(k)(2)(B) on October 15, 2017, and placed in service this property, including all component parts, on November 1, 2020. *NN* uses the safe harbor test in paragraph (d)(3)(ii)(B) of this section to determine when physical work of a significant nature begins for the property described in section 168(k)(2)(B).

(*2*) Because the component part of $100,000 that was manufactured by *OO* for *NN* is not more than 10 percent of the total cost of the property described in section 168(k)(2)(B), physical work of a significant nature for the property described in section 168(k)(2)(B) did not begin before September 28, 2017.

(*3*) Pursuant to paragraphs (b)(5)(iv)(C)(*2*) and (d)(1) of this section, the self-constructed component part of $100,000 manufactured by *OO* for *NN* is not eligible for the 100-percent additional first year depreciation deduction because the manufacturing of such component part began before September 28, 2017. However, pursuant to paragraph (d)(3)(i) of this section, the cost of the property described in section 168(k)(2)(B), excluding the cost of the component part of $100,000 manufactured by *OO* for *NN,* is eligible for the 100-percent additional first year depreciation deduction, assuming all other requirements are met, because construction of the property began after September 27, 2017, and before January 1, 2027, and the property described in section 168(k)(2)(B) was placed in service by *NN* during 2020.

(B) *Example 2.* (*1*) On June 1, 2026, *PP* decided to construct property described in section 168(k)(2)(B) for its own use. However, one of the component parts of the property had to be manufactured by another person for *PP.* On August 15, 2026, *PP* entered into a written binding contract with *XP* to acquire this component part of the property for $100,000. *XP* began manufacturing the component part on September 1, 2026, and delivered the completed component part to *PP* on February 1, 2027, at which time *PP* incurred $100,000 for the cost of the component. The cost of this component part is 9 percent of the total cost of the property to be constructed by *PP. PP* did not incur any other cost of the property to be constructed before *PP* began construction. *PP* began constructing the property described in section 168(k)(2)(B) on January 15, 2027, and placed this property, including all component parts, in service on November 1, 2027.

(*2*) Pursuant to paragraph (d)(3)(iii)(B) of this section, the self-constructed component part of $100,000 manufactured by *XP* for *PP* is eligible for the additional first year depreciation deduction under this section, assuming all other requirements are met, because the manufacturing of the component part began before January 1, 2027, and the property described in section 168(k)(2)(B), the larger self-constructed property, was placed in service by *PP* before January 1, 2028. However, pursuant to paragraph (d)(3)(i) of this section, the cost of the property described in section 168(k)(2)(B), excluding the cost of the self-constructed component part of $100,000 manufactured by *XP* for *PP,* is not eligible for the additional first year depreciation deduction under this section because construction of the property began after December 31, 2026.

(C) *Example 3.* On December 1, 2026, *QQ* entered into a written binding contract, as defined in paragraph (b)(5)(iii) of this section, with *RR* to manufacture an aircraft described in section 168(k)(2)(C) for use in *QQ*'s trade or business. *RR* begins to manufacture the aircraft on February 1, 2027. *QQ* places the aircraft in service on August 1, 2027. Pursuant to paragraph (d)(3)(i) of this section, the aircraft meets the requirements of paragraph (d)(1) of this section because the aircraft was acquired by *QQ* pursuant to a written binding contract entered into before January 1, 2027. Further, the aircraft was placed in service by *QQ* before January 1, 2028. Thus, assuming all other requirements are met, *QQ*'s cost of the aircraft is eligible for the additional first year depreciation deduction under this section.

(e) *Computation of depreciation deduction for qualified property*—(1) *Additional first year depreciation deduction*—(i) *Allowable taxable year.* The additional first year depreciation deduction is allowable—

(A) Except as provided in paragraph (e)(1)(i)(B) or (g) of this section, in the taxable year in which the qualified property is placed in service by the taxpayer for use in its trade or business or for the production of income; or

(B) In the taxable year in which the specified plant is planted, or grafted to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4), if the taxpayer properly made the election to apply section 168(k)(5) (for further guidance, see paragraph (f) of this section).

(ii) *Computation.* Except as provided in paragraph (g)(5) of this section, the allowable additional first year depreciation deduction for qualified property is determined by multiplying the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the qualified property by the applicable percentage. Except as provided in paragraph (g)(1) of this section, the additional first year depreciation deduction is not affected by a taxable year of less than 12 months. See paragraph (g)(1) of this section for qualified property placed in service or planted or grafted, as applicable, and disposed of during the same taxable year. See paragraph (g)(5) of this section for qualified property acquired in a like-kind exchange or as a result of an involuntary conversion.

(iii) *Property described in section 168(k)(2)(B).* For purposes of paragraph (e)(1)(ii) of this section, the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of qualified property described in section 168(k)(2)(B) is limited to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2027.

(iv) *Alternative minimum tax*—(A) *In general.* The additional first year depreciation deduction is allowable for alternative minimum tax purposes—

(*1*) Except as provided in paragraph (e)(1)(iv)(A)(*2*) of this section, in the taxable year in which the qualified property is placed in service by the taxpayer; or

(*2*) In the taxable year in which a specified plant is planted by the taxpayer, or grafted by the taxpayer to a plant that was previously planted, if the taxpayer properly made the election to apply section 168(k)(5) (for further guidance, see paragraph (f) of this section).

(B) *Special rules.* In general, the additional first year depreciation deduction for alternative minimum tax purposes is based on the unadjusted depreciable basis of the property for alternative minimum tax purposes. However, see paragraph (g)(5)(iii)(E) of this section for qualified property acquired in a like-kind exchange or as a result of an involuntary conversion.

(2) *Otherwise allowable depreciation deduction*—(i) *In general.* Before determining the amount otherwise allowable as a depreciation deduction for the qualified property for the placed-in-service year and any subsequent taxable year, the taxpayer must determine the remaining adjusted depreciable basis of the qualified property. This remaining adjusted depreciable basis is equal to the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the qualified property reduced by the amount of the additional first year depreciation allowed or allowable, whichever is greater. The remaining adjusted depreciable basis of the qualified property is then depreciated using the applicable depreciation provisions under the Internal Revenue Code for the qualified property. The remaining adjusted depreciable basis of the qualified property that is MACRS property is also the basis to which the annual depreciation rates in the optional depreciation tables apply (for further guidance, see section 8 of Rev. Proc. 87–57 (1987–2 C.B. 687) and § 601.601(d)(2)(ii)(*b*) of this chapter). The depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property is affected by a taxable year of less than 12 months.

(ii) *Alternative minimum tax.* For alternative minimum tax purposes, the depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property is based on the remaining adjusted depreciable basis for alternative minimum tax purposes. The remaining adjusted depreciable basis of the qualified property for alternative minimum tax purposes is depreciated using the same depreciation method, recovery period (or useful life in the case of computer software), and convention that apply to the qualified property for regular tax purposes.

(3) *Examples.* This paragraph (e) is illustrated by the following examples:

(i) *Example 1.* On March 1, 2023, *SS,* a calendar-year taxpayer, purchased and placed in service qualified property that costs $1 million and is 5-year property under section 168(e). *SS* depreciates its 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For 2023, *SS* is allowed an 80-percent additional first year depreciation deduction of $800,000 (the unadjusted depreciable basis of $1 million multiplied by 0.80). Next, *SS* must reduce the unadjusted depreciable basis of $1 million by the additional first year depreciation deduction of $800,000 to determine the remaining adjusted depreciable basis of $200,000. Then, *SS'* depreciation deduction allowable in 2023 for the remaining adjusted depreciable basis of $200,000 is $40,000 (the remaining adjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(ii) *Example 2.* On June 1, 2023, *TT,* a calendar-year taxpayer, purchased and placed in service qualified property that costs $1,500,000. The property qualifies for the expensing election under section 179 and is 5-year property under section 168(e). *TT* did not purchase any other section 179 property in 2023. *TT* makes the election under section 179 for the property and depreciates its 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. Assume the maximum section 179 deduction for 2023 is $1,000,000. For 2023, *TT* is first allowed a $1,000,000 deduction under section 179. Next, *TT* must reduce the cost of $1,500,000 by the section 179 deduction of $1,000,000 to determine the unadjusted depreciable basis of $500,000. Then, for 2023, *TT* is allowed an 80-percent additional first year depreciation deduction of $400,000 (the unadjusted depreciable basis of $500,000 multiplied by 0.80). Next, *TT* must reduce the unadjusted depreciable basis of $500,000 by the additional first year depreciation deduction of $400,000 to determine the remaining adjusted depreciable basis of $100,000. Then, *TT*'s depreciation deduction allowable in 2023 for the remaining adjusted depreciable basis of $100,000 is $20,000 (the remaining adjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(f) *Elections under section 168(k)*—(1) *Election not to deduct additional first year depreciation*—(i) *In general.* A taxpayer may make an election not to deduct the additional first year depreciation for any class of property that is qualified property placed in service during the taxable year. If this election is made, the election applies to all qualified property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property, except as provided in § 1.743–1(j)(4)(i)(B)(*1*).

(ii) *Definition of class of property.* For purposes of this paragraph (f)(1), the term *class of property* means:

(A) Except for the property described in paragraphs (f)(1)(ii)(B) and (D), and (f)(2) of this section, each class of property described in section 168(e) (for example, 5-year property);

(B) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(C) Computer software as defined in, and depreciated under, section 167(f)(1) and § 1.167(a)–14(b);

(D) Qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(C) and (a)(5)(ii), and depreciated under section 168;

(E) Each separate production, as defined in § 1.181–3(b), of a qualified film or television production;

(F) Each separate production, as defined in section 181(e)(2), of a qualified live theatrical production; or

(G) A partner's basis adjustment in partnership assets under section 743(b) for each class of property described in paragraphs (f)(1)(ii)(A) through (F), and (f)(2) of this section (for further guidance, see § 1.743–1(j)(4)(i)(B)(*1*)).

(iii) *Time and manner for making election*—(A) *Time for making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(1)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the qualified property is placed in service by the taxpayer.

(B) *Manner of making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(1)(i) of this section must be made in the manner prescribed on Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including a lower-tier partnership; also including basis adjustments in the partnership assets under section 743(b)), or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(iv) *Failure to make election.* If a taxpayer does not make the election specified in paragraph (f)(1)(i) of this section within the time and in the

manner prescribed in paragraph (f)(1)(iii) of this section, the amount of depreciation allowable for that property under section 167 or 168, as applicable, must be determined for the placed-in-service year and for all subsequent taxable years by taking into account the additional first year depreciation deduction. Thus, any election specified in paragraph (f)(1)(i) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(2) *Election to apply section 168(k)(5) for specified plants*—(i) *In general.* A taxpayer may make an election to apply section 168(k)(5) to one or more specified plants that are planted, or grafted to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4). If this election is made for a specified plant, such plant is not treated as qualified property under section 168(k) and this section in its placed-in-service year.

(ii) *Time and manner for making election*—(A) *Time for making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(2)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer planted or grafted the specified plant to which the election applies.

(B) *Manner of making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(2)(i) of this section must be made in the manner prescribed on Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning specified plants (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including a lower-tier partnership), or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(iii) *Failure to make election.* If a taxpayer does not make the election specified in paragraph (f)(2)(i) of this section for a specified plant within the time and in the manner prescribed in paragraph (f)(2)(ii) of this section, the specified plant is treated as qualified property under section 168(k), assuming all requirements are met, in the taxable year in which such plant is placed in service by the taxpayer. Thus, any election specified in paragraph (f)(2)(i) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(3) *Election for qualified property placed in service during the 2017 taxable year*—(i) *In general.* A taxpayer may make an election to deduct 50 percent, instead of 100 percent, additional first year depreciation for all qualified property acquired after September 27, 2017, by the taxpayer and placed in service by the taxpayer during its taxable year that includes September 28, 2017. If a taxpayer makes an election to apply section 168(k)(5) for its taxable year that includes September 28, 2017, the taxpayer also may make an election to deduct 50 percent, instead of 100 percent, additional first year depreciation for all specified plants that are planted, or grafted to a plant that has already been planted, after September 27, 2017, by the taxpayer in the ordinary course of the taxpayer's farming business during such taxable year.

(ii) *Time and manner for making election*—(A) *Time for making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(3)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxpayer's taxable year that includes September 28, 2017.

(B) *Manner of making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(3)(i) of this section must be made in the manner prescribed on the 2017 Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including a lower-tier partnership), or by the S corporation).

(iii) *Failure to make election.* If a taxpayer does not make the election specified in paragraph (f)(3)(i) of this section within the time and in the manner prescribed in paragraph (f)(3)(ii) of this section, the amount of depreciation allowable for qualified property under section 167 or 168, as applicable, acquired and placed in service, or planted or grafted, as applicable, by the taxpayer after September 27, 2017, must be determined for the taxable year that includes September 28, 2017, and for all subsequent taxable years by taking into account the 100-percent additional first year depreciation deduction, unless the taxpayer makes the election specified in paragraph (f)(1)(i) of this section within the time and in the manner prescribed in paragraph (f)(1)(iii) of this section for the class of property in which the qualified property is included. Thus, any election specified in paragraph (f)(3)(i) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(4) *Alternative minimum tax.* If a taxpayer makes an election specified in paragraph (f)(1) of this section for a class of property or in paragraph (f)(2) of this section for a specified plant, the depreciation adjustments under section 56 and the regulations in this part under section 56 do not apply to the property or specified plant, as applicable, to which that election applies for purposes of computing the taxpayer's alternative minimum taxable income. If a taxpayer makes an election specified in paragraph (f)(3) of this section for all qualified property, see paragraphs (e)(1)(iv) and (e)(2)(ii) of this section.

(5) *Revocation of election*–(i) *In general.* Except as provided in paragraphs (f)(5)(ii) and (f)(6) of this section, an election specified in this paragraph (f), once made, may be revoked only by filing a request for a private letter ruling and obtaining the Commissioner of Internal Revenue's written consent to revoke the election. The Commissioner may grant a request to revoke the election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. An election specified in this paragraph (f) may not be revoked through a request under section 446(e) to change the taxpayer's method of accounting.

(ii) *Automatic 6-month extension.* If a taxpayer made an election specified in this paragraph (f), an automatic extension of 6 months from the due date of the taxpayer's Federal tax return, excluding extensions, for the placed-in-service year or the taxable year in which the specified plant is planted or grafted, as applicable, is granted to revoke that election, provided the taxpayer timely filed the taxpayer's Federal tax return for the placed-in-service year or the taxable year in which the specified plant is planted or grafted, as applicable, and, within this 6-month extension period, the taxpayer, and all taxpayers whose tax liability would be affected by the election, file an amended Federal tax return for the placed-in-service year or the taxable year in which the specified plant is planted or grafted, as applicable, in a manner that is

consistent with the revocation of the election.

(6) *Special rules for 2016 and 2017 returns.* For an election specified in this paragraph (f) for qualified property placed in service, or for a specified plant that is planted, or grafted to a plant that has already been planted, by the taxpayer during its taxable year that included September 28, 2017, the taxpayer should refer to Rev. Proc. 2019–33 (2019–34 I.R.B. 662) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for the time and manner of making the election on the 2016 or 2017 Federal tax return.

(g) *Special rules*—(1) *Property placed in service and disposed of in the same taxable year*—(i) *In general.* Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the additional first year depreciation deduction is not allowed for qualified property placed in service or planted or grafted, as applicable, and disposed of during the same taxable year. If a partnership interest is acquired and disposed of during the same taxable year, the additional first year depreciation deduction is not allowed for any section 743(b) adjustment arising from the initial acquisition. Also, if qualified property is placed in service and disposed of during the same taxable year and then reacquired and again placed in service in a subsequent taxable year, the additional first year depreciation deduction is not allowable for the property in the subsequent taxable year.

(ii) *Technical termination of a partnership.* In the case of a technical termination of a partnership under section 708(b)(1)(B) in a taxable year beginning before January 1, 2018, the additional first year depreciation deduction is allowable for any qualified property placed in service or planted or grafted, as applicable, by the terminated partnership during the taxable year of termination and contributed by the terminated partnership to the new partnership. The allowable additional first year depreciation deduction for the qualified property shall not be claimed by the terminated partnership but instead shall be claimed by the new partnership for the new partnership's taxable year in which the qualified property was contributed by the terminated partnership to the new partnership. However, if qualified property is both placed in service or planted or grafted, as applicable, and contributed to a new partnership in a transaction described in section 708(b)(1)(B) by the terminated partnership during the taxable year of termination, and if such property is disposed of by the new partnership in the same taxable year the new partnership received such property from the terminated partnership, then no additional first year depreciation deduction is allowable to either partnership.

(iii) *Section 168(i)(7) transactions.* If any qualified property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property is placed in service or planted or grafted, as applicable, by the transferor, the additional first year depreciation deduction is allowable for the qualified property. If a partnership interest is purchased and transferred in a transaction described in section 168(i)(7) in the same taxable year, the additional first year depreciation deduction is allowable for any section 743(b) adjustment that arises from the initial acquisition with respect to qualified property held by the partnership, provided the requirements of paragraph (b)(3)(iv)(D) of this section and all other requirements of section 168(k) and this section are satisfied. The allowable additional first year depreciation deduction for the qualified property for the transferor's taxable year in which the property is placed in service or planted or grafted, as applicable, is allocated between the transferor and the transferee on a monthly basis. The allowable additional first year depreciation deduction for a section 743(b) adjustment with respect to qualified property held by the partnership is allocated between the transferor and the transferee on a monthly basis notwithstanding that under § 1.743–1(f) a transferee's section 743(b) adjustment is determined without regard to a transferors section 743(b) adjustment. These allocations shall be made in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. However, solely for purposes of this section, if the qualified property is transferred in a section 721(a) transaction to a partnership that has as a partner a person, other than the transferor, who previously had a depreciable interest in the qualified property, in the same taxable year that the qualified property is acquired or planted or grafted, as applicable, by the transferor, the qualified property is deemed to be placed in service or planted or grafted, as applicable, by the transferor during that taxable year, and the allowable additional first year depreciation deduction is allocated entirely to the transferor and not to the partnership. Additionally, if qualified property is both placed in service or planted or grafted, as applicable, and transferred in a transaction described in section 168(i)(7) by the transferor during the same taxable year, and if such property is disposed of by the transferee, other than by a transaction described in section 168(i)(7), during the same taxable year the transferee received such property from the transferor, then no additional first year depreciation deduction is allowable to either party.

(iv) *Examples.* The application of this paragraph (g)(1) is illustrated by the following examples:

(A) *Example 1. UU* and *VV* are equal partners in *Partnership JL,* a general partnership. *Partnership JL* is a calendar-year taxpayer. On October 1, 2017, *Partnership JL* purchased and placed in service qualified property at a cost of $30,000. On November 1, 2017, *UU* sells its entire 50 percent interest to *WW* in a transfer that terminates the partnership under section 708(b)(1)(B). As a result, terminated *Partnership JL* is deemed to have contributed the qualified property to new *Partnership JL.* Pursuant to paragraph (g)(1)(ii) of this section, new *Partnership JL,* not terminated *Partnership JL,* is eligible to claim the 100-percent additional first year depreciation deduction allowable for the qualified property for the taxable year 2017, assuming all other requirements are met.

(B) *Example 2.* On January 5, 2018, *XX* purchased and placed in service qualified property for a total amount of $9,000. On August 20, 2018, *XX* transferred this qualified property to *Partnership BC* in a transaction described in section 721(a). No other partner of *Partnership BC* has ever had a depreciable interest in the qualified property. *XX* and *Partnership BC* are calendar-year taxpayers. Because the transaction between *XX* and *Partnership BC* is a transaction described in section 168(i)(7), pursuant to paragraph (g)(1)(iii) of this section, the 100-percent additional first year depreciation deduction allowable for the qualified property is allocated between *XX* and *Partnership BC* in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. Accordingly, the 100-percent additional first year depreciation deduction allowable of $9,000 for the qualified property for 2018 is allocated between *XX* and *Partnership BC* based on the number of months that *XX* and *Partnership BC* held the qualified property in service during 2018. Thus, because the qualified property was held in service by *XX* for 7 of 12 months, which includes the month in which *XX* placed the qualified property in service but does not include the month in which the qualified property was transferred, *XX* is allocated $5,250 ($^{7}/_{12}$ × $9,000 additional first year depreciation deduction). *Partnership BC* is allocated $3,750, the remaining $^{5}/_{12}$ of the $9,000 additional first year depreciation deduction allowable for the qualified property.

(2) *Redetermination of basis.* If the unadjusted depreciable basis, as defined

in § 1.168(b)–1(a)(3), of qualified property is redetermined (for example, due to contingent purchase price or discharge of indebtedness) before January 1, 2027, or in the case of property described in section 168(k)(2)(B) or (C), is redetermined before January 1, 2028, the additional first year depreciation deduction allowable for the qualified property is redetermined as follows:

(i) *Increase in basis.* For the taxable year in which an increase in basis of qualified property occurs, the taxpayer shall claim an additional first year depreciation deduction for qualified property by multiplying the amount of the increase in basis for this property by the applicable percentage for the taxable year in which the underlying property was placed in service by the taxpayer. For purposes of this paragraph (g)(2)(i), the additional first year depreciation deduction applies to the increase in basis only if the underlying property is qualified property. To determine the amount otherwise allowable as a depreciation deduction for the increase in basis of qualified property, the amount of the increase in basis of the qualified property must be reduced by the additional first year depreciation deduction allowed or allowable, whichever is greater, for the increase in basis and the remaining increase in basis of—

(A) Qualified property, except for computer software described in paragraph (b)(2)(i)(B) of this section, a qualified film or television production described in paragraph (b)(2)(i)(E) of this section, or a qualified live theatrical production described in paragraph (b)(2)(i)(F) of this section, is depreciated over the recovery period of the qualified property remaining as of the beginning of the taxable year in which the increase in basis occurs, and using the same depreciation method and convention applicable to the qualified property that applies for the taxable year in which the increase in basis occurs; and

(B) Computer software, as defined in paragraph (b)(2)(i)(B) of this section, that is qualified property is depreciated ratably over the remainder of the 36-month period, the useful life under section 167(f)(1), as of the beginning of the first day of the month in which the increase in basis occurs.

(ii) *Decrease in basis.* For the taxable year in which a decrease in basis of qualified property occurs, the taxpayer shall reduce the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property by the excess additional first year depreciation deduction previously claimed for the qualified property. If, for such taxable year, the excess additional first year depreciation deduction exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income. The excess additional first year depreciation deduction for qualified property is determined by multiplying the amount of the decrease in basis for this property by the applicable percentage for the taxable year in which the underlying property was placed in service by the taxpayer. For purposes of this paragraph (g)(2)(ii), the additional first year depreciation deduction applies to the decrease in basis only if the underlying property is qualified property. Also, if the taxpayer establishes by adequate records or other sufficient evidence that the taxpayer claimed less than the additional first year depreciation deduction allowable for the qualified property before the decrease in basis, or if the taxpayer claimed more than the additional first year depreciation deduction allowable for the qualified property before the decrease in basis, the excess additional first year depreciation deduction is determined by multiplying the amount of the decrease in basis by the additional first year depreciation deduction percentage actually claimed by the taxpayer for the qualified property before the decrease in basis. To determine the amount to reduce the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property for the excess depreciation previously claimed, other than the additional first year depreciation deduction, resulting from the decrease in basis of the qualified property, the amount of the decrease in basis of the qualified property must be adjusted by the excess additional first year depreciation deduction that reduced the total amount otherwise allowable as a depreciation deduction, as determined under this paragraph (g)(2)(ii), and the remaining decrease in basis of—

(A) Qualified property, except for computer software described in paragraph (b)(2)(i)(B) of this section, a qualified film or television production described in paragraph (b)(2)(i)(E) of this section, or a qualified live theatrical production described in paragraph (b)(2)(i)(F) of this section, reduces the amount otherwise allowable as a depreciation deduction over the recovery period of the qualified property remaining as of the beginning of the taxable year in which the decrease in basis occurs, and using the same depreciation method and convention of the qualified property that applies in the taxable year in which the decrease in basis occurs. If, for any taxable year, the reduction to the amount otherwise allowable as a depreciation deduction, as determined under this paragraph (g)(2)(ii)(A), exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income; and

(B) Computer software, as defined in paragraph (b)(2)(i)(B) of this section, that is qualified property reduces the amount otherwise allowable as a depreciation deduction over the remainder of the 36-month period, the useful life under section 167(f)(1), as of the beginning of the first day of the month in which the decrease in basis occurs. If, for any taxable year, the reduction to the amount otherwise allowable as a depreciation deduction, as determined under this paragraph (g)(2)(ii)(B), exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income.

(iii) *Definitions.* Except as otherwise expressly provided by the Internal Revenue Code (for example, section 1017(a)), the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin for purposes of this paragraph (g)(2)—

(A) An increase in basis occurs in the taxable year an amount is taken into account under section 461; and

(B) A decrease in basis occurs in the taxable year an amount would be taken into account under section 451.

(iv) *Examples.* The application of this paragraph (g)(2) is illustrated by the following examples:

(A) *Example 1.* (*1*) On May 15, 2023, *YY,* a cash-basis taxpayer, purchased and placed in service qualified property that is 5-year property at a cost of $200,000. In addition to the $200,000, *YY* agrees to pay the seller 25 percent of the gross profits from the operation of the property in 2023. On May 15, 2024, *YY* paid to the seller an additional $10,000. *YY* depreciates the 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(*2*) For 2023, *YY* is allowed an 80-percent additional first year depreciation deduction of $160,000 (the unadjusted depreciable basis

of $200,000 multiplied by 0.80). In addition, *YY*'s depreciation deduction for 2023 for the remaining adjusted depreciable basis of $40,000 (the unadjusted depreciable basis of $200,000 reduced by the additional first year depreciation deduction of $160,000) is $8,000 (the remaining adjusted depreciable basis of $40,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(*3*) For 2024, *YY*'s depreciation deduction for the remaining adjusted depreciable basis of $40,000 is $12,800 (the remaining adjusted depreciable basis of $40,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2). In addition, pursuant to paragraph (g)(2)(i) of this section, *YY* is allowed an additional first year depreciation deduction for 2024 for the $10,000 increase in basis of the qualified property. Consequently, *YY* is allowed an additional first year depreciation deduction of $8,000 (the increase in basis of $10,000 multiplied by 0.80, the applicable percentage for 2023). Also, *YY* is allowed a depreciation deduction for 2024 attributable to the remaining increase in basis of $2,000 (the increase in basis of $10,000 reduced by the additional first year depreciation deduction of $8,000). The depreciation deduction allowable for 2024 attributable to the remaining increase in basis of $2,000 is $889 (the remaining increase in basis of $2,000 multiplied by 0.4444, which is equal to 1/remaining recovery period of 4.5 years at January 1, 2024, multiplied by 2). Accordingly, for 2024, *YY*'s total depreciation deduction allowable for the qualified property is $21,689 ($12,800 plus $8,000 plus $889).

(B) *Example 2.* (*1*) On May 15, 2023, *ZZ,* a calendar-year taxpayer, purchased and placed in service qualified property that is 5-year property at a cost of $400,000. To purchase the property, *ZZ* borrowed $250,000 from Bank1. On May 15, 2024, Bank1 forgives $50,000 of the indebtedness. *ZZ* makes the election provided in section 108(b)(5) to apply any portion of the reduction under section 1017 to the basis of the depreciable property of the taxpayer. *ZZ* depreciates the 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(*2*) For 2023, *ZZ* is allowed an 80-percent additional first year depreciation deduction of $320,000 (the unadjusted depreciable basis of $400,000 multiplied by 0.80). In addition, *ZZ*'s depreciation deduction allowable for 2023 for the remaining adjusted depreciable basis of $80,000 (the unadjusted depreciable basis of $400,000 reduced by the additional first year depreciation deduction of $320,000) is $16,000 (the remaining adjusted depreciable basis of $80,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(*3*) For 2024, *ZZ*'s deduction for the remaining adjusted depreciable basis of $80,000 is $25,600 (the remaining adjusted depreciable basis of $80,000 multiplied by the annual depreciation rate 0.32 for recovery year 2). Although Bank1 forgave the indebtedness in 2024, the basis of the property is reduced on January 1, 2025, pursuant to sections 108(b)(5) and 1017(a) under which basis is reduced at the beginning of the taxable year following the taxable year in which the discharge of indebtedness occurs.

(*4*) For 2025, *ZZ*'s deduction for the remaining adjusted depreciable basis of $80,000 is $15,360 (the remaining adjusted depreciable basis of $80,000 multiplied by the annual depreciation rate 0.192 for recovery year 3). However, pursuant to paragraph (g)(2)(ii) of this section, *ZZ* must reduce the amount otherwise allowable as a depreciation deduction for 2025 by the excess depreciation previously claimed for the $50,000 decrease in basis of the qualified property. Consequently, *ZZ* must reduce the amount of depreciation otherwise allowable for 2025 by the excess additional first year depreciation of $40,000 (the decrease in basis of $50,000 multiplied by 0.80, the applicable percentage for 2023). Also, *ZZ* must reduce the amount of depreciation otherwise allowable for 2025 by the excess depreciation attributable to the remaining decrease in basis of $10,000 (the decrease in basis of $50,000 reduced by the excess additional first year depreciation of $40,000). The reduction in the amount of depreciation otherwise allowable for 2025 for the remaining decrease in basis of $10,000 is $5,714 (the remaining decrease in basis of $10,000 multiplied by 0.5714, which is equal to (1/remaining recovery period of 3.5 years at January 1, 2025, multiplied by 2). Accordingly, assuming the qualified property is the only depreciable property owned by *ZZ,* for 2025, *ZZ* has a negative depreciation deduction for the qualified property of $30,354 ($15,360 minus $40,000 minus $5,714).

(3) *Sections 1245 and 1250 depreciation recapture.* For purposes of section 1245 and §§ 1.1245–1 through –6, the additional first year depreciation deduction is an amount allowed or allowable for depreciation. Further, for purposes of section 1250(b) and § 1.1250–2, the additional first year depreciation deduction is not a straight line method.

(4) *Coordination with section 169.* The additional first year depreciation deduction is allowable in the placed-in-service year of a certified pollution control facility, as defined in § 1.169–2(a), that is qualified property even if the taxpayer makes the election to amortize the certified pollution control facility under section 169 and §§ 1.169–1 through –4 in the certified pollution control facility's placed-in-service year.

(5) *Like-kind exchanges and involuntary conversions*—(i) *Scope.* The rules of this paragraph (g)(5) apply to replacement MACRS property or replacement computer software that is qualified property at the time of replacement provided the time of replacement is after September 27, 2017, and before January 1, 2027; or, in the case of replacement MACRS property or replacement computer software that is qualified property described in section 168(k)(2)(B) or (C), the time of replacement is after September 27, 2017, and before January 1, 2028.

(ii) *Definitions.* For purposes of this paragraph (g)(5), the following definitions apply:

(A) *Replacement MACRS property* has the same meaning as that term is defined in § 1.168(i)–6(b)(1).

(B) *Relinquished MACRS property* has the same meaning as that term is defined in § 1.168(i)–6(b)(2).

(C) *Replacement computer software* is computer software, as defined in paragraph (b)(2)(i)(B) of this section, in the hands of the acquiring taxpayer that is acquired for other computer software in a like-kind exchange or in an involuntary conversion.

(D) *Relinquished computer software* is computer software that is transferred by the taxpayer in a like-kind exchange or in an involuntary conversion.

(E) *Time of disposition* has the same meaning as that term is defined in § 1.168(i)–6(b)(3) for relinquished MACRS property. For relinquished computer software, *time of disposition* is when the disposition of the relinquished computer software takes place under the convention determined under § 1.167(a)–14(b).

(F) Except as provided in paragraph (g)(5)(iv) of this section, the *time of replacement* has the same meaning as that term is defined in § 1.168(i)–6(b)(4) for replacement MACRS property. For replacement computer software, the *time of replacement* is, except as provided in paragraph (g)(5)(iv) of this section, the later of—

(*1*) When the replacement computer software is placed in service under the convention determined under § 1.167(a)–14(b); or

(*2*) The time of disposition of the relinquished property.

(G) *Exchanged basis* has the same meaning as that term is defined in § 1.168(i)–6(b)(7) for MACRS property, as defined in § 1.168(b)–1(a)(2). For computer software, the *exchanged basis* is determined after the amortization deductions for the year of disposition are determined under § 1.167(a)–14(b) and is the lesser of—

(*1*) The basis in the replacement computer software, as determined under section 1031(d) and § 1.1031(d)–1, 1.1031(d)–2, 1.1031(j)–1, or 1.1031(k)–1; or section 1033(b) and § 1.1033(b)–1; or

(*2*) The adjusted depreciable basis of the relinquished computer software.

(H) *Excess basis* has the same meaning as that term is defined in § 1.168(i)–6(b)(8) for replacement MACRS property. For replacement

computer software, the *excess basis* is any excess of the basis in the replacement computer software, as determined under section 1031(d) and § 1.1031(d)–1, 1.1031(d)–2, 1.1031(j)–1, or 1.1031(k)–1; or section 1033(b) and § 1.1033(b)–1, over the exchanged basis as determined under paragraph (g)(5)(ii)(G) of this section.

(I) *Remaining exchanged basis* is the exchanged basis as determined under paragraph (g)(5)(ii)(G) of this section reduced by—

(*1*) The percentage of such basis attributable to the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business or for the production of income; and

(*2*) Any adjustments to basis provided by other provisions of the Code and the regulations under the Code (including section 1016(a)(2) and (3)) for periods prior to the disposition of the relinquished property.

(J) *Remaining excess basis* is the excess basis as determined under paragraph (g)(5)(ii)(H) of this section reduced by—

(*1*) The percentage of such basis attributable to the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business or for the production of income;

(*2*) Any portion of the basis the taxpayer properly elects to treat as an expense under section 179 or 179C; and

(*3*) Any adjustments to basis provided by other provisions of the Code and the regulations under the Code.

(K) *Year of disposition* has the same meaning as that term is defined in § 1.168(i)–6(b)(5).

(L) *Year of replacement* has the same meaning as that term is defined in § 1.168(i)–6(b)(6).

(M) *Like-kind exchange* has the same meaning as that term is defined in § 1.168(i)–6(b)(11).

(N) *Involuntary conversion* has the same meaning as that term is defined in § 1.168(i)–6(b)(12).

(iii) *Computation*—(A) *In general.* If the replacement MACRS property or the replacement computer software, as applicable, meets the original use requirement in paragraph (b)(3)(ii) of this section and all other requirements of section 168(k) and this section, the remaining exchanged basis for the year of replacement and the remaining excess basis, if any, for the year of replacement for the replacement MACRS property or the replacement computer software, as applicable, are eligible for the additional first year depreciation deduction under this section. If the replacement MACRS property or the replacement computer software, as applicable, meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section and all other requirements of section 168(k) and this section, only the remaining excess basis for the year of replacement for the replacement MACRS property or the replacement computer software, as applicable, is eligible for the additional first year depreciation deduction under this section. See paragraph (b)(3)(iii)(A)(*3*) of this section. The additional first year depreciation deduction applies to the remaining exchanged basis and any remaining excess basis, as applicable, of the replacement MACRS property or the replacement computer software, as applicable, if the time of replacement is after September 27, 2017, and before January 1, 2027; or, in the case of replacement MACRS property or replacement computer software, as applicable, described in section 168(k)(2)(B) or (C), the time of replacement is after September 27, 2017, and before January 1, 2028. The additional first year depreciation deduction is computed separately for the remaining exchanged basis and any remaining excess basis, as applicable.

(B) *Year of disposition and year of replacement.* The additional first year depreciation deduction is allowable for the replacement MACRS property or replacement computer software in the year of replacement. However, the additional first year depreciation deduction is not allowable for the relinquished MACRS property or the relinquished computer software, as applicable, if the relinquished MACRS property or the relinquished computer software, as applicable, is placed in service and disposed of in a like-kind exchange or in an involuntary conversion in the same taxable year.

(C) *Property described in section 168(k)(2)(B).* For purposes of paragraph (g)(5)(iii)(A) of this section, the total of the remaining exchanged basis and the remaining excess basis, if any, of the replacement MACRS property that is qualified property described in section 168(k)(2)(B) and meets the original use requirement in paragraph (b)(3)(ii) of this section is limited to the total of the property's remaining exchanged basis and remaining excess basis, if any, attributable to the property's manufacture, construction, or production after September 27, 2017, and before January 1, 2027. For purposes of paragraph (g)(5)(iii)(A) of this section, the remaining excess basis, if any, of the replacement MACRS property that is qualified property described in section 168(k)(2)(B) and meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section is limited to the property's remaining excess basis, if any, attributable to the property's manufacture, construction, or production after September 27, 2017, and before January 1, 2027.

(D) *Effect of § 1.168(i)–6(i)(1) election.* If a taxpayer properly makes the election under § 1.168(i)–6(i)(1) not to apply § 1.168(i)–6 for any MACRS property, as defined in § 1.168(b)–1(a)(2), involved in a like-kind exchange or involuntary conversion, then:

(*1*) If the replacement MACRS property meets the original use requirement in paragraph (b)(3)(ii) of this section and all other requirements of section 168(k) and this section, the total of the exchanged basis, as defined in § 1.168(i)–6(b)(7), and the excess basis, as defined in § 1.168(i)–6(b)(8), if any, in the replacement MACRS property is eligible for the additional first year depreciation deduction under this section; or

(*2*) If the replacement MACRS property meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section and all other requirements of section 168(k) and this section, only the excess basis, as defined in § 1.168(i)–6(b)(8), if any, in the replacement MACRS property is eligible for the additional first year depreciation deduction under this section.

(E) *Alternative minimum tax.* The additional first year depreciation deduction is allowed for alternative minimum tax purposes for the year of replacement of replacement MACRS property or replacement computer software, as applicable, that is qualified property. If the replacement MACRS property or the replacement computer software, as applicable, meets the original use requirement in paragraph (b)(3)(ii) of this section and all other requirements of section 168(k) and this section, the additional first year depreciation deduction for alternative minimum tax purposes is based on the remaining exchanged basis and the remaining excess basis, if any, of the replacement MACRS property or the replacement computer software, as applicable, for alternative minimum tax purposes. If the replacement MACRS property or the replacement computer software, as applicable, meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section and all other requirements of section 168(k) and this section, the additional first year depreciation deduction for alternative minimum tax purposes is based on the remaining excess basis, if any, of the replacement MACRS property or the replacement computer software, as

applicable, for alternative minimum tax purposes.

(iv) *Replacement MACRS property or replacement computer software that is acquired and placed in service before disposition of relinquished MACRS property or relinquished computer software.* If, in an involuntary conversion, a taxpayer acquires and places in service the replacement MACRS property or the replacement computer software, as applicable, before the time of disposition of the involuntarily converted MACRS property or the involuntarily converted computer software, as applicable; and the time of disposition of the involuntarily converted MACRS property or the involuntarily converted computer software, as applicable, is after December 31, 2026, or, in the case of property described in service 168(k)(2)(B) or (C), after December 31, 2027, then—

(A) The time of replacement for purposes of this paragraph (g)(5) is when the replacement MACRS property or replacement computer software, as applicable, is placed in service by the taxpayer, provided the threat or imminence of requisition or condemnation of the involuntarily converted MACRS property or involuntarily converted computer software, as applicable, existed before January 1, 2027, or, in the case of property described in section 168(k)(2)(B) or (C), existed before January 1, 2028; and

(B) The taxpayer depreciates the replacement MACRS property or replacement computer software, as applicable, in accordance with paragraph (e) of this section. However, at the time of disposition of the involuntarily converted MACRS property, the taxpayer determines the exchanged basis, as defined in § 1.168(i)–6(b)(7), and the excess basis, as defined in § 1.168(i)–6(b)(8), of the replacement MACRS property and begins to depreciate the depreciable exchanged basis, as defined in § 1.168(i)–6(b)(9), of the replacement MACRS property in accordance with § 1.168(i)–6(c). The depreciable excess basis, as defined in § 1.168(i)–6(b)(10), of the replacement MACRS property continues to be depreciated by the taxpayer in accordance with the first sentence of this paragraph (g)(5)(iv)(B). Further, in the year of disposition of the involuntarily converted MACRS property, the taxpayer must include in taxable income the excess of the depreciation deductions allowable, including the additional first year depreciation deduction allowable, on the unadjusted depreciable basis of the replacement MACRS property over the additional first year depreciation deduction that would have been allowable to the taxpayer on the remaining exchanged basis of the replacement MACRS property at the time of replacement, as defined in paragraph (g)(5)(iv)(A) of this section, plus the depreciation deductions that would have been allowable, including the additional first year depreciation deduction allowable, to the taxpayer on the depreciable excess basis of the replacement MACRS property from the date the replacement MACRS property was placed in service by the taxpayer, taking into account the applicable convention, to the time of disposition of the involuntarily converted MACRS property. Similar rules apply to replacement computer software.

(v) *Examples.* The application of this paragraph (g)(5) is illustrated by the following examples:

(A) *Example 1.* (*1*) In April 2016, *CSK,* a calendar-year corporation, acquired for $200,000 and placed in service Canopy V1, a gas station canopy. Canopy V1 is qualified property under section 168(k)(2), as in effect on the day before amendment by the Act, and is 5-year property under section 168(e). *CSK* depreciated Canopy V1 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *CSK* elected to use the optional depreciation tables to compute the depreciation allowance for Canopy V1. In November 2017, Canopy V1 was destroyed in a fire and was no longer usable in *CSK's* business. In December 2017, in an involuntary conversion, *CSK* acquired and placed in service Canopy W1 with all of the $160,000 of insurance proceeds *CSK* received due to the loss of Canopy V1. Canopy W1 is qualified property under section 168(k)(2) and this section, and is 5-year property under section 168(e). Canopy W1 also meets the original use requirement in paragraph (b)(3)(ii) of this section. *CSK* did not make the election under § 1.168(i)–6(i)(1).

(*2*) For 2016, *CSK* is allowed a 50-percent additional first year depreciation deduction of $100,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by 0.50), and a regular MACRS depreciation deduction of $20,000 for Canopy V1 (the remaining adjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(*3*) For 2017, *CSK* is allowed a regular MACRS depreciation deduction of $16,000 for Canopy V1 (the remaining adjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2 × ½ year).

(*4*) Pursuant to paragraph (g)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 for 2017 equals $64,000 (100 percent of Canopy W1's remaining exchanged basis at the time of replacement of $64,000 (Canopy V1's remaining adjusted depreciable basis of $100,000 minus 2016 regular MACRS depreciation deduction of $20,000 minus 2017 regular MACRS depreciation deduction of $16,000)).

(B) *Example 2.* (*1*) The facts are the same as in *Example 1* of paragraph (g)(5)(v)(A)(*1*) of this section, except *CSK* elected not to deduct the additional first year depreciation for 5-year property placed in service in 2016. *CSK* deducted the additional first year depreciation for 5-year property placed in service in 2017.

(*2*) For 2016, *CSK* is allowed a regular MACRS depreciation deduction of $40,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(*3*) For 2017, *CSK* is allowed a regular MACRS depreciation deduction of $32,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2 × ½ year).

(*4*) Pursuant to paragraph (g)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 for 2017 equals $128,000 (100 percent of Canopy W1's remaining exchanged basis at the time of replacement of $128,000 (Canopy V1's unadjusted depreciable basis of $200,000 minus 2016 regular MACRS depreciation deduction of $40,000 minus 2017 regular MACRS depreciation deduction of $32,000)).

(C) *Example 3.* The facts are the same as in *Example 1* of paragraph (g)(5)(v)(A)(*1*) of this section, except Canopy W1 meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section. Because the remaining excess basis of Canopy W1 is zero, *CSK* is not allowed any additional first year depreciation for Canopy W1 pursuant to paragraph (g)(5)(iii)(A) of this section.

(D) *Example 4.* (*1*) In December 2016, *AB,* a calendar-year corporation, acquired for $10,000 and placed in service Computer X2. Computer X2 is qualified property under section 168(k)(2), as in effect on the day before amendment by the Act, and is 5-year property under section 168(e). *AB* depreciated Computer X2 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *AB* elected to use the optional depreciation tables to compute the depreciation allowance for Computer X2. In November 2017, *AB* acquired Computer Y2 by exchanging Computer X2 and $1,000 cash in a like-kind exchange. Computer Y2 is qualified property under section 168(k)(2) and this section, and is 5-year property under section 168(e). Computer Y2 also meets the original use requirement in paragraph (b)(3)(ii) of this section. *AB* did not make the election under § 1.168(i)–6(i)(1).

(*2*) For 2016, *AB* is allowed a 50-percent additional first year depreciation deduction of $5,000 for Computer X2 (unadjusted basis of $10,000 multiplied by 0.50), and a regular MACRS depreciation deduction of $1,000 for Computer X2 (the remaining adjusted depreciable basis of $5,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(*3*) For 2017, *AB* is allowed a regular MACRS depreciation deduction of $800 for Computer X2 (the remaining adjusted depreciable basis of $5,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2 × ½ year).

(*4*) Pursuant to paragraph (g)(5)(iii)(A) of this section, the 100-percent additional first year depreciation deduction for Computer Y2 for 2017 is allowable for the remaining exchanged basis at the time of replacement of $3,200 (Computer X2's unadjusted depreciable basis of $10,000 minus additional first year depreciation deduction allowable of $5,000 minus the 2016 regular MACRS depreciation deduction of $1,000 minus the 2017 regular MACRS depreciation deduction of $800) and for the remaining excess basis at the time of replacement of $1,000 (cash paid for Computer Y2). Thus, the 100-percent additional first year depreciation deduction allowable for Computer Y2 totals $4,200 for 2017.

(E) *Example 5.* (*1*) In July 2017, *BC,* a calendar-year corporation, acquired for $20,000 and placed in service Equipment X3. Equipment X3 is qualified property under section 168(k)(2), as in effect on the day before amendment by the Act, and is 5-year property under section 168(e). *BC* depreciated Equipment X3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *BC* elected to use the optional depreciation tables to compute the depreciation allowance for Equipment X3. In December 2017, *BC* acquired Equipment Y3 by exchanging Equipment X3 and $5,000 cash in a like-kind exchange. Equipment Y3 is qualified property under section 168(k)(2) and this section, and is 5-year property under section 168(e). Equipment Y3 also meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section. *BC* did not make the election under § 1.168(i)–6(i)(1).

(*2*) Pursuant to § 1.168(k)–1(f)(5)(iii)(B), no additional first year depreciation deduction is allowable for Equipment X3 and, pursuant to § 1.168(d)–1(b)(3)(ii), no regular depreciation deduction is allowable for Equipment X3, for 2017.

(*3*) Pursuant to paragraph (g)(5)(iii)(A) of this section, no additional first year depreciation deduction is allowable for Equipment Y3's remaining exchanged basis at the time of replacement of $20,000 (Equipment X3's unadjusted depreciable basis of $20,000). However, pursuant to paragraph (g)(5)(iii)(A) of this section, the 100-percent additional first year depreciation deduction is allowable for Equipment Y3's remaining excess basis at the time of replacement of $5,000 (cash paid for Equipment Y3). Thus, the 100-percent additional first year depreciation deduction allowable for Equipment Y3 is $5,000 for 2017.

(F) *Example 6.* (*1*) The facts are the same as in *Example 5* of paragraph (g)(5)(v)(E)(*1*) of this section, except *BC* properly makes the election under § 1.168(i)–6(i)(1) not to apply § 1.168(i)–6 to Equipment X3 and Equipment Y3.

(*2*) Pursuant to § 1.168(k)–1(f)(5)(iii)(B), no additional first year depreciation deduction is allowable for Equipment X3 and, pursuant to § 1.168(d)–1(b)(3)(ii), no regular depreciation deduction is allowable for Equipment X3, for 2017.

(*3*) Pursuant to § 1.168(i)–6(i)(1), *BC* is treated as placing Equipment Y3 in service in December 2017 with a basis of $25,000 (the total of the exchanged basis of $20,000 and the excess basis of $5,000). However, pursuant to paragraph (g)(5)(iii)(D)(*2*) of this section, the 100-percent additional first year depreciation deduction is allowable only for Equipment Y3's excess basis at the time of replacement of $5,000 (cash paid for Equipment Y3). Thus, the 100-percent additional first year depreciation deduction allowable for Equipment Y3 is $5,000 for 2017.

(6) *Change in use*—(i) *Change in use of MACRS property.* The determination of whether the use of MACRS property, as defined in § 1.168(b)–1(a)(2), changes is made in accordance with section 168(i)(5) and § 1.168(i)–4.

(ii) *Conversion to personal use.* If qualified property is converted from business or income-producing use to personal use in the same taxable year in which the property is placed in service by a taxpayer, the additional first year depreciation deduction is not allowable for the property.

(iii) *Conversion to business or income-producing use*—(A) *During the same taxable year.* If, during the same taxable year, property is acquired by a taxpayer for personal use and is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use, assuming all of the requirements in paragraph (b) of this section are met. See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use. See § 1.168(i)–4(b)(1) for determining the depreciable basis of the property at the time of conversion to business or income-producing use.

(B) *Subsequent to the acquisition year.* If property is acquired by a taxpayer for personal use and, during a subsequent taxable year, is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use, assuming all of the requirements in paragraph (b) of this section are met. For purposes of paragraphs (b)(4) and (5) of this section, the property must be acquired by the taxpayer for personal use after September 27, 2017, and converted by the taxpayer from personal use to business or income-producing use by January 1, 2027. See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use. See § 1.168(i)–4(b)(1) for determining the depreciable basis of the property at the time of conversion to business or income-producing use.

(iv) *Depreciable property changes use subsequent to the placed-in-service year.* (A) If the use of qualified property changes in the hands of the same taxpayer subsequent to the taxable year the qualified property is placed in service and, as a result of the change in use, the property is no longer qualified property, the additional first year depreciation deduction allowable for the qualified property is not redetermined.

(B) If depreciable property is not qualified property in the taxable year the property is placed in service by the taxpayer, the additional first year depreciation deduction is not allowable for the property even if a change in the use of the property subsequent to the taxable year the property is placed in service results in the property being qualified property in the taxable year of the change in use.

(v) *Examples.* The application of this paragraph (g)(6) is illustrated by the following examples:

(A) *Example 1.* (*1*) On January 1, 2019, *FFF,* a calendar year corporation, purchased and placed in service several new computers at a total cost of $100,000. *FFF* used these computers within the United States for 3 months in 2019 and then moved and used the computers outside the United States for the remainder of 2019. On January 1, 2020, *FFF* permanently returns the computers to the United States for use in its business.

(*2*) For 2019, the computers are considered as used predominantly outside the United States in 2019 pursuant to § 1.48–1(g)(1)(i). As a result, the computers are required to be depreciated under the alternative depreciation system of section 168(g). Pursuant to paragraph (b)(2)(ii)(B) of this section, the computers are not qualified property in 2019, the placed-in-service year. Thus, pursuant to paragraph (g)(6)(iv)(B) of this section, no additional first year depreciation deduction is allowed for these computers, regardless of the fact that the computers are permanently returned to the United States in 2020.

(B) *Example 2.* (*1*) On February 8, 2023, *GGG,* a calendar year corporation, purchased and placed in service new equipment at a cost of $1,000,000 for use in its California plant. The equipment is 5-year property under section 168(e) and is qualified property under section 168(k). *GGG* depreciates its 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent

declining balance method, a 5-year recovery period, and the half-year convention. On June 4, 2024, due to changes in *GGG*'s business circumstances, *GGG* permanently moves the equipment to its plant in Mexico.

(*2*) For 2023, *GGG* is allowed an 80-percent additional first year depreciation deduction of $800,000 (the adjusted depreciable basis of $1,000,000 multiplied by 0.80). In addition, *GGG*'s depreciation deduction allowable in 2023 for the remaining adjusted depreciable basis of $200,000 (the unadjusted depreciable basis of $1,000,000 reduced by the additional first year depreciation deduction of $800,000) is $40,000 (the remaining adjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(*3*) For 2024, the equipment is considered as used predominantly outside the United States pursuant to § 1.48–1(g)(1)(i). As a result of this change in use, the adjusted depreciable basis of $160,000 for the equipment is required to be depreciated under the alternative depreciation system of section 168(g) beginning in 2024. However, the additional first year depreciation deduction of $800,000 allowed for the equipment in 2023 is not redetermined.

(7) *Earnings and profits.* The additional first year depreciation deduction is not allowable for purposes of computing earnings and profits.

(8) *Limitation of amount of depreciation for certain passenger automobiles.* For a passenger automobile as defined in section 280F(d)(5), the limitation under section 280F(a)(1)(A)(i) is increased by $8,000 for qualified property acquired and placed in service by a taxpayer after September 27, 2017.

(9) *Coordination with section 47*—(i) *In general.* If qualified rehabilitation expenditures, as defined in section 47(c)(2) and § 1.48–12(c), incurred by a taxpayer with respect to a qualified rehabilitated building, as defined in section 47(c)(1) and § 1.48–12(b), are qualified property, the taxpayer may claim the rehabilitation credit provided by section 47(a), provided the requirements of section 47 are met—

(A) With respect to the portion of the basis of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures if the taxpayer makes the applicable election under paragraph (f)(1)(i) of this section not to deduct any additional first year depreciation for the class of property that includes the qualified rehabilitation expenditures; or

(B) With respect to the portion of the remaining rehabilitated basis of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures if the taxpayer claims the additional first year depreciation deduction on the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3) but before the reduction in basis for the amount of the rehabilitation credit, of the qualified rehabilitation expenditures; and the taxpayer depreciates the remaining adjusted depreciable basis, as defined in paragraph (e)(2)(i) of this section, of such expenditures using straight line cost recovery in accordance with section 47(c)(2)(B)(i) and § 1.48–12(c)(7)(i). For purposes of this paragraph (g)(9)(i)(B), the remaining rehabilitated basis is equal to the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3) but before the reduction in basis for the amount of the rehabilitation credit, of the qualified rehabilitation expenditures that are qualified property reduced by the additional first year depreciation allowed or allowable, whichever is greater.

(ii) *Example.* The application of this paragraph (g)(9) is illustrated by the following example:

(A) Between February 8, 2023, and June 4, 2023, *JM,* a calendar-year taxpayer, incurred qualified rehabilitation expenditures of $200,000 with respect to a qualified rehabilitated building that is nonresidential real property under section 168(e). These qualified rehabilitation expenditures are qualified property and qualify for the 20-percent rehabilitation credit under section 47(a)(1). *JM*'s basis in the qualified rehabilitated building is zero before incurring the qualified rehabilitation expenditures and *JM* placed the qualified rehabilitated building in service in July 2023. *JM* depreciates its nonresidential real property placed in service in 2023 under the general depreciation system of section 168(a) by using the straight line method of depreciation, a 39-year recovery period, and the mid-month convention. *JM* elected to use the optional depreciation tables to compute the depreciation allowance for its depreciable property placed in service in 2023. Further, for 2023, *JM* did not make any election under paragraph (f) of this section.

(B) Because *JM* did not make any election under paragraph (f) of this section, *JM* is allowed an 80-percent additional first year depreciation deduction of $160,000 for the qualified rehabilitation expenditures for 2023 (the unadjusted depreciable basis of $200,000 (before reduction in basis for the rehabilitation credit) multiplied by 0.80). *JM* also is allowed to claim a rehabilitation credit of $8,000 for the remaining rehabilitated basis of $40,000 (the unadjusted depreciable basis (before reduction in basis for the rehabilitation credit) of $200,000 less the additional first year depreciation deduction of $160,000, multiplied by 0.20 to calculate the rehabilitation credit). For 2023, the ratable share of the rehabilitation credit of $8,000 is $1,600. Further, *JM*'s depreciation deduction for 2023 for the remaining adjusted depreciable basis of $32,000 (the unadjusted depreciable basis (before reduction in basis for the rehabilitation credit) of $200,000 less the additional first year depreciation deduction of $160,000 less the rehabilitation credit of $8,000) is $376.64 (the remaining adjusted depreciable basis of $32,000 multiplied by the depreciation rate of 0.01177 for recovery year 1, placed in service in month 7).

(10) *Coordination with section 514(a)(3).* The additional first year depreciation deduction is not allowable for purposes of section 514(a)(3).

(11) [Reserved]

(h) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (h)(2) and (3) of this section, the rules of this section apply to—

(i) Qualified property under section 168(k)(2) that is placed in service by the taxpayer during or after the taxpayer's taxable year that includes September 24, 2019; and

(ii) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, by the taxpayer during or after the taxpayer's taxable year that includes September 24, 2019.

(2) *Early application of this section.* A taxpayer may choose to apply this section, in its entirety, to—

(i) Qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017; and

(ii) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017.

(3) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the provisions of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for—

(i) Qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019; and

(ii) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ **Par. 10.** Section 1.169–3 is amended by adding a sentence at the end of paragraph (a) and adding three sentences at the end of paragraph (g) to read as follows:

§ 1.169–3 Amortizable basis.

(a) * * * Further, before computing the amortization deduction allowable under section 169, the adjusted basis for purposes of determining gain for a facility that is acquired and placed in service after September 27, 2017, and that is qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)) (the ''Act''), or § 1.168(k)–2, must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k), as amended by the Act.

* * * * *

(g) * * * The last sentence of paragraph (a) of this section applies to a certified pollution control facility that is qualified property under section 168(k)(2) and placed in service by a taxpayer during or after the taxpayer's taxable year that includes September 24, 2019. However, a taxpayer may choose to apply the last sentence of paragraph (a) of this section to a certified pollution control facility that is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019. A taxpayer may rely on the last sentence in paragraph (a) of this section in regulation project REG–104397–18 (2018–41 IRB 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for a certified pollution control facility that is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ **Par. 11.** Section 1.179–4 is amended by revising paragraph (c)(2) to read as follows:

§ 1.179–4 Definitions.

* * * * *

(c) * * *

(2) Property deemed to have been acquired by a new target corporation as a result of a section 338 election (relating to certain stock purchases treated as asset acquisitions) or a section 336(e) election (relating to certain stock dispositions treated as asset transfers) made for a disposition described in § 1.336–2(b)(1) will be considered acquired by purchase.

* * * * *

■ **Par. 12.** Section 1.179–6 is amended by revising the first sentence in paragraph (a) and adding paragraph (e) to read as follows:

§ 1.179–6 Effective/applicability dates.

(a) * * * Except as provided in paragraphs (b), (c), (d), and (e) of this section, the provisions of §§ 1.179–1 through 1.179–5 apply for property placed in service by the taxpayer in taxable years ending after January 25, 1993. * * *

* * * * *

(e) *Application of § 1.179–4(c)(2)*–(1) *In general.* Except as provided in paragraphs (e)(2) and (3) of this section, the provisions of § 1.179–4(c)(2) relating to section 336(e) are applicable on or after September 24, 2019.

(2) *Early application of § 1.179–4(c)(2).* A taxpayer may choose to apply the provisions of § 1.179–4(c)(2) relating to section 336(e) for the taxpayer's taxable years ending on or after September 28, 2017.

(3) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the provisions of § 1.179–4(c)(2) relating to section 336(e) in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the taxpayer's taxable years ending on or after September 28, 2017, and ending before September 24, 2019.

■ **Par. 13.** Section 1.312–15 is amended by adding a sentence at the end of paragraph (a)(1) and adding paragraph (e) to read as follows:

§ 1.312–15 Effect of depreciation on earnings and profits.

(a) * * *

(1) * * * Further, see § 1.168(k)–2(g)(7) with respect to the treatment of the additional first year depreciation deduction allowable under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)), for purposes of computing the earnings and profits of a corporation.

* * * * *

(e) *Applicability date of qualified property.* The last sentence of paragraph (a)(1) of this section applies to the taxpayer's taxable years ending on or after September 24, 2019. However, a taxpayer may choose to apply the last sentence in paragraph (a)(1) of this section for the taxpayer's taxable years ending on or after September 28, 2017. A taxpayer may rely on the last sentence in paragraph (a)(1) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the taxpayer's taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ **Par. 14.** Section 1.704–1 is amended by adding three sentences at the end of paragraph (b)(1)(ii)(*a*) and adding a sentence at the end of paragraph (b)(2)(iv)(*g*)(*3*) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*a*) * * * The last sentence of paragraph (b)(2)(iv)(*g*)(*3*) of this section is applicable for partnership taxable years ending on or after September 24, 2019. However, a partnership may choose to apply the last sentence in paragraph (b)(2)(iv)(*g*)(*3*) of this section for the partnership's taxable years ending on or after September 28, 2017. A partnership may rely on the last sentence in paragraph (b)(2)(iv)(g)(3) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the partnership's taxable years ending on or after September 28, 2017, and ending before the partnership's taxable year that includes September 24, 2019.

* * * * *

(2) * * *

(iv) * * *

(*g*) * * *

(*3*) * * * For purposes of the preceding sentence, additional first year depreciation deduction under section 168(k) is not a reasonable method.

* * * * *

■ **Par. 15.** Section 1.704–3 is amended by adding a sentence at the end of paragraph (d)(2), revising the first sentence in paragraph (f), and adding three sentences at the end of paragraph (f) to read as follows:

§ 1.704–3 Contributed property.

* * * * *

(d) * * *

(2) * * * However, the additional first year depreciation deduction under section 168(k) is not a permissible method for purposes of the preceding sentence and, if a partnership has acquired property in a taxable year for which the additional first year depreciation deduction under section 168(k) has been used of the same type as the contributed property, the portion of the contributed property's book basis that exceeds its adjusted tax basis must be recovered under a reasonable method. See § 1.168(k)–2(b)(3)(iv)(B).

* * * * *

(f) * * * With the exception of paragraphs (a)(1), (a)(8)(ii) and (iii), and (a)(10) and (11) of this section, and of

the last sentence in paragraph (d)(2) of this section, this section applies to property contributed to a partnership and to restatements pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after December 21, 1993. * * * The last sentence of paragraph (d)(2) of this section applies to property contributed to a partnership on or after September 24, 2019. However, a taxpayer may choose to apply the last sentence in paragraph (d)(2) of this section for property contributed to a partnership on or after September 28, 2017. A taxpayer may rely on the last sentence in paragraph (d)(2) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for property contributed to a partnership on or after September 28, 2017, and ending before September 24, 2019.

* * * * *

■ **Par. 16.** Section 1.743–1 is amended by adding three sentences to the end of paragraph (j)(4)(i)(B)(*1*), adding one new sentence at the end of paragraph (j)(4)(i)(B)(*2*), and adding three sentences at the end of paragraph (l) to read as follows:

§ 1.743–1 Optional adjustment to basis of partnership property.

* * * * *

(*j*) * * *

(4) * * *

(i) * * *

(B) * * *

(*1*) * * * The partnership is allowed to deduct the additional first year depreciation under section 168(k) and § 1.168(k)–2 for an increase in the basis of qualified property, as defined in section 168(k) and § 1.168(k)–2, under section 743(b) in a class of property, as defined in § 1.168(k)–2(f)(1)(ii)(A) through (F), even if the partnership made the election under section 168(k)(7) and § 1.168(k)–2(f)(1) not to deduct the additional first year depreciation for all other qualified property of the partnership in the same class of property, as defined in § 1.168(k)–2(f)(1)(ii)(A) through (F), and placed in service in the same taxable year, provided the section 743(b) basis adjustment meets all requirements of section 168(k) and § 1.168(k)–2. Further, the partnership may make an election under section 168(k)(7) and § 1.168(k)–2(f)(1) not to deduct the additional first year depreciation for an increase in the basis of qualified property, as defined in section 168(k) and § 1.168(k)–2, under section 743(b) in a class of property, as defined in § 1.168(k)–2(f)(1)(ii)(A) through (F), and placed in service in the same taxable year, even if the partnership does not make that election for all other qualified property of the partnership in the same class of property, as defined in § 1.168(k)–2(f)(1)(ii)(A) through (F), and placed in service in the same taxable year. In this case, the section 743(b) basis adjustment must be recovered under a reasonable method.

(*2*) * * * The first sentence of this paragraph (j)(4)(i)(B)(*2*) does not apply to a partnership that is not a publicly traded partnership within the meaning of section 7704(b) with respect to any basis increase under section 743(b) that is recovered using the additional first year depreciation deduction under section 168(k).

* * * * *

(l) * * * The last three sentences of paragraph (j)(4)(i)(B)(*1*) of this section, and the last sentence of paragraph (j)(4)(i)(B)(*2*) of this section, apply to transfers of partnership interests that occur on or after September 24, 2019. However, a partnership may choose to apply the last three sentences in paragraph (j)(4)(i)(B)(1) of this section, and the last sentence of paragraph (j)(4)(i)(B)(2) of this section, for transfers of partnership interests that occur on or after September 28, 2017.

A partnership may rely on the last three sentences in paragraph (j)(4)(i)(B)(1) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for transfers of partnership interests that occur on or after September 28, 2017, and ending before September 24, 2019.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: September 11, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–20036 Filed 9–17–19; 4:15 pm]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 185 September 24, 2019

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1
Additional First Year Depreciation Deduction; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106808–19]

RIN 1545–BP32

Additional First Year Depreciation Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the additional first year depreciation deduction under section 168(k) of the Internal Revenue Code (Code). These proposed regulations reflect and clarify the increase of the benefit and expansion of the universe of qualifying property, particularly to certain classes of used property, made by the Tax Cuts and Jobs Act. These proposed regulations generally affect taxpayers who deduct depreciation for qualified property acquired and placed in service after September 27, 2017. This document also provides notice of a public hearing on these proposed regulations. Finally, this document withdraws a portion of the proposed regulations published on August 8, 2018.

DATES: Written or electronic comments must be received by November 25, 2019. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, November 13, 2019, at 10 a.m. must be received by October 23, 2019. If no outlines of topics are received by October 23, 2019, the public hearing will be cancelled.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–106808–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–106808–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106808–19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth R. Binder or Kathleen Reed, (202) 317–7005; concerning submissions of comments and outlines of topics, the hearing, or to be placed on the building access list to attend the hearing, Regina L. Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 168(k) of the Code. Section 168(k) was added to the Code by section 101 of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21). Section 168(k) allows an additional first year depreciation deduction in the placed-in-service year of qualified property. Subsequent amendments to section 168(k) increased the percentage of the additional first year depreciation deduction from 30 percent to 50 percent (to 100 percent for property acquired and placed in service after September 8, 2010, and generally before January 1, 2012), extended the placed-in-service date generally through December 31, 2019, and made other changes.

On December 22, 2017, section 168(k) and related provisions were amended by sections 12001(b)(13), 13201, and 13204 of the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054) (the ''Act'') to provide further changes to the additional first year depreciation deduction. Unless otherwise indicated, all references to section 168(k) hereinafter are references to section 168(k) as amended by the Act.

The Treasury Department and the IRS published proposed regulations interpreting section 168(k) on August 8, 2018 (the August Proposed Regulations) (83 FR 39292). This notice of proposed rulemaking withdraws § 1.168(k)–2(b)(3)(iii)(B)(*3*)(*i*) through (*iii*) and *Examples 19* through *22* in § 1.168(k)–2(b)(3)(vi) of the August Proposed Regulations, and proposes in their place § 1.168(k)–2(b)(3)(v)(A) through (E) and *Examples 26* through *30* in § 1.168(k)–2(b)(3)(vii)(Z) through (DD), respectively. This notice of proposed rulemaking also withdraws § 1.168(k)–2(b)(3)(iii)(C) and *Example 18* in § 1.168(k)–2(b)(3)(vi) of the August Proposed Regulations, and proposes in their place § 1.168(k)–2(b)(3)(iii)(C) and *Examples 31* through *34* in § 1.168(k)–2(b)(3)(vii)(EE) through (HH), respectively. The August Proposed Regulations, with modifications in response to comments and testimony received, were adopted as final regulations, issued concurrently with these proposed regulations and published elsewhere in this issue of the **Federal Register** (the Final Regulations).

Explanation of Provisions

These proposed regulations propose amendments to the Final Regulations to provide taxpayers with guidance that is not addressed in the Final Regulations regarding the application of section 168(k). Specifically, these proposed regulations contain amendments to § 1.168(k)–2(b)(2), (3), and (5) of the Final Regulations, each of which provides rules relevant to the definition of qualified property for purposes of the additional first year depreciation deduction under section 168(k). These proposed regulations also amend § 1.168(k)–2(b)(3)(v) by adding special rules for consolidated groups. Additionally, these proposed regulations amend § 1.168(k)–2(c) by adding rules regarding components acquired or self-constructed after September 27, 2017, for larger self-constructed property for which manufacture, construction, or production began before September 28, 2017. Further, these proposed regulations amend § 1.168(k)–2(g)(11) by adding rules regarding the application of the mid-quarter convention, as determined under section 168(d). These additional proposed rules respond to comments received on the August Proposed Regulations as well as address certain issues identified after additional study. This Explanation of Provisions section describes each of the proposed rules contained in this document.

1. Property Excluded From the Additional First Year Depreciation Deduction by Section 168(k)(9)

Section 1.168(k)–2(b)(2)(ii)(F) of the Final Regulations provides that qualified property does not include any property that is primarily used in a trade or business described in section 163(j)(7)(A)(iv). Section 1.168(k)–2(b)(2)(ii)(G) of the Final Regulations provides that qualified property does not include any property used in a trade or business that has had floor plan financing indebtedness, as defined in section 163(j)(9), if the floor plan financing interest, as defined in section 163(j)(9), related to such indebtedness is taken into account under section 163(j)(1)(C) for the taxable year. Sections 1.168(k)–2(b)(2)(ii)(F) and (G) of the Final Regulations apply to property

placed in service by the taxpayer in a taxable year beginning after December 31, 2017.

A. Lessor Leasing Property to a Trade or Business Described in Section 168(k)(9)

Several commenters to the August Proposed Regulations requested guidance on whether a taxpayer that leases property to a trade or business described in section 168(k)(9) is eligible to claim the additional first year depreciation for the property, and they recommend allowing the additional first year depreciation deduction (assuming all other requirements are met). The Treasury Department and the IRS agree with the commenters' recommendation, provided the lessor is not described in section 168(k)(9)(A) or (B). Accordingly, these proposed regulations amend § 1.168(k)–2(b)(2)(ii)(F) and (G) to provide that such exclusion from the additional first year depreciation deduction does not apply to lessors of property to a trade or business described in section 168(k)(9) so long as the lessor is not described in such Code section.

B. Property Described in Section 168(k)(9)(A)

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned how to determine whether property is primarily used in a trade or business described in section 168(k)(9)(A). For depreciation purposes, § 1.167(a)–11(b)(4)(iii)(*b*) and (e)(3)(iii) classify property according to its primary use. The Treasury Department and the IRS believe that the same standard should apply for purposes of section 168(k)(9)(A). Accordingly, these proposed regulations amend § 1.168(k)–2(b)(2)(ii)(F) to provide that for purposes of section 168(k)(9)(A) and § 1.168(k)–2(b)(2)(ii)(F), the term *primarily used* has the same meaning as that term is used in § 1.167(a)–11(b)(4)(iii)(*b*) and (e)(3)(iii) for classifying property.

C. Property Described in Section 168(k)(9)(B)

A commenter to the August Proposed Regulations requested guidance on when floor plan financing is ''taken into account'' for purposes of section 168(k)(9)(B). The commenter believed that section 168(k)(9)(B) does not apply when a taxpayer does not deduct interest in excess of the sum of the amounts calculated under section 163(j)(1)(A) and (B). The Treasury Department and the IRS do not believe that section 163(j) is optional. However, the Treasury Department and the IRS agree that, for purposes of section 168(k)(9)(B), floor plan financing interest is not taken into account by a trade or business that has had floor plan financing indebtedness if the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year equals or exceeds the business interest, as defined in section 163(j)(5) (including carryforwards of disallowed business interest under section 163(j)(2)), which includes floor plan financing interest of the trade or business, for the taxable year. Accordingly, these proposed regulations amend § 1.168(k)–2(b)(2)(ii)(G) to provide that solely for purposes of section 168(k)(9)(B) and § 1.168(k)–2(b)(2)(ii)(G), floor plan financing interest is not taken into account for the taxable year by a trade or business that has had floor plan financing indebtedness if the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year equals or exceeds the business interest, as defined in section 163(j)(5), for the taxable year.

If floor plan financing interest is taken into account for a taxable year by a trade or business that has had floor plan financing indebtedness, the Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether the additional first year depreciation deduction is not allowed for property placed in service by that trade or business in any subsequent taxable year. In such a case, the additional first year depreciation deduction for subsequent taxable years would not be allowed, even if the amount of the floor plan financing interest taken into account for the current taxable year is de minimis. For this reason, the Treasury Department and the IRS have decided that, for purposes of section 168(k)(9)(B), the determination of whether a trade or business that has had floor plan financing indebtedness has taken into account floor plan financing interest is made annually. Accordingly, these proposed regulations amend § 1.168(k)–2(b)(2)(ii)(G) to provide that if the trade or business has taken floor plan financing interest into account pursuant to § 1.168(k)–2(b)(2)(ii)(G) for a taxable year, § 1.168(k)–2(b)(2)(ii)(G) applies to any property placed in service by that trade or business in that taxable year.

2. Used Property

A. Depreciable Interest

As a result of comments received on the August Proposed Regulations regarding sale-leaseback transactions, the Treasury Department and the IRS have determined that it is appropriate to provide an exception to the depreciable interest rule in the Final Regulations when the taxpayer disposes of property within a short period of time after the taxpayer placed such property in service. Accordingly, these proposed regulations amend § 1.168(k)–2 by adding paragraph (b)(3)(iii)(B)(*4*) to provide that if (a) a taxpayer acquires and places in service property, (b) the taxpayer or a predecessor did not previously have a depreciable interest in the property, (c) the taxpayer disposes of the property to an unrelated party within 90 calendar days after the date the property was originally placed in service by the taxpayer (without taking into account the applicable convention), and (d) the taxpayer reacquires and again places in service the property, the taxpayer's depreciable interest in the property during that 90-day period is not taken into account for determining whether the property was used by the taxpayer or a predecessor at any time prior to its reacquisition by the taxpayer. The 90-day period is consistent with the period of time specified in section 168(k)(2)(E)(iii). To prevent the churning of assets, this proposed rule does not apply if the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property. The proposed regulations also define an *unrelated party* as meaning a person not described in section 179(d)(2)(A) or (B), and § 1.179–4(c)(1)(ii) or (iii), or (c)(2).

B. Application to Partnerships

One commenter to the August Proposed Regulations asked for clarification regarding a partner's depreciable interest in property held by a partnership. The Treasury Department and the IRS clarify in these proposed regulations the extent to which a person is treated as having a depreciable interest in property by virtue of being a partner in a partnership that holds the property.

Under the August Proposed Regulations, each partner is treated as having owned and used the partner's proportionate share of partnership property for purposes of determining whether a section 743(b) basis adjustment meets the used property acquisition requirements of section 168(k)(2)(E)(ii). Consistent with this approach, a person should be considered as having a depreciable interest in a portion of property if the person is a partner in the partnership while the partnership owns the property. The same rule should apply whether a current partner purchases property directly from the partnership or a person acquires property that the

partnership previously owned while the person was a partner.

These proposed regulations amend § 1.168(k)–2 by adding paragraph (b)(3)(iii)(B)(*5*) to provide that a partner is considered to have a depreciable interest in a portion of property equal to the partner's total share of depreciation deductions with respect to the property as a percentage of the total depreciation deductions allocated to all partners with respect to that property during the current calendar year and five calendar years immediately prior to the partnership's current year. For this purpose, only the portion of the current calendar year and previous 5-year period during which the partnership owned the property and the person was a partner is taken into account. The Treasury Department and the IRS believe that this provides an accurate reflection of the partner's prior depreciable interest in the property.

C. Series of Related Transactions

Section 1.168(k)–2(b)(3)(iii)(C) of the August Proposed Regulations provides that, in the case of a series of related transactions, property is treated as directly transferred from the original transferor to the ultimate transferee, and the relationship between the original transferor and the ultimate transferee is tested immediately after the last transaction in the series (related transactions rule).

A commenter requested clarification on whether the related transactions rule applies only to test relatedness under section 179(d)(2)(A) or whether this rule applies more broadly for purposes of all of the rules under section 168(k)(2)(E)(ii). For example, if, in a series of related transactions, A transfers property to B in exchange for cash and B transfers property to C in a nonrecognition transaction in exchange for stock or other property, the commenter states that it is not clear whether the related transactions rule is intended to test only the relatedness between A and C under section 179(d)(2)(A). If this rule is intended to apply more broadly, the commenter states that it is not clear whether the rule also determines the basis of the property or whether B's prior use of the property is relevant.

The commenter also requested clarification on whether the related transactions rule applies to transactions described in § 1.168(k)–2(f)(1)(iii) of the August Proposed Regulations (qualified property that is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property is placed in service by the transferor). For example, if a person purchased qualified property and contributed it to a partnership in a transaction described in section 721 in the same taxable year, the commenter questioned whether the related transactions rule would treat the transfer as occurring directly between the original seller and the partnership, assuming that the initial acquisition of the property by the person and the person's transfer of such property to the partnership are part of a series of related transactions.

The Treasury Department and the IRS intended to apply the related transactions rule only for purposes of testing the relatedness of the parties under section 179(d)(2)(A) or (B) in a series of related transactions. The related transactions rule was not intended to test relatedness between the parties involved in a transaction described in section 168(i)(7).

These proposed regulations amend § 1.168(k)–2 by revising paragraph (b)(3)(iii)(C) to provide rules for a series of related transactions (proposed related transactions rule). The proposed related transactions rule generally provides that the relationship between the parties under section 179(d)(2)(A) or (B) in a series of related transactions is tested immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series.

The Treasury Department and the IRS believe that the relationship between the parties in a series of related transactions should not be tested in certain cases. Accordingly, the proposed related transactions rule provides that a party in the series that is neither the original transferor nor the ultimate transferee is disregarded in applying the relatedness test if the party placed in service and disposed of the property in the party's same taxable year or did not place the property in service. The proposed related transactions rule also provides that any step in a series of related transactions that is neither the original step nor the ultimate step is disregarded for purposes of testing relatedness if the step is a transaction described in § 1.168(k)–2(g)(1)(iii) (that is, a transfer of property in a transaction described in section 168(i)(7) in the same taxable year that the property is placed in service by the transferor) (§ 1.168(k)–2(f)(1)(iii) of the August Proposed Regulations). Finally, these proposed regulations provide that the proposed related transactions rule does not apply when all transactions in the series are described in § 1.168(k)–2(g)(1)(iii) or to a syndication transaction described in § 1.168(k)–2(b)(3)(vi).

The commenter also requested clarification on the application of the related transactions rule in transactions involving sections 179(d)(2)(B) and 1563. For example, if there is a series of related transactions involving a sale of qualified property between two corporations that also become members of the same controlled group, section 179(d)(2)(B) would require testing whether the two corporations are component members of the same controlled group for purposes of section 1563. Under section 1563 and the regulations issued thereunder, a corporation is generally a component member of a controlled group if it is a member of the controlled group for at least one half of the days in the relevant taxable year. See § 1.1563–1(b). If the corporations both become members of the controlled group pursuant to a series of related transactions ending in the first half of the taxable year, the corporations should be component members for purposes of section 179(d)(2)(B). However, if the series of related transactions ends in the second half of the taxable year, the commenter questioned whether the related transactions rule applies to treat the two corporations as non-members prior to the end of the series of related transactions, in which case the purchaser of the qualified property may be eligible for immediate expensing (setting aside the potential application of section 179(d)(2)(A)).

The Treasury Department and the IRS also received comments concerning the application of section 179(d)(2)(B) to *Example 21* of § 1.168(k)–2(b)(3)(vi) in the August Proposed Regulations. In response, the Treasury Department and the IRS have proposed new rules covering the application of section 179(d)(2)(B) to acquisitions of depreciable property between members of the same consolidated group, as explained in the following section of this Explanation of Provisions.

D. Application to Members of a Consolidated Group

i. Overview of Used Property Acquisition Requirements

Section 1.168(k)–2(b)(3)(iii)(A) of the August Proposed Regulations and the Final Regulations lists the following three requirements that must be satisfied in order for acquisitions of used property to qualify for the additional first year depreciation deduction (used property acquisition requirements). First, the property must not have been used by the taxpayer or

a predecessor at any time prior to the acquisition (No Prior Use Requirement). Second, the acquisition of the property must satisfy § 1.168(k)–2(b)(3)(iii)(A)(*2*) of the August Proposed Regulations and the Final Regulations, which requires that (a) the property was not acquired from a related person (within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii)) (Related Party Requirement), (b) the property was not acquired by one component member of a controlled group from another component member of the same controlled group (Component Member Requirement), and (c) the basis of the property in the hands of the acquirer is not determined, in whole or in part, by reference to the adjusted basis in the hands of the transferor. Third, the acquisition of the property must meet the requirements of section 179(d)(3) and § 1.179–4(d) (concerning like-kind exchanges and involuntary conversions).

ii. Application of the Used Property Acquisition Requirements to Consolidated Groups

Section 1.168(k)–2(b)(3)(iii)(B)(*3*) of the August Proposed Regulations provides special rules applying the No Prior Use Requirement to consolidated groups. Section 1.168(k)–2(b)(3)(iii)(B)(*3*)(*i*) of the August Proposed Regulations treats a member that acquires depreciable property as having a prior depreciable interest in such property if the consolidated group had a depreciable interest at any time prior to the member's acquisition of the property (Group Prior Use Rule). For these purposes, a consolidated group is treated as having a depreciable interest in property during the period in which any current or previous member of the consolidated group had a depreciable interest in the property while a member of the consolidated group. Section 1.168(k)–2(b)(3)(iii)(B)(*3*)(*ii*) of the August Proposed Regulations provides that, for purposes of applying the No Prior Use Requirement, a member is treated as having a depreciable interest in property prior to the time of its acquisition if, as part of a series of related transactions, the property is acquired by a member of a consolidated group and a corporation that had a depreciable interest in the property becomes a member of that consolidated group (Stock and Asset Acquisition Rule). For purposes of applying these two rules, § 1.168(k)–2(b)(3)(iii)(B)(*3*)(*iii*) of the August Proposed Regulations provides that, if the acquisition of property is part of a series of related transactions that also includes one or more transactions in which the transferee of the property ceases to be a member of a consolidated group, then whether the taxpayer is a member of a consolidated group is tested immediately after the last transaction in the series.

Commenters have asked for clarification regarding the application of the Group Prior Use Rule to situations in which a consolidated group terminates as a result of all of its members joining another consolidated group, including as a result of a reverse acquisition as defined in § 1.1502–75(d)(3). By its terms, the Group Prior Use Rule applies only to the acquisition of property by a member of a consolidated group. Thus, the Treasury Department and the IRS have determined that this rule should apply only as long as the consolidated group remains in existence, as determined under § 1.1502–75(d) and other applicable law.

Several commenters also have requested confirmation that a member of a consolidated group that is treated as having a depreciable interest in property solely as a result of the application of the Group Prior Use Rule does not continue to be treated under that rule as having a depreciable interest in the property after the member leaves the consolidated group (that is, deconsolidates). Commenters have noted that, if a former member continues to be treated as having a depreciable interest in the property after deconsolidation, the Stock and Asset Acquisition Rule could apply whenever one consolidated group acquires from another consolidated group both qualified property and the stock of a member of that second consolidated group (the target member), even if the target member had no actual depreciable interest in the qualified property (as opposed to a depreciable interest arising solely from the application of the Group Prior Use Rule).

The Treasury Department and the IRS did not intend the Group Prior Use Rule to continue to apply to a member of a consolidated group after the member leaves that consolidated group. By its terms, the Group Prior Use Rule applies only as long as a corporation remains a member of a consolidated group. Therefore, when a member deconsolidates, it does not continue to be treated under that rule as having a depreciable interest in the property. Accordingly, a departing member does not continue to have a depreciable interest in the property unless it actually owned such property.

Further, the Treasury Department and the IRS intended the Stock and Asset Acquisition Rule to apply only when the member whose stock is acquired had an actual depreciable interest in the qualified property that also is acquired as part of the same series of related transactions. Accordingly, these proposed regulations clarify that the phrase ''a corporation that had a depreciable interest in the property'' in the Stock and Asset Acquisition Rule refers only to a corporation that has such an interest without regard to the application of the Group Prior Use Rule.

iii. Sales of Property Between Members of the Same Consolidated Group (*Example 21* in § 1.168(k)–2(b)(3)(vi) of the August Proposed Regulations)

The Treasury Department and the IRS have received comments regarding the interaction of the August Proposed Regulations for consolidated groups with the statutorily prescribed Related Party Requirement and Component Member Requirement, as illustrated by *Example 21* in § 1.168(k)–2(b)(3)(vi) of the August Proposed Regulations (Former *Example 21*). Generally, a corporation qualifies as a component member of a controlled group if the corporation was a member of such controlled group during the majority of the corporation's taxable year. See section 1563(b). In addition, the taxable year of a member of a consolidated group ends for all Federal income tax purposes at the end of the day on which its status as a member changes. See § 1.1502–76(b). Therefore, commenters have questioned how the August Proposed Regulations for consolidated groups could apply to treat the Component Member Requirement as satisfied if a member acquires depreciable property from another member of the same consolidated group (selling group) and, as part of an integrated plan that includes the acquisition, the acquiring member deconsolidates from the selling group.

In Former *Example 21,* Parent is the common parent of a consolidated group that includes F Corporation (F) and G Corporation (G). G has a depreciable interest in certain equipment (Equipment #3). As part of a series of related transactions, (1) G sells Equipment #3 to F, and then (2) Parent sells all of its F stock to X Corporation (X), the common parent of an unrelated consolidated group. Based on those facts, Former *Example 21* concludes that the Group Prior Use Rule does not apply to treat F as previously having a depreciable interest in Equipment #3 because F's status as a member of the Parent consolidated group is tested immediately after the last transaction in the related series, at which point F has ceased to be a member of the Parent

consolidated group. Former *Example 21* relies on the same analysis to conclude that the Related Party Requirement and Component Member Requirement are also satisfied, and that, assuming all other relevant requirements are satisfied, F would be eligible to claim the additional first year depreciation deduction for Equipment #3.

Commenters also have requested guidance concerning the amount, location, and timing of the additional first year depreciation deduction in transactions similar to the transaction described in Former *Example 21.* In particular, commenters have asked whether the deduction should be reported on the consolidated return of the Parent consolidated group (that is, the selling group) or on the consolidated return of the X consolidated group (that is, the acquiring group), and whether the deduction would be limited by section 168(i)(7). Commenters have noted that, if F were treated as placing Equipment #3 in service while a member of the Parent consolidated group, the deduction might be reported on the consolidated return of the Parent group. In addition, because the transaction between F and G is an intercompany transaction, section 168(i)(7)(B)(ii) might apply to limit the amount of the deduction to an amount equaling G's gain from the transaction. One commenter further noted that, even if section 168(i)(7)(B)(ii) did not apply to the transaction, any amount of the deduction in excess of G's gain nevertheless might be disallowed under § 1.1502–13 as a noncapital, nondeductible amount.

Commenters have asserted that these potential results regarding the location (the Parent consolidated group) and the amount (an amount not in excess of G's gain) of the deduction would be improper based on the legislative history of section 168(k), which indicates that Congress intended to stimulate economic activity and promote capital investment. See H. Rept. 115–409, at 232 (2017) (''The Committee believes that providing full expensing for certain business assets lowers the cost of capital for tangible property used in a trade or business. With lower costs of capital, the Committee believes that businesses will be encouraged to purchase equipment and other assets, which will promote capital investment and provide economic growth.''); H. Rept. 107–251, at 20 (2001) (''The Committee believes that allowing additional first-year depreciation will accelerate purchases of equipment, promote capital investment, modernization, and growth, and will help to spur an economic recovery.'').

The Treasury Department and the IRS agree with commenters that, in situations similar to Former *Example 21,* the additional first year depreciation deduction should be reported on the consolidated return of the acquiring group rather than the selling group. With respect to Former *Example 21,* the Treasury Department and the IRS note that F made the economic outlay for Equipment #3, which was included in the amount paid by X for F's stock. Additionally, F's acquisition of Equipment #3 and Parent's sale of the F stock to X occur as part of the same series of related transactions; thus, at the time of F's acquisition of Equipment #3, the parties expected F to deconsolidate from the Parent consolidated group, and the substance of the transaction is the same as if F first became a member of the X consolidated group and then acquired Equipment #3. Furthermore, F's purchase of Equipment #3 is the type of activity that section 168(k) was intended to encourage—if F had become a member of the X consolidated group before purchasing Equipment #3, it is clear that F, as a member of the X consolidated group, would be allowed the deduction in its full amount.

Moreover, in circumstances similar to Former *Example 21,* the statute and regulations disregard a transitory acquisition of depreciable property when the property is acquired and disposed of within 90 calendar days. See section 168(k)(2)(E)(iii) and § 1.168(k)–2(b)(3)(vi) and (b)(4)(iv) (concerning syndication transactions) of the Final Regulations; see also § 1.168(k)–2(b)(3)(iii)(B)(*4*) of these proposed regulations (concerning de minimis uses of property).

To ensure that the additional first year depreciation deduction is reported on the acquiring group's consolidated return in circumstances like those described in Former *Example 21,* § 1.168(k)–2(b)(3)(v)(C) of these proposed regulations (Proposed Consolidated Acquisition Rule) provides that, if a member of a consolidated group acquires depreciable property from another member of the same consolidated group (that is, the selling group) in a taxable transaction, and if the transferee member ceases to be a member of the selling group in a series of related transactions that includes the property acquisition within 90 calendar days of the date of the property acquisition, then (1) the disposition and acquisition of the property are treated as occurring one day after the date on which the transferee member ceases to be a member of the selling group (Deconsolidation Date) for all Federal income tax purposes, and (2) the transferee member is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of claiming depreciation or the investment credit.

The Proposed Consolidated Acquisition Rule would ensure that the used property acquisition requirements, including the No Prior Use Requirement and the Related Party Requirement, are satisfied in cases similar to Former *Example 21.* With respect to the No Prior Use Requirement, because the proposed rule treats the transferee member as acquiring the property after it ceases to be a member of the selling group, the transferee member is not attributed the selling group's usage of the property under the Group Prior Use Rule. The Related Party Requirement and Component Member Requirements would be tested using the same analysis.

The Proposed Consolidated Acquisition Rule applies the same treatment for purposes of determining whether the transaction is covered by section 168(i)(7)(B)(ii). Therefore, because the acquisition is not treated as occurring between members of the same consolidated group, if the transferee member is eligible to claim the additional first year depreciation deduction, then section 168(i)(7)(B)(ii) will not apply to limit the amount of the deduction.

In order to allow the deduction to the appropriate party, the Proposed Consolidated Acquisition Rule also provides that the transferee member is treated as placing the property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§ 1.46–3(d) and 1.167(a)–11(e)(1). In so providing, the Treasury Department and the IRS intend to prohibit the transferee member from claiming the additional first year depreciation deduction on the selling group's consolidated return. The rule also prevents the transferee member from claiming regular depreciation or the investment credit with respect to the acquired property during the period after the transferee member acquires the property but before it leaves the selling group. *Example 28* (that is, revised Former *Example 21*) in proposed § 1.168(k)–2(b)(3)(vii)(BB) illustrates the application of the Proposed Consolidated Acquisition Rule to the acquisition of depreciable property by one member of a consolidated group from another member of the same consolidated group.

iv. Deemed Acquisitions of Depreciable Property Between Members of the Same Consolidated Group

Commenters have noted that issues similar to those in Former *Example 21* also arise in the context of deemed acquisitions of property within a consolidated group resulting from an election under either section 338(h)(10) or section 336(e). The Treasury Department and the IRS have determined that deemed acquisitions of property should be treated the same as actual acquisitions of property. Thus, § 1.168(k)–2(b)(3)(v)(D) of these proposed regulations provides a rule (Proposed Consolidated Deemed Acquisition Rule) that applies if (1) the transferee member acquires the stock of another member of the same group that holds depreciable property (target) in a qualified stock purchase or a qualified stock disposition for which a section 338 election or a section 336(e) election for a disposition described in § 1.336–2(b)(1), respectively, is made, and (2) the transferee member and target cease to be members of the consolidated group within 90 calendar days of the acquisition date (within the meaning of § 1.338–2(c)(1)) or disposition date (within the meaning of § 1.336–1(b)(8)) as part of the same series of related transactions that includes the acquisition. The Proposed Consolidated Deemed Acquisition Rule does not apply to qualified stock dispositions described in section 355(d)(2) or (e)(2) because the rules applicable to such dispositions do not treat a new target corporation as acquiring assets from an unrelated person. See § 1.336–2(b)(2).

If the Proposed Consolidated Deemed Acquisition Rule applies, then (a) the acquisition date or disposition date, as applicable, is treated as the date that is one day after the date on which the transferee member and target cease to be members of the consolidated group (Deconsolidation Date) for all Federal income tax purposes, and (b) new target is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§ 1.46–3(d) and 1.167(a)–11(e)(1).

Without the proposed rule, new target might be treated as having a depreciable interest in the assets new target is deemed to acquire by virtue of the Group Prior Use Rule because old target, a member of the same consolidated group, had a depreciable interest in those assets. If applicable, the proposed rule prevents new target from being treated as having a depreciable interest in the assets by moving the acquisition date or disposition date to the day after the Deconsolidation Date. New target is therefore a member of the acquiring group at the time it is deemed to acquire the assets. Similar to the Proposed Consolidated Acquisition Rule, this deemed acquisition rule also provides that the transferee member is treated as placing the property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§ 1.46–3(d) and 1.167(a)–11(e)(1). *Example 29* in proposed § 1.168(k)–2(b)(3)(vii)(CC) illustrates the application of the rule to the deemed acquisition of depreciable property by one member of a consolidated group from another member of the same consolidated group pursuant to a section 338(h)(10) election.

Neither the Proposed Consolidated Acquisition Rule nor the Proposed Consolidated Deemed Acquisition Rule applies if the property that is acquired (or deemed acquired) is subsequently disposed of by the transferee member or new target, respectively, in a transaction that is part of the same series of related transactions as the actual or deemed acquisition of the property. For special rules governing the transfer of property in a series of related transactions, see § 1.168(k)–2(b)(3)(iii)(C) of these proposed regulations. For special rules governing property placed in service and disposed of in the same taxable year, see § 1.168(k)–2(g)(1).

3. Acquisition of Property

A. Definition of Binding Contract for Acquisition of Entity

The Treasury Department and the IRS are aware that taxpayers and practitioners are having difficulty applying the binding contract rules in the August Proposed Regulations to transactions involving the acquisition of an entity. Because those rules were written to apply to the purchase of an asset instead of an entity, the Treasury Department and the IRS recognize that a binding contract rule for an acquisition of a trade or business, or an entity, is needed. Accordingly, these proposed regulations amend § 1.168(k)–2 by adding paragraph (b)(5)(iii)(G) to provide that a contract to acquire all or substantially all of the assets of a trade or business or to acquire an entity (for example, a corporation, a partnership, or a limited liability company) is binding if it is enforceable under State law against the parties to the contract. The presence of a condition outside the control of the parties, including, for example, regulatory agency approval, will not prevent the contract from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, does not prevent the contract from being a binding contract. This proposed rule also applies to a contract for the sale of the stock of a corporation that is treated as an asset sale as a result of an election under section 338.

B. Property Not Acquired Pursuant to a Written Binding Contract

The Treasury Department and the IRS also are aware that, in some cases, a taxpayer may acquire property that was not pursuant to a written binding contract. If such property is not self-constructed property, a qualified film, television, or live theatrical production, or a specified plant, these proposed regulations amend § 1.168(k)–2 by adding paragraph (b)(5)(v) to provide that the acquisition date of property acquired pursuant to a contract that is not a written binding contract is the date on which the taxpayer paid or incurred more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities such as planning and designing, securing financing, exploring, or researching. This 10-percent proposed rule is the same as the safe harbor provided in § 1.168(k)–2(b)(5)(iv)(B)(*2*) of the Final Regulations for determining the acquisition date of self-constructed property. This proposed rule does not apply to the acquisition of a trade or business, or an entity. The Treasury Department and the IRS request comments on this proposed rule.

4. Components

Multiple commenters to the August Proposed Regulations requested an election similar to the one provided in section 3.02(2)(b) of Rev. Proc. 2011–26 (2011–16 I.R.B. 664 (April 18, 2011)) for components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which the manufacture, construction, or production of the larger self-constructed property begins before September 28, 2017.

The Treasury Department and the IRS have determined that it is appropriate to allow a taxpayer to elect to treat one or more components acquired or self-constructed after September 27, 2017, of certain larger self-constructed property as being eligible for the additional first year depreciation deduction under section 168(k). The larger self-constructed property must be qualified property under section 168(k)(2), as in effect before the enactment of the Act,

for which the manufacture, construction, or production began before September 28, 2017. However, the election is not available for components of larger self-constructed property when such property is not eligible for any additional first year depreciation deduction under section 168(k) (for example, property described in section 168(k)(9) and placed in service by the taxpayer in any taxable year beginning after December 31, 2017, or qualified improvement property placed in service by the taxpayer after December 31, 2017). These proposed regulations amend § 1.168(k)–2 by adding paragraph (c) to provide for this election. These proposed regulations also provide rules regarding installation costs and the determination of the basis attributable to the manufacture, construction, or production before January 1, 2020, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C). Additionally, these proposed regulations provide the time and manner of making the election, and examples to illustrate the proposed rules.

These proposed regulations also amend § 1.168(k)–2(e)(1)(iii) to provide rules regarding the determination of the basis attributable to the manufacture, construction, or production before January 1, 2027, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C).

Commenters to the August Proposed Regulations requested guidance on whether property acquired before September 28, 2017, by a trade or business described in section 168(k)(9)(A) is eligible for the additional first year depreciation deduction provided by section 168(k) as in effect before the enactment of the Act. Another commenter requested clarification on whether any of the costs of property acquired before September 28, 2017, pursuant to a written binding contract, and placed in service after 2017 are eligible for the additional first year depreciation deduction under section 168(k). Property acquired before September 28, 2017, is eligible for the additional first year depreciation deduction provided by section 168(k) as in effect before the enactment of the Act provided such property is qualified property under section 168(k) as in effect before the enactment of the Act. However, if the taxpayer makes the election in proposed § 1.168(k)–2(c), as described above, for components acquired or self-constructed after September 27, 2017, those components are eligible for the additional first year depreciation deduction under section 168(k). Such election, however, does not apply to, among other things, property described in section 168(k)(9) and placed in service in a taxable year beginning after December 31, 2017.

5. Special Rules: Mid-Quarter Convention

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether the unadjusted depreciable basis of qualified property for which the additional first year depreciation deduction is claimed is taken into account in determining whether the mid-quarter convention under section 168(d) and § 1.168(d)–1 applies for the taxable year. The Treasury Department and the IRS agree that a rule is necessary and that it should be consistent with the definition of depreciable basis in § 1.168(d)–1(b)(4). Accordingly, the proposed regulations amend § 1.168(k)–2 by adding paragraph (g)(11) to provide that in determining whether the mid-quarter convention applies for a taxable year under section 168(d)(3) and § 1.168(d)–1, the depreciable basis, as defined in § 1.168(d)–1(b)(4), for the taxable year the qualified property is placed in service by the taxpayer, is not reduced by the allowed or allowable additional first year depreciation deduction for that taxable year.

Proposed Applicability Date

These regulations are proposed to apply to qualified property placed in service or planted or grafted, as applicable, by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. These regulations also are proposed to apply to components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in effect before the enactment of the Act and placed in service by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Pending the issuance of final regulations, a taxpayer may choose to rely on these proposed regulations, in their entirety, to qualified property acquired and placed in service or planted or grafted, as applicable, after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017. Pending the issuance of final regulations, a taxpayer also may choose to rely on these proposed regulations, in their entirety, to components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in effect before the enactment of the Act and placed in service by the taxpayer during taxable years ending on or after September 28, 2017. If a taxpayer chooses to rely on these proposed regulations, the taxpayer must consistently apply all rules of these proposed regulations.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these proposed regulations as significant under section 1(b) of the MOA. Accordingly, the OMB has reviewed these proposed regulations.

A. Background

i. Bonus Depreciation Generally

In general, section 168(k) allows taxpayers to immediately deduct some portion of investment in certain types of physical capital, what is colloquially known as bonus depreciation. The Act changed section 168(k) in several ways. Arguably most substantially, the Act increased the bonus percentage as it applies to property generally acquired after September 27, 2017, which accelerates depreciation deductions. The Act also removed the ''original use'' requirement, meaning that taxpayers

could claim bonus depreciation on ''used'' property. The Act made several other modest changes to the operation of section 168(k). First, it excluded from the definition of qualified property any property used by rate-regulated utilities and firms (primarily automobile dealerships) with ''floor plan financing indebtedness'' as defined under section 163(j). Furthermore, section 168(k)(2)(a)(ii)(IV) and (V) allowed qualified film, television, and live theatrical productions (as defined under Section 181) to qualify for bonus depreciation.

The regulations under § 1.168(k)–2 generally provide structure and clarity for the implementation of section 168(k). However, Treasury and the IRS determined that there remained several outstanding issues requiring clarification that should be subject to notice and comment. First, these proposed regulations address some ambiguities related to the operation of section 168(k)(9), which describes some property that is ineligible for bonus depreciation. Second, these proposed regulations create a de minimis rule which provides that a taxpayer will not be deemed to have had a prior depreciable interest in a property—and thus that property will be eligible for bonus depreciation in that taxpayer's hands—if the taxpayer previously disposed of that property within 90 days of the date on which that property was placed in service. Third, these proposed regulations clarify the interpretation of an example in the August Proposed Regulations regarding an asset acquisition as part of a sale of a member of a controlled group from one group to another. Fourth, these proposed regulations modify the treatment of series of related transactions. Finally, these proposed regulations provide that certain components of larger self-constructed property can be eligible for the increased bonus depreciation percentage even if the construction of such larger self-constructed property began before September 28, 2017.

B. No-Action Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

C. Economic Analysis of NPRM

This section describes the main provisions of these proposed regulations and provides a qualitative economic analysis of each one.

i. Property Excluded From Bonus Depreciation by Section 168(k)(9)

As discussed above, section 168(k)(9) provides that property used by certain businesses is not eligible for bonus depreciation. These businesses include certain rate-regulated utilities and motor vehicle dealerships with floor plan financing indebtedness.

These proposed regulations first clarify that those taxpayers that lease property to such businesses described by section 168(k)(9) may claim bonus depreciation, so long as other requirements of section 168(k) are met. This approach broadly follows the existing normalization rules (which provide generally for the reconciliation of tax income and book income for regulatory purposes for utilities), which provides that lessors to public utilities are not bound by such rules so long as they themselves are not a public utility. The Treasury Department and the IRS project that this guidance will be easy for taxpayers to interpret and comply with. Additionally, this decision allows businesses to receive some share of the economic benefit of section 168(k). To the extent that lessors can claim bonus depreciation, it is plausible that the market-clearing lease price for such assets will fall, potentially enabling some expansions of output and contributing to economic growth.

These proposed regulations next clarify which businesses fall under the umbrella of section 168(k)(9)(A) (utilities) and section 168(k)(9)(B) (dealerships with floor plan financing indebtedness). For utilities, these proposed regulations clarify that the ''primary use'' of an item described in the Code is consistent with how primary use is determined in existing regulations under section 167. This application should be familiar to taxpayers, and thus relatively easy to comply with.

The statutory language of section 168(k)(9)(B) is somewhat more ambiguous, and thus more substantive clarifications were necessary. First, section 168(k)(9)(B) provides that dealerships with floor plan financing indebtedness are ineligible for bonus depreciation ''if the floor plan financing interest was taken into account under [section 163(j)(1)(C)].'' These proposed regulations clarify that such interest is in fact ''taken into account'' only if the firm in fact received a benefit from section 163(j)(1)(C)—*i.e.,* if total business interest expense (including floor plan financing interest) exceeds business interest income plus 30 percent of adjusted taxable income. This decision allows more firms to claim bonus depreciation than if the Treasury Department and the IRS had made the opposite interpretation (deeming all dealerships with floor plan financing interest to be ineligible for bonus depreciation, regardless of whether the firm received a benefit from section 163(j)(1)(C)).

The Treasury Department and the IRS have undertaken an analysis of the investment effects of this provision, under the assumption that 10 to 50 percent of affected taxpayers would have come to the opposite interpretation in the absence of the proposed regulations. Using tax return data and parameters from the literature on the effect of bonus depreciation on investment, this analysis has found that this provision would increase investment by an annual maximum of $20 to $90 million, although this range would likely decrease over time as uncertainty over the interpretation of the statute is resolved. Additionally, these proposed regulations will resolve a substantial compliance uncertainty facing these taxpayers.

An additional ambiguity in section 168(k)(9)(B) pertains to the length of time that the section applies to a given firm. The section refers to a ''trade or business that has had floor plan financing indebtedness . . . if the floor plan financing interest related to such indebtedness was taken into account under [section 163(j)(1)(C)]''. Consider a firm (*Example A*) that received a benefit from section 163(j)(C)(1) in tax year 2018 (meaning that its interest deduction would have been smaller if not for section 163(j)(C)(1)) but not in tax year 2019 or any other later year. One interpretation of the statute would deem that firm forever ineligible for bonus depreciation, in 2019 and later. The Treasury Department and the IRS came to the opposite conclusion and deemed that section 168(k)(9)(B) is determined on an annual basis: For example, the firm in *Example A* of this part of the Special Analysis section would not be eligible for bonus depreciation in 2018, but so long as the other requirements were met, it would be eligible for bonus depreciation in 2019. As with the interpretation of ''taken into account,'' this interpretation enables more firms to be eligible for bonus depreciation in more years, potentially increasing investment by such firms. The Treasury Department and the IRS expect that some taxpayers would have come to a different conclusion regarding the interpretation of this timing in the absence of these proposed regulations. Therefore, this provision could also have some economic effects. The Treasury Department and the IRS engaged in an

analysis on these effects based on historical tax data, parameter values from the economic literature for the effect of bonus depreciation on investment, and assumptions regarding taxpayer interpretations in the absence of these proposed regulations. The result of this analysis projects that this provision will cause investment to increase in this industry by no greater than $55 million in any year, and approximately $25 million per year on average over the period from 2019 to 2028. The Treasury Department and the IRS additionally project that some share of this increased investment will reduce investment in other industries through crowd-out effects.

Importantly, the estimated effect of this provision interacts substantially with the rule that floor plan financing is ''taken into account'' only if the firm in fact received a benefit from section 163(j)(1)(C). In the absence of the proposed regulations, the Treasury Department and the IRS project that some share of taxpayers in this industry would have interpreted section 168(k)(9)(B) as rendering them ineligible for bonus depreciation in substantially all circumstances. Therefore, the effect of both provisions together is less than the sum of each of the provisions considered independently. In total, the Treasury Department and the IRS have determined that the effect of both rules related to section 168(k)(9)(B), when considered together, would have a maximum annual effect on investment in the range of $65 million to $90 million and declining over time as uncertainty over the interpretation of the statute is resolved.

ii. Prior Depreciable Interest

In general, to be eligible for bonus depreciation, a given property may not have been owned by the same firm in the past. This requirement was instituted by Congress in order to prevent ''churning'' of assets, whereby a firm could sell and soon thereafter repurchase the same asset in order to claim the 100 percent deduction. The August Proposed Regulations defined ''ownership'' for this purpose as having a prior depreciable interest. Section 1.168(k)–2 finalizes this interpretation. These proposed regulations introduce an exception, providing that a taxpayer does not have a depreciable interest in a given property if the taxpayer disposed of the property within 90 days of the initial date when the property was placed in service (so long as the asset is not repurchased and placed in service again within the same taxable year). The Treasury Department and the IRS primarily instituted this rule in order to coordinate with the syndication transaction rules of section 168(k)(E)(2)(iii). The Treasury Department and the IRS do not anticipate substantial economic effects of this provision. Nevertheless, it will generally have the effect of causing more property to be eligible for bonus depreciation (increasing incentives to invest), while minimizing incentives for wasteful churning of assets.

Furthermore, these proposed regulations clarify that partners in a partnership hold a depreciable interest in the property held by that partnership, and that the share of the property to which this applies equals the partner's share of the depreciation deductions of the partnership over a certain period. The Treasury Department and the IRS have determined that this provides an accurate reflection of the partner's prior depreciable interest in the property, and therefore aligns tax consequences and economic consequences, which is generally favorable for economic efficiency. However, as is the case with the ''prior use'' rules generally, the Treasury Department and the IRS do not project this provision to substantially affect behavior.

iii. Group Prior Use Rule

These proposed regulations clarify several aspects of the ''Group Prior Use Rule.'' Under that rule, all members of a consolidated group are treated as having had a depreciable interest in a property if any member of the consolidated group had such a depreciable interest. First, these proposed regulations clarify that the rule ceases to be in effect once the consolidated group terminates as a result of joining another consolidated group. Second, these proposed regulations clarify that the Group Prior Use Rule does not apply to a corporation after it deconsolidates from the consolidated group, so long as that corporation did not in fact own that property. As is the case with the prior use rules generally, the Treasury Department and the IRS do not anticipate large economic effects as a result of this section of these proposed regulations.

iv. Purchases of Assets as Part of Acquisition of Entire Business

Additionally, these proposed regulations clarify the proper procedure for certain purchases of assets by a given corporation from a related party that are a part of an integrated plan involving the selling of that corporation from one group to another. Specifically, these proposed regulations provide that the deduction for bonus depreciation is allowed in such circumstances, and should be claimed by the acquiring group. These proposed regulations provide for a similar treatment in the case of deemed acquisitions in the case of an election under section 338(h)(10) or section 336(e). These rules cause the tax treatment to reflect the economic reality, in which the acquiring group is bearing the economic outlay of the asset purchase, and that acquiring group had no economic prior depreciable interest. By aligning the tax consequences with the economic allocations, this treatment minimizes potential distortions caused by the anti-churning rules.

v. Component Rule Election

In 2010, Congress increased the bonus percentage from 50 percent to 100 percent for property placed in service between September 9, 2010 and December 31, 2011. In 2011, the IRS issued Revenue Procedure 2011–26 to allow taxpayers to elect to have the 100 percent bonus rate apply to components of larger self-constructed property whose construction began before September 9, 2010, so long as (1) the components were acquired (or self-constructed) after than that date and (2) the larger self-constructed property itself qualifies for bonus depreciation generally. These proposed regulations provide an analogous rule, replacing September 9, 2010 with September 27, 2017. This provision will allow more property to qualify for 100 percent bonus depreciation. Furthermore, this provision provides neutrality between taxpayers who acquire distinct, smaller pieces of depreciable property and those taxpayers that invest a similar amount in fewer, larger pieces of depreciable property whose construction takes place over a longer period of time. By treating similar taxpayers (and similar choices) similarly, this rule enhances economic efficiency by minimizing tax-related distortions. However, the Treasury Department and the IRS project these rules to have only a modest effect on future economic decisions. These rules affect only taxpayers (1) that acquire (or self-construct) components after the date of enactment of these proposed regulations and (2) for whom the construction of the larger self-constructed property began prior to September 28, 2017 (approximately 21 months ago). The Treasury Department and the IRS expect relatively few taxpayers to be affected by this provision going forward.

vi. Series of Related Transactions

The August Proposed Regulations provided that, in a series of related transactions, the relationship between

the transferor and transferee of an asset was determined only after the final transaction in the series (the ''Series of Related Transaction Rule''). Commenters had expressed confusion regarding whether this applies to testing whether parties are related under section 179(d)(2), or whether it applies more broadly (*e.g.,* in determining whether the taxpayer had a prior depreciable interest). These proposed regulations clarify that this Series of Related Transaction Rule is intended only to test the relatedness of two parties.

These proposed regulations further revise the Series of Related Transaction Rule to address its application in various situations. Under these proposed regulations, the relatedness is tested after each step of the series of related transactions, with the substantial exception that any intermediary (*i.e.,* a taxpayer other than the original transferor or ultimate transferee) is disregarded so long as that intermediary (1) never places the property in service or (2) disposes of the property in the same taxable year in which it was placed in service. This would tend to eliminate the benefit of the Series of Related Transaction Rule in cases where intermediate transferees maintained use of the property for a non-trivial length of time. The Treasury Department and the IRS project that this interpretation will prevent abuse. The Treasury Department and the IRS do not predict substantial economic effects of this provision.

vii. Miscellaneous

Lastly, these proposed regulations put forward rules to the extent existing regulations apply in slightly new contexts. In particular, these proposed regulations clarify when a binding contract is in force to acquire all or substantially all the assets of a trade or business. Additionally, consistent with the rules of § 1.168(d)–1(b)(4), these proposed regulations provide that, for the purpose of determining whether the mid-quarter convention applies, depreciable basis is not reduced by the amount of bonus depreciation. The Treasury Department and the IRS do not anticipate large economic effects of these clarifications, though the additional clarity of these regulations will likely reduce compliance burdens.

II. Paperwork Reduction Act

The collection of information in these proposed regulations are in proposed § 1.168(k)–2(c). The collection of information in proposed § 1.168(k)–2(c) is an election that a taxpayer may make to treat one or more components acquired or self-constructed after September 27, 2017, of certain larger self-constructed property as being eligible for the 100-percent additional first year depreciation deduction under section 168(k). The larger self-constructed property must be qualified property under section 168(k)(2) as in effect before the enactment of the Act and for which the manufacture, construction, or production began before September 28, 2017. The election is made by attaching a statement to a Federal income tax return indicating that the taxpayer is making the election under proposed § 1.168(k)–2(c) and whether the taxpayer is making the election for all or some of the components described in proposed § 1.168(k)–2(c).

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), the reporting burden associated with proposed § 1.168(k)–2(c) will be reflected in the PRA submission associated with income tax returns in the Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series (for OMB control numbers, see chart at the end of this part II of this Special Analysis section). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 137,000 respondents. Historical data was not available to directly estimate the number of impacted filers. This estimate assumes that no more than 10 percent of income tax return filers with a nonzero entry on Form 4562 Line 14 (additional first year depreciation deduction) will make this election (5 percent in the case of filers of Form 1040 series). The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(c) Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017.	0–137,000	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

Source: IRS:RAAS:KDA (CDW 6–1–19).

The current status of the PRA submissions related to the tax forms that will be revised as a result of the information collections in the section 168(k) regulations is provided in the accompanying table. As described above, the reporting burdens associated with the information collections in the regulations are included in the aggregated burden estimates for OMB control numbers 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)), 1545–0074 (which represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), and 1545–0092 (which represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016)). The overall burden estimates provided for the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the information collections in the regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the regulations. These burdens have been reported for other regulations that rely on the same OMB control numbers to conduct information collections under the PRA, and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against over counting the burden that the regulations that cite these OMB control numbers imposed prior to the Act. No burden estimates specific to the forms affected by the regulations are currently available. The Treasury Department and the IRS have not

estimated the burden, including that of any new information collections, related to the requirements under the regulations. For the OMB control numbers discussed in above, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture changes made by the Act, the final regulations under section 168(k), and those that arise out of discretionary authority exercised in these proposed regulations and other regulations that affect the compliance burden for those forms.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. In addition, when available, drafts of IRS forms are posted for comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm.* IRS forms are available at *https://www.irs.gov/forms-instructions.* Forms will not be finalized until after they have been approved by OMB under the PRA.

Form	Type of filer	OMB No.(s)	Status
Form 1040	Individual (NEW Model)	1545–0074	Published in the **Federal Register** on 7/20/18. Public Comment period closed on 9/18/18.
	Link: *https://www.federalregister.gov/documents/2018/07/20/2018-15627/proposed-collection-comment-request-for-regulation-project.*		
Form 1041	Trusts and estates	1545–0092	Published in the **Federal Register** on 4/4/18. Public Comment period closed on 6/4/18.
	Link: *https://www.federalregister.gov/documents/2018/04/04/2018-06892/proposed-collection-comment-request-for-form-1041.*		
Forms 1065 and 1120	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 10/8/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		

III. Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 168(k) generally affects taxpayers that own and use depreciable property in their trades or businesses or for their production of income. The reporting burden in proposed § 1.168(k)–2(c) generally affects taxpayers that elect to have the 100 percent additional first year depreciation deduction apply to components that are acquired or self-constructed after September 27, 2017, of depreciable property for which the manufacture, construction, or production began before September 28, 2017, and was completed generally before January 1, 2020. The election is made by attaching a statement to a Federal income tax return indicating that the taxpayer is making the election under proposed § 1.168(k)–2(c) and whether the taxpayer is making this election for all or some of the components described in § 1.168(k)–2(c).

For purposes of the PRA, the Treasury Department and the IRS estimate that there are 0 to 181,500 respondents of all sizes that are likely to be impacted by this collection of information. Only a small proportion of these filers are likely to be small entities (business entities with gross receipts of $25 million or less pursuant to section 448(c)(1)). The Treasury Department and the IRS estimate the number of filers affected by proposed § 1.168(k)–2(c) to be the following:

Form	Gross receipts of $25 million or less	Gross receipts over $25 million
Form 1040	0–12,000 Respondents (estimated)	0–32,500 Respondents (estimated).
Form 1065	0–1,250 Respondents (estimated)	0–35,000 Respondents (estimated).
Form 1120	0–1,750 Respondents (estimated)	0–11,000 Respondents (estimated).
Form 1120S	0–2,500 Respondents (estimated)	0–41,000 Respondents (estimated).
Total	0–29,500 Respondents (estimated)	0–152,000 Respondents (estimated).

Source: IRS:RAAS:KDA (CDW 6–1–19).

Regardless of the number of small entities potentially affected by these proposed regulations, the Treasury Department and the IRS have concluded that proposed § 1.168(k)–2(c) will not have a significant economic impact on a substantial number of small entities. As a result of all changes in these proposed regulations, the Treasury Department and the IRS estimate that individual taxpayers who have gross receipts of $25 million or less and experience an increase in burden will incur an average increase of 0 to 3 hours, and business taxpayers that have gross receipts of $25 million or less and experience an increase in burden will incur an average increase of 0 to 2 hours (Source: IRS:RAAS (8–28–2019)). Because the election in proposed § 1.168(k)–2(c) is one of several changes in these proposed regulations, the Treasury Department and the IRS expect the average increase in burden to be less for the collection of information in proposed § 1.168(k)–2(c) than the average increase in burden in the preceding sentence. The Treasury Department and the IRS also note that many taxpayers with gross receipts of

$25 million or less may experience a reduction in burden as a result of all changes in these proposed regulations.

Additionally: (1) Many small businesses are not required to capitalize under section 263(a) the amount paid or incurred for the acquisition of depreciable tangible property that costs $5,000 or less if the business has an applicable financial statement or costs $500 or less if the business does not have an applicable financial statement, pursuant to § 1.263(a)–1(f)(1); (2) many small businesses are no longer required to capitalize under section 263A the costs to construct, build, manufacture, install, improve, raise, or grow depreciable property if their average annual gross receipts are $25,000,000 or less; and (3) a small business that capitalizes costs of depreciable tangible property may deduct under section 179 up to $1,020,000 (2019 inflation adjusted amount) of the cost of such property placed in service during the taxable year if the total cost of depreciable tangible property placed in service during the taxable year does not exceed $2,550,000 (2019 inflation adjusted amount). Therefore, the Treasury Department and the IRS have determined that a substantial number of small entities will not be subject to these proposed regulations. Finally, proposed § 1.168(k)–2(c) applies only if the taxpayer chooses to make an election to a more favorable rule. Consequently, the Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These proposed regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *https://www.regulations.gov* or upon request.

A public hearing is scheduled on November 13, 2019, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 23, 2019. Submit a signed paper or electronic copy of the outline as prescribed in this preamble under the **ADDRESSES** heading. A period of 10 minutes will be allotted to each person making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

If no outline of the topics to be discussed at the hearing is received by October 23, 2019, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Kathleen Reed and Elizabeth R. Binder of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

Partial Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805 and 26 U.S.C. 1502, § 1.168(k)–2(b)(3)(iii)(B)(*3*)(*i*) through (*iii*), § 1.168(k)–2(b)(3)(iii)(C), and § 1.168(k)–2(b)(3)(vi) *Examples 18* through *22* of the notice of proposed rulemaking (REG–104397–18) published in the **Federal Register** on August 8, 2018 (83 FR 39292) are withdrawn.

Statement of Availability

IRS Revenue Procedures and Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.168(k)–2 in numerical order to read in part as follows:

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

* * * * *

Section 1.168(k)-2 also issued under 26 U.S.C. 1502.

* * * * *

■ **Par. 2.** Section 1.168(k)–0 is amended by adding entries for § 1.168(k)–2(b)(3)(iii)(C), (b)(3)(v), (b)(5)(iii)(G), (b)(5)(v), (c), and (g)(11); and adding an entry for § 1.168(k)–2(h)(4) to read as follows:

§ 1.168(k)–0 Table of contents.

* * * * *

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(C) Special rules for a series of related transactions.

* * * * *

(v) Application to members of a consolidated group.

* * * * *

(5) * * *

(iii) * * *

(G) Acquisition of a trade or business or an entity.

* * * * *

(v) Determination of acquisition date for property not acquired pursuant to a written binding contract.

* * * * *

(c) Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017.

(1) In general.

(2) Eligible larger self-constructed property.

(i) In general.

(ii) Exceptions.

(3) Eligible components.

(i) In general.

(ii) Acquired components.

(iii) Self-constructed components.

(4) Special rules.

(i) Installation costs.

(ii) Property described in section 168(k)(2)(B).

(5) Computation of additional first year depreciation deduction.

(i) Election is made.

(ii) Election is not made.

(6) Time and manner for making election.

(i) Time for making election.

(ii) Manner of making election.

(7) Examples.

* * * * *

(g) * * *

(11) Mid-quarter convention.

(h) * * *

(4) Regulation project REG–106808–19.

■ **Par. 3.** Section 1.168(k)–2 is amended by:

■ 1. At the end of paragraph (a)(1), adding ‘‘, except as provided in paragraph (c) of this section’’;

■ 2. Revising paragraph (b)(2)(ii)(F);

■ 3. Adding three sentences at the end of paragraph (b)(2)(ii)(G);

■ 4. Adding paragraphs (b)(2)(iii)(F), (G), and (H);

■ 5. Adding paragraphs (b)(3)(iii)(B)(*4*) and (*5*), (b)(3)(iii)(C), (b)(3)(v), and (b)(3)(vii)(Y) through (HH);

■ 6. Revising the last sentence in paragraph (b)(5)(ii)(A);

■ 7. In the first sentence in paragraph (b)(5)(iii)(A), removing the word ‘‘A’’ at the beginning of the sentence and adding ‘‘Except as provided in paragraph (b)(5)(iii)(G) of this section, a’’ in its place;

■ 8. In the first sentence in paragraph (b)(5)(iii)(B), removing the word ‘‘A’’ at the beginning of the sentence and adding ‘‘Except as provided in paragraph (b)(5)(iii)(G) of this section, a’’ in its place;

■ 9. Adding paragraph (b)(5)(iii)(G);

■ 10. In the penultimate sentence in paragraph (b)(5)(iv)(C)(*1*), removing the period at the end of the sentence and adding ‘‘, except as provided in paragraph (c) of this section.’’ in its place;

■ 11. In the penultimate sentence in paragraph (b)(5)(iv)(C)(*2*), removing the period at the end of the sentence and adding ‘‘, except as provided in paragraph (c) of this section.’’ in its place;

■ 12. Adding paragraph (b)(5)(v);

■ 13. Revising the second sentence in paragraph (b)(5)(viii) introductory text;

■ 14. Adding paragraph (c);

■ 15. Adding two sentences at the end of paragraph (e)(1)(iii);

■ 16. Adding paragraph (g)(11);

■ 17. In introductory paragraph (h)(1), removing ‘‘paragraphs (h)(2) and (3)’’ and adding ‘‘paragraphs (h)(2), (3), and (4)’’ in its place; and

■ 18. Adding paragraph (h)(4).

The additions and revisions read as follows:

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(F) Primarily used in a trade or business described in section 163(j)(7)(A)(iv), and placed in service by the taxpayer in any taxable year beginning after December 31, 2017. For purposes of section 168(k)(9)(A) and this paragraph (b)(2)(ii)(F), the term *primarily used* has the same meaning as that term is used in § 1.167(a)–11(b)(4)(iii)(*b*) and (e)(3)(iii) for classifying property. This paragraph (b)(2)(ii)(F) does not apply to property that is leased to a trade or business described in section 163(j)(7)(A)(iv) by a lessor's trade or business that is not described in section 163(j)(7)(A)(iv) for the taxable year; or

(G) * * * Solely for purposes of section 168(k)(9)(B) and this paragraph (b)(2)(ii)(G), floor plan financing interest is not taken into account for the taxable year by a trade or business that has had floor plan financing indebtedness if the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year equals or exceeds the business interest, as defined in section 163(j)(5), of the trade or business for the taxable year (which includes floor plan financing interest). If the trade or business has taken floor plan financing interest into account pursuant to this paragraph (b)(2)(ii)(G) for a taxable year, this paragraph (b)(2)(ii)(G) applies to any property placed in service by that trade or business in that taxable year. This paragraph (b)(2)(ii)(G) does not apply to property that is leased to a trade or business that has had floor plan financing indebtedness by a lessor's trade or business that has not had floor plan financing indebtedness during the taxable year or that has had floor plan financing indebtedness but did not take into account floor plan financing interest for the taxable year pursuant to this paragraph (b)(2)(ii)(G).

(iii) * * *

(F) *Example 6.* In 2019, a financial institution buys new equipment for $1 million and then leases this equipment to a lessee that primarily uses the equipment in a trade or business described in section 163(j)(7)(A)(iv). The financial institution is not described in section 163(j)(7)(A)(iv). As a result, paragraph (b)(2)(ii)(F) of this section does not apply to this new equipment. Assuming all other requirements are met, the financial institution's purchase price of $1 million for the new equipment qualifies for the additional first year depreciation deduction under this section.

(G) *Example 7.* In 2019, *F,* an automobile dealer, buys new computers for $50,000 for use in its trade or business of selling automobiles. For purposes of section 163(j), *F* has the following for 2019: $1,000 of adjusted taxable income, $40 of business interest income, $400 of business interest (which includes $100 of floor plan financing interest). The sum of the amounts calculated under section 163(j)(1)(A) and (B) for *F* for 2019 is $340 ($40 + ($1,000 × 30 percent)). *F*'s business interest, which includes floor plan financing interest, for 2019 is $400. As a result, *F*'s floor plan financing interest is taken into account by *F* for 2019 pursuant to paragraph (b)(2)(ii)(G) of this section. Accordingly, *F*'s purchase price of $50,000 for the computers does not qualify for the additional first year depreciation deduction under this section.

(H) *Example 8.* The facts are the same as in *Example 7* in paragraph (b)(2)(iii)(G) of this section. In 2020, *F* buys new copiers for $30,000 for use in its trade or business of selling automobiles. For purposes of section 163(j), *F* has the following for 2020: $1,300 of adjusted taxable income, $40 of business interest income, $400 of business interest (which includes $100 of floor plan financing interest). The sum of the amounts calculated under section 163(j)(1)(A) and (B) for *F* for 2020 is $430 ($40 + ($1,300 × 30 percent)). *F*'s business interest, which includes floor plan financing interest, for 2020 is $400. As a result, *F*'s floor plan financing interest is

not taken into account by *F* for 2020 pursuant to paragraph (b)(2)(ii)(G) of this section. Assuming all other requirements are met, *F*'s purchase price of $30,000 for the copiers qualifies for the additional first year depreciation deduction under this section.

(3) * * *

(iii) * * *

(B) * * *

(*4*) *De minimis use of property.* If a taxpayer acquires and places in service property, the taxpayer or a predecessor did not previously have a depreciable interest in the property, the taxpayer disposes of the property to an unrelated party within 90 calendar days after the date the property was originally placed in service by the taxpayer, without taking into account the applicable convention, and the taxpayer reacquires and again places in service the property, the taxpayer's depreciable interest in the property during that 90-day period is not taken into account for determining whether the property was used by the taxpayer or a predecessor at any time prior to its reacquisition by the taxpayer under paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. This paragraph (b)(3)(iii)(B)(*4*) does not apply if the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property. For purposes of this paragraph (b)(3)(iii)(B)(*4*), an *unrelated party* is a person not described in section 179(d)(2)(A) or (B), and § 1.179–4(c)(1)(ii) or (iii), or (c)(2).

(*5*) *Partner's prior depreciable interest in property held by partnership.* Solely for purposes of applying paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) and (*2*) of this section, a person is treated as having a depreciable interest in a portion of property prior to the person's acquisition of the property if the person was a partner in a partnership at any time the partnership owned the property. For purposes of the preceding sentence, the portion of property that a partner is treated as having a depreciable interest in is equal to the total share of depreciation deductions with respect to the property allocated to the partner as a percentage of the total depreciation deductions with respect to that property allocated to all partners during the current calendar year and five calendar years immediately prior to the partnership's current year. If the person was not a partner in the partnership for this entire period, or if the partnership did not own the property for the entire period, only the period during which the person was a partner and the partnership owned the property is taken into account for purposes of determining a partner's share of depreciation deductions.

(C) *Special rules for a series of related transactions*—(*1*) *In general.* Solely for purposes of paragraph (b)(3)(iii) of this section, the relationship between parties under section 179(d)(2)(A) or (B) in a series of related transactions is tested immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. A series of related transactions may include, for example, a transfer of partnership assets followed by a transfer of an interest in the partnership that owned the assets; or a disposition of property and disposition, directly or indirectly, of the transferor or transferee of the property.

(*2*) *Special rules*—(*i*) *Property placed in service and disposed of in same taxable year or property not placed in service.* Any party in a series of related transactions that is neither the original transferor nor the ultimate transferee is disregarded (disregarded party) for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(*1*) of this section if the party places in service and disposes of the depreciable property subject to the series, other than in a transaction described in paragraph (g)(1)(iii) of this section, during the party's same taxable year or if the party does not place in service the depreciable property subject to the series for use in the party's trade or business or production of income. In this case, the relationship is tested between the party from which the disregarded party acquired the depreciable property and the party to which the disregarded party disposed of the depreciable property. If the series has consecutive disregarded parties, the relationship is tested between the party from which the first disregarded party acquired the depreciable property and the party to which the last disregarded party disposed of the depreciable property. The rules for testing the relationships in paragraph (b)(3)(iii)(C)(*1*) of this section continue to apply for the other transactions in the series and for the last transaction in the series.

(*ii*) *All section 168(i)(7) transactions.* This paragraph (b)(3)(iii)(C) does not apply if all transactions in a series of related transactions are described in paragraph (g)(1)(iii) of this section (section 168(i)(7) transactions in which property is transferred in the same taxable year that the property is placed in service by the transferor).

(*iii*) *One or more section 168(i)(7) transactions.* Any step in a series of related transactions that is neither the original step nor the ultimate step is disregarded (disregarded step) for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(*1*) of this section if the step is a transaction described in paragraph (g)(1)(iii) of this section. In this case, the relationship is not tested between the transferor and transferee of that transaction. Instead, the relationship is tested between the transferor in the disregarded step and the party to which the transferee in the disregarded step disposed of the depreciable property, and the transferee in the disregarded step and the party to which the transferee in the disregarded step disposed of the depreciable property. If the series has consecutive disregarded steps, the relationship is tested between the transferor in the first disregarded step and the party to which the transferee in the last disregarded step disposed of the depreciable property, and the transferee in the last disregarded step and the party to which the transferee in the last disregarded step disposed of the depreciable property. The rules for testing the relationships in paragraph (b)(3)(iii)(C)(*1*) of this section continue to apply for the other transactions in the series and for the last transaction in the series.

(*iv*) *Syndication transaction.* This paragraph (b)(3)(iii)(C) does not apply to a syndication transaction described in paragraph (b)(3)(vi) of this section.

(*v*) *Application of paragraph (g)(1) of this section.* Paragraph (g)(1) of this section applies to each step in a series of related transactions.

* * * * *

(v) *Application to members of a consolidated group*—(A) *In general.* Solely for purposes of applying paragraph (b)(3)(iii)(A)(*1*) of this section, if a member of a consolidated group, as defined in § 1.1502–1(h), acquires depreciable property in which the group had a depreciable interest at any time prior to the member's acquisition of the property, the member is treated as having a depreciable interest in the property prior to the acquisition. For purposes of this paragraph (b)(3)(v)(A), a consolidated group is treated as having a depreciable interest in property during the time any current or previous member of the group had a depreciable interest in the property while a member of the group.

(B) *Certain acquisitions pursuant to a series of related transactions.* Solely for purposes of applying paragraph (b)(3)(v)(A) of this section, if a series of related transactions includes one or more transactions in which property is acquired by a member of a consolidated group, and one or more transactions in which a corporation that had a depreciable interest in the property,

determined without regard to the application of paragraph (b)(3)(v)(A) of this section, becomes a member of the group, the member that acquires the property is treated as having a depreciable interest in the property prior to the time of its acquisition.

(C) *Sale of depreciable property to a member that leaves the group.* Except as otherwise provided in paragraph (b)(3)(v)(E) of this section, if a member of a consolidated group (transferee member) acquires from another member of the same group (transferor member) depreciable property in an acquisition meeting the requirements of paragraph (b)(3)(iii)(A) of this section without regard to section 179(d)(2)(A) or (B) or paragraph (b)(3)(v)(A) of this section, and if, as part of the same series of related transactions that includes the acquisition, the transferee member ceases to be a member of the consolidated group within 90 calendar days of the date of the acquisition, then—

(*1*) The transferor member is treated as disposing of, and the transferee member is treated as acquiring, the depreciable property one day after the date on which the transferee member ceases to be a member of the consolidated group (Deconsolidation Date) for all Federal income tax purposes; and

(*2*) The transferee member is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§ 1.46–3(d) and 1.167(a)–11(e)(1).

(D) *Deemed sales of depreciable property under section 338 or 336(e) to a member that leaves the group.* This paragraph (b)(3)(v)(D) applies only if a member of a consolidated group (transferee member) acquires the stock of another member of the same group that holds depreciable property (target) in either a qualified stock purchase for which a section 338 election is made or a qualified stock disposition described in § 1.336–2(b)(1) for which a section 336(e) election is made. Except as otherwise provided in paragraph (b)(3)(v)(E) of this section, if the target would be eligible for the additional first year depreciation deduction under this section with respect to the depreciable property without regard to paragraph (b)(3)(v)(A) of this section, and if the transferee member and the target cease to be members of the group within 90 calendar days of the acquisition date, within the meaning of § 1.338–2(c)(1), or disposition date, within the meaning of § 1.336–1(b)(8), as part of the same series of related transactions that includes the acquisition, then—

(*1*) The acquisition date or disposition date, as applicable, is treated as the date that is one day after the Deconsolidation Date for all Federal income tax purposes; and

(*2*) New target is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§ 1.46–3(d) and 1.167(a)–11(e)(1).

(E) *Disposition of depreciable property pursuant to the same series of related transactions.* Paragraph (b)(3)(v)(C) of this section does not apply if, following the acquisition of depreciable property, the transferee member disposes of such property pursuant to the same series of related transactions that includes the property acquisition. Paragraph (b)(3)(v)(D) of this section does not apply if, following the deemed acquisition of depreciable property, the target disposes of such property pursuant to the same series of related transactions that includes the deemed acquisition. See paragraph (b)(3)(iii)(C) of this section for rules regarding the transfer of property in a series of related transactions. See also paragraph (g)(1) of this section for rules regarding property placed in service and disposed of in the same taxable year.

* * * * *

(vii) * * *

(Y) *Example 25.* (*1*) On September 5, 2017, *Y,* a calendar-year taxpayer, acquires and places in service a new machine (Machine #1), and begins using Machine #1 in its manufacturing trade or business. On November 1, 2017, *Y* sells Machine #1 to *Z,* then *Z* leases Machine #1 back to *Y* for 4 years, and *Y* continues to use Machine #1 in its manufacturing trade or business. The lease agreement contains a purchase option provision allowing *Y* to buy Machine #1 at the end of the lease term. On November 1, 2021, *Y* exercises the purchase option in the lease agreement and buys Machine #1 from *Z.* The lease between *Y* and *Z* for Machine #1 is a true lease for Federal tax purposes.

(*2*) Because *Y,* a calendar-year taxpayer, placed in service and disposed of Machine #1 during 2017, Machine #1 is not eligible for the additional first year depreciation deduction for *Y* pursuant to § 1.168(k)–1(g)(1)(i).

(*3*) The use of Machine #1 by *Y* prevents *Z* from satisfying the original use requirement of paragraph (b)(3)(ii) of this section. However, *Z*'s acquisition of Machine #1 satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *Z*'s purchase price of Machine #1 qualifies for the additional first year depreciation deduction for *Z* under this section.

(*4*) During 2017, *Y* sold Machine #1 within 90 calendar days of placing in service Machine #1. Pursuant to paragraph (b)(3)(iii)(B)(*4*) of this section, *Y*'s depreciable interest in Machine #1 during that 90-day period is not taken into account for determining whether Machine #1 was used by *Y* or a predecessor at any time prior to its reacquisition by *Y* on November 1, 2021. Accordingly, assuming all other requirements are met, *Y*'s purchase price of Machine #1 on November 1, 2021, qualifies for the additional first year depreciation deduction for *Y* under this section.

(Z) *Example 26.* Parent owns all of the stock of B and C, which are members of the Parent consolidated group. C has a depreciable interest in Equipment #1. During 2018, C sells Equipment #1 to B. Prior to this acquisition, B never had a depreciable interest in Equipment #1. B's acquisition of Equipment #1 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section for two reasons. First, B and C are related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(2)(iii). Second, pursuant to paragraph (b)(3)(v)(A) of this section, B is treated as previously having a depreciable interest in Equipment #1 because B is a member of the Parent consolidated group and C, while a member of the Parent consolidated group, had a depreciable interest in Equipment #1. Accordingly, B's acquisition of Equipment #1 is not eligible for the additional first year depreciation deduction.

(AA) *Example 27*—(*1*) *Facts.* Parent owns all of the stock of D and E, which are members of the Parent consolidated group. D has a depreciable interest in Equipment #2. No other current or previous member of the Parent consolidated group has ever had a depreciable interest in Equipment #2 while a member of the Parent consolidated group. During 2018, D sells Equipment #2 to BA, a person not related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), to any member of the Parent consolidated group. In an unrelated transaction during 2019, E acquires Equipment #2 from BA or another person not related to any member of the Parent consolidated group within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c).

(*2*) *Analysis.* Pursuant to paragraph (b)(3)(v)(A) of this section, E is treated as previously having a depreciable interest in Equipment #2 because E is a member of the Parent consolidated group and D, while a member of the Parent consolidated group, had a depreciable interest in Equipment #2. As a result, E's acquisition of Equipment #2 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Thus, E's acquisition of Equipment #2 is not eligible for the additional first year depreciation deduction. The results would be the same if, after selling Equipment #2 to BA, D had ceased to be a member of the Parent consolidated group prior to E's acquisition of Equipment #2.

(BB) *Example 28*—(*1*) *Facts.* Parent owns all of the stock of B and S, which are members of the Parent consolidated group. S has a depreciable interest in Equipment #3. No other current or previous member of the Parent consolidated group has ever had a depreciable interest in Equipment #3 while a member of the Parent consolidated group. X is the common parent of a consolidated

group and is not related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), to any member of the Parent consolidated group. No member of the X consolidated group has ever had a depreciable interest in Equipment #3 while a member of the X consolidated group. On January 1, 2019, B purchases Equipment #3 from S. On February 15, 2019, as part of the same series of related transactions that includes B's purchase of Equipment #3, Parent sells all of the stock of B to X. Thus, B leaves the Parent consolidated group at the end of the day on February 15, 2019, and joins the X consolidated group on February 16, 2019. See § 1.1502–76(b).

(*2*) *Application of paragraph (b)(3)(v)(C) of this section.* B was a member of the Parent consolidated group when B acquired Equipment #3 from S, another member of the same group. Paragraph (b)(3)(v)(A) of this section generally treats each member of a consolidated group as having a depreciable interest in property during the time any member of the group had a depreciable interest in such property while a member of the group. However, B acquired Equipment #3 in a transaction meeting the requirements of paragraph (b)(3)(iii)(A) of this section, without regard to section 179(d)(2)(A) or (B) or paragraph (b)(3)(v)(A) of this section, and Parent sold all of the stock of B to X within 90 calendar days of B's acquisition of Equipment #3 as part of the same series of related transactions that included B's acquisition of Equipment #3. Thus, under paragraph (b)(3)(v)(C) of this section, B's acquisition of Equipment #3 is treated as occurring on February 16, 2019, for all Federal income tax purposes.

(*3*) *Eligibility for the additional first year depreciation deduction.* B's acquisition of Equipment #3 on February 16, 2019, under paragraph (b)(3)(v)(C) of this section satisfies the requirement in paragraph (b)(3)(iii)(A)(*1*) of this section because B does not have a prior depreciable interest in Equipment #3. In addition, because no member of the X consolidated group previously had a depreciable interest in Equipment #3 while a member of the X consolidated group, B is not treated as previously having a depreciable interest in Equipment #3 under paragraph (b)(3)(v)(A) of this section. Further, because the relation between S and B is tested as if B acquired Equipment #3 while a member of the X consolidated group, S and B are neither members nor component members of the same controlled group on February 16, 2019. Therefore, section 179(d)(2)(A) and (B) and § 1.179–4(c)(1)(ii) and (iii) are satisfied. If the other requirements of paragraph (b)(3)(iii)(A) of this section are satisfied, B is treated as placing Equipment #3 in service on a date not earlier than February 16, 2019, while a member of the X consolidated group. Accordingly, assuming all other requirements of this section are satisfied, B is eligible to claim the additional first year depreciation deduction for Equipment #3 on that date. In addition, because the sale of Equipment #3 is deemed to occur between S, a member of the Parent consolidated group, and B, a member of the X consolidated group, the transaction is not between members of the same consolidated group and thus is not covered by section 168(i)(7)(B)(ii). Therefore, B's deduction is not limited by section 168(i)(7)(A) when B is treated, under paragraph (b)(3)(v)(C) of this section, as placing Equipment #3 in service on a date not earlier than February 16, 2019.

(CC) *Example 29*—(*1*) *Facts.* The facts are the same as *Example 28* in paragraph (b)(3)(viii)(BB)(*1*) of this section, except that S owns all of the stock of T (rather than a depreciable interest in Equipment #3), which is a member of the Parent consolidated group; T has a depreciable interest in Equipment #3; B acquires all of the stock of T (instead of a depreciable interest in Equipment #3) on January 1, 2019; and S and B make a section 338(h)(10) election for B's qualified stock purchase.

(*2*) *Application of paragraph (b)(3)(v)(D) of this section.* As a result of the section 338(h)(10) election, Old T is treated as transferring all of its assets, including Equipment #3, to an unrelated person in a single transaction in exchange for consideration at the close of the acquisition date and then transferring the consideration received to S in liquidation. In turn, New T is treated as acquiring all of its assets, including Equipment #3, from an unrelated person in exchange for consideration on the following day. See § 1.338–1(a)(1). New T was a member of the Parent consolidated group on January 1, 2019, the date that New T acquired Equipment #3. Paragraph (b)(3)(v)(A) of this section generally treats each member of a consolidated group as having a depreciable interest in property during the time any member of the group had a depreciable interest in such property while a member of the group. However, New T would be eligible for the additional first year depreciation deduction under this section without regard to paragraph (b)(3)(v)(A) of this section, and Parent sold all of its B stock to X within 90 calendar days of New T's acquisition of Equipment #3 as part of the same series of related transactions that included the acquisition, thereby causing B and New T to cease to be members of the Parent consolidated group at the end of the day on February 15, 2019. Thus, paragraph (b)(3)(v)(D) applies to treat the acquisition date as February 16, 2019, for all Federal income tax purposes.

(*3*) *Eligibility for the additional first year depreciation deduction.* Pursuant to paragraph (b)(3)(v)(D), Old T is treated as selling its assets to an unrelated person on February 16, 2019, and New T is treated as acquiring those assets on the following day, February 17, 2019. If the other requirements of paragraph (b)(3)(iii)(A) of this section are satisfied, New T is treated as placing Equipment #3 in service on a date not earlier than February 17, 2019, while a member of the X consolidated group. Accordingly, assuming all other requirements of this section are satisfied, New T is eligible to claim the additional first year depreciation deduction for Equipment #3 when New T places Equipment #3 in service. In addition, the amount of the deduction is not limited by section 168(i)(7)(A).

(DD) *Example 30*—(*1*) *Facts.* G, which is not a member of a consolidated group, has a depreciable interest in Equipment #4. Parent owns all the stock of H, which is a member of the Parent consolidated group. No member of the Parent consolidated group has ever had a depreciable interest in Equipment #4 while a member of the Parent consolidated group, and neither Parent nor H is related to G within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). During 2018, G sells Equipment #4 to a person not related to G, Parent, or H within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). In a series of related transactions, during 2019, Parent acquires all of the stock of G, and H purchases Equipment #4 from an unrelated person.

(*2*) *Analysis.* In a series of related transactions, G became a member of the Parent consolidated group, and H, also a member of the Parent consolidated group, acquired Equipment #4. Because G previously had a depreciable interest in Equipment #4, pursuant to paragraph (b)(3)(v)(B) of this section, H is treated as having a depreciable interest in Equipment #4. As a result, H's acquisition of Equipment #4 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, H's acquisition of Equipment #4 is not eligible for the additional first year depreciation deduction.

(EE) *Example 31.* (*1*) In a series of related transactions, a father sells a machine to an unrelated individual in December 2019 who sells the machine to the father's daughter in January 2020 for use in the daughter's trade or business. Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, the time to test whether the parties are related is immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. As a result, the following relationships are tested under section 179(d)(2)(A): The father and the unrelated individual, the unrelated individual and the father's daughter, and the father and his daughter.

(*2*) Because the individual is not related to the father within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), the individual's acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, the individual's purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*3*) The individual and the daughter are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). However, the father and his daughter are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). Accordingly, the daughter's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(FF) *Example 32.* (*1*) The facts are the same as in *Example 31* of paragraph (b)(3)(viii)(EE)(*1*) of this section, except that instead of selling to an unrelated individual, the father sells the machine to his son in December 2019 who sells the machine to his

sister (the father's daughter) in January 2020. Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, the time to test whether the parties are related is immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. As a result, the following relationships are tested under section 179(d)(2)(A): The father and his son, the father's son and his sister, and the father and the father's daughter.

(*2*) Because the father and his son are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), the son's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, the son's acquisition of the machine is not eligible for the additional first year depreciation deduction.

(*3*) The son and his sister are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). However, the father and his daughter are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). Accordingly, the daughter's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(GG) *Example 33.* (*1*) In June 2018, *DA,* an individual, bought and placed in service a new machine from an unrelated party for use in its trade or business. In a series of related transactions, *DA* sells the machine to *DB* and *DB* places it in service in October 2019, *DB* sells the machine to *DC* and *DC* places it in service in December 2019, and *DC* sells the machine to *DD* and *DD* places it in service in January 2020. *DA* and *DB* are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). *DB* and *DC* are related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(iii). *DC* and *DD* are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(iii). *DA* is not related to *DC* or to *DD* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). All parties are calendar year taxpayers.

(*2*) *DA*'s purchase of the machine in June 2018 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, qualifies for the additional first year depreciation deduction under this section.

(*3*) Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, the time to test whether the parties in the series of related transactions are related is immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. However, because *DB* placed in service and disposed of the machine in the same taxable year, *DB* is disregarded pursuant to paragraph (b)(3)(iii)(C)(*2*)(*i*) of this section. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): *DA* and *DC, DC* and *DD,* and *DA* and *DD.*

(*4*) Because *DA* is not related to *DC* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), *DC*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *DC*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*5*) Because *DC* is not related to *DD* and *DA* is not related to *DD* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(iii), *DD*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *DD*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(HH) *Example 34.* (*1*) In June 2018, *EA,* an individual, bought and placed in service a new machine from an unrelated party for use in his trade or business. In a series of related transactions, *EA* sells the machine to *EB* and *EB* places it in service in September 2019, *EB* transfers the machine to *EC* in a transaction described in paragraph (g)(1)(iii) of this section and *EC* places it in service in November 2019, and *EC* sells the machine to *ED* and *ED* places it in service in January 2020. *EA* and *EB* are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). *EB* and *EC* are related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(iii). *EB* and *ED* are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(iii). *EC* and *ED* are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(iii). *EA* is not related to *EC* or to *ED* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii). All parties are calendar year taxpayers.

(*2*) *EA*'s purchase of the machine in June 2018 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, qualifies for the additional first year depreciation deduction under this section.

(*3*) Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, the time to test whether the parties in the series of related transactions are related is immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. However, because *EB* placed in service and transferred the machine in the same taxable year in a transaction described in paragraph (g)(1)(iii) of this section, the section 168(i)(7) transaction between *EB* and *EC* is disregarded pursuant to paragraph (b)(3)(iii)(C)(*2*)(*iii*) of this section. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): *EA* and *EB, EB* and *ED, EC* and *ED,* and *EA* and *ED.*

(*4*) Because *EA* is not related to *EB* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), *EB*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *EB*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section. Pursuant to paragraph (g)(1)(iii) of this section, *EB* is allocated $^{2}/_{12}$ of its 100-percent additional first year depreciation deduction for the machine, and *EC* is allocated the remaining portion of *EB*'s 100-percent additional first year depreciation deduction for the machine.

(*5*) *EC* is not related to *ED* and *EA* is not related to *ED* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(iii). However, *EB* and *ED* are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(iii). Accordingly, *ED*'s acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

* * * * *

(5) * * *

(ii) * * *

(A) * * * For determination of acquisition date, see paragraph (b)(5)(ii)(B) of this section for property acquired pursuant to a written binding contract, paragraph (b)(5)(iv) of this section for self-constructed property, and paragraph (b)(5)(v) of this section for property not acquired pursuant to a written binding contract.

* * * * *

(iii) * * *

(G) *Acquisition of a trade or business or an entity.* A contract to acquire all or substantially all of the assets of a trade or business or to acquire an entity (for example, a corporation, a partnership, or a limited liability company) is binding if it is enforceable under State law against the parties to the contract. The presence of a condition outside the control of the parties, including, for example, regulatory agency approval, will not prevent the contract from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, does not prevent the contract from being a binding contract. This paragraph (b)(5)(iii)(G) also applies to a contract for the sale of the stock of a corporation that is treated as an asset sale as a result of an election under section 338.

* * * * *

(v) *Determination of acquisition date for property not acquired pursuant to a written binding contract.* Except as provided in paragraphs (b)(5)(iv), (vi), and (vii) of this section, the acquisition date of property that the taxpayer acquires pursuant to a contract that does not meet the definition of a written

binding contract in paragraph (b)(5)(iii) of this section, is the date on which the taxpayer paid (in the case of a cash basis taxpayer) or incurred (in the case of an accrual basis taxpayer) more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities such as planning and designing, securing financing, exploring, or researching. This paragraph (b)(5)(v) does not apply to an acquisition described in paragraph (b)(5)(iii)(G) of this section.

* * * * *

(viii) * * * Unless the facts specifically indicate otherwise, assume that the parties are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), paragraph (c) of this section does not apply, and the parties do not have predecessors:

* * * * *

(c) *Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017*—(1) *In general.* A taxpayer may elect to treat any acquired or self-constructed component, as described in paragraph (c)(3) of this section, of the larger self-constructed property, as described in paragraph (c)(2) of this section, as being eligible for the additional first year depreciation deduction under this section, assuming all requirements of section 168(k) and this section are met. The taxpayer may make this election for one or more such components.

(2) *Eligible larger self-constructed property*—(i) *In general.* Solely for purposes of this paragraph (c) and except as provided in paragraph (c)(2)(ii) of this section, the larger self-constructed property must be qualified property under section 168(k)(2), as in effect on the day before the date of the enactment of the Act, for which the taxpayer begins the manufacture, construction, or production before September 28, 2017. The determination of when manufacture, construction, or production of the larger self-constructed property begins is made in accordance with the rules in § 1.168(k)–1(b)(4)(iii)(B). A larger self-constructed property is property that is manufactured, constructed, or produced by the taxpayer for its own use in its trade or business or for its production of income, or property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in § 1.168(k)–1(b)(4)(ii), that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income. If the taxpayer enters into a written binding contract, as defined in paragraph (b)(5)(iii) of this section, before September 28, 2017, with another person to manufacture, construct, or produce the larger self-constructed property and the manufacture, construction, or production of this property begins after September 27, 2017, paragraph (b)(5)(iv) of this section applies and paragraph (c) of this section does not apply.

(ii) *Exceptions.* This paragraph (c) does not apply to any larger self-constructed property that meets at least one of the following criteria—

(A) Is placed in service by the taxpayer before September 28, 2017;

(B) Is placed in service by the taxpayer after December 31, 2019, or for property described in section 168(k)(2)(B) or (C) as in effect on the day before the date of the enactment of the Act, after December 31, 2020;

(C) Does not meet the original use requirement in section 168(k)(2)(A)(ii) as in effect on the day before the date of the enactment of the Act;

(D) Is described in section 168(k)(9) and § 1.168(k)–2(b)(2)(ii)(F) or (G);

(E) Is described in section 168(g)(1)(F) and (g)(8) (electing real property trade or business) or section 168(g)(1)(G) (electing farming business) and placed in service by the taxpayer in any taxable year beginning after December 31, 2017;

(F) Is qualified leasehold improvement property, as defined in section 168(e)(6) as in effect on the day before amendment by section 13204(a)(1) of the Act, and placed in service by the taxpayer after December 31, 2017;

(G) Is qualified restaurant property, as defined in section 168(e)(7) as in effect on the day before amendment by section 13204(a)(1) of the Act, and placed in service by the taxpayer after December 31, 2017;

(H) Is qualified retail improvement property, as defined in section 168(e)(8) as in effect on the day before amendment by section 13204(a)(1) of the Act, and placed in service by the taxpayer after December 31, 2017;

(I) Is qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(A) (placed in service by the taxpayer after December 31, 2017); or

(J) Is included in a class of property for which the taxpayer made an election under section 168(k)(7) (formerly section 168(k)(2)(D)(iii)) not to deduct the additional first year depreciation deduction.

(3) *Eligible components*—(i) *In general.* Solely for purposes of this paragraph (c), a component of the larger self-constructed property, as described in paragraph (c)(2) of this section, must be qualified property under section 168(k)(2) and paragraph (b) of this section.

(ii) *Acquired components.* Solely for purposes of this paragraph (c), a binding contract, as defined in paragraph (b)(5)(iii) of this section, to acquire a component of the larger self-constructed property must be entered into by the taxpayer after September 27, 2017.

(iii) *Self-constructed components.* Solely for purposes of this paragraph (c), the manufacture, construction, or production of a component of the larger self-constructed property must begin after September 27, 2017. The determination of when manufacture, construction, or production of the component begins is made in accordance with the rules in paragraph (b)(5)(iv)(B) of this section.

(4) *Special rules*—(i) *Installation costs.* If the taxpayer pays or incurs costs, including labor costs, to install a component of the larger self-constructed property, as described in paragraph (c)(2) of this section, such costs are eligible for additional first year depreciation under this section, assuming all requirements are met, only if the component being installed meets the requirements in paragraph (c)(3) of this section.

(ii) *Property described in section 168(k)(2)(B).* For purposes of this paragraph (c), the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of qualified property in section 168(k)(2)(B), as in effect on the day before the date of the enactment of the Act, is limited to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2020. The amounts of unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2020, are referred to as ''progress expenditures.'' Rules similar to the rules in section 4.02(1)(b) of Notice 2007–36 (2007–17 I.R.B. 1000) (see § 601.601(d)(2)(ii)(*b*) of this chapter) apply for determining progress expenditures.

(5) *Computation of additional first year depreciation deduction*—(i) *Election is made.* Before determining the allowable additional first year depreciation deduction for property for which the taxpayer makes the election specified in this paragraph (c), the taxpayer must determine the portion of the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the larger self-constructed property, including all components, attributable

to the component that meets the requirements of paragraph (c)(3) of this section (component basis). The additional first year depreciation deduction for the component basis is determined by multiplying such component basis by the applicable percentage for the placed-in-service year of the larger self-constructed property. The additional first year depreciation deduction for the remaining unadjusted depreciable basis of the larger self-constructed property, as described in paragraph (c)(2) of this section, is determined by multiplying such remaining unadjusted depreciable basis by the phase-down percentage in section 168(k)(8) applicable to the placed-in-service year of the larger self-constructed property. For purposes of this paragraph (c), the remaining unadjusted depreciable basis of the larger self-constructed property is equal to the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the larger self-constructed property, including all components, reduced by the sum of the component basis of the components for which the taxpayer makes the election specified in this paragraph (c). If the phase-down percentage in section 168(k)(8) is zero for the placed-in-service year of the larger self-constructed property, none of the components of the larger self-constructed property qualify for the additional first year depreciation deduction under this section.

(ii) *Election is not made.* If the taxpayer does not make the election specified in this paragraph (c), the additional first year depreciation deduction for the larger self-constructed property, including all components, that is qualified property under section 168(k)(2), as in effect on the day before the date of the enactment of the Act, is determined by multiplying the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the larger self-constructed property, including all components, by the phase-down percentage in section 168(k)(8) applicable to the placed-in-service year of the larger self-constructed property.

(6) *Time and manner for making election*—(i) *Time for making election.* The election specified in this paragraph (c) must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer placed in service the larger self-constructed property.

(ii) *Manner of making election.* The election specified in this paragraph (c) must be made by attaching a statement to such return indicating that the taxpayer is making the election provided in this paragraph (c) and whether the taxpayer is making the election for all or some of the components described in paragraph (c)(3) of this section. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including a lower-tier partnership), or by the S corporation).

(7) *Examples.* The application of this paragraph (c) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the larger self-constructed property is qualified property under section 168(k)(2) as in effect on the day before the date of the enactment of the Act, and the components acquired or self-constructed after September 27, 2017, are qualified property under section 168(k)(2) and paragraph (b) of this section.

(i) *Example 1.* (A) *BC,* a calendar year taxpayer, is engaged in a trade or business described in section 163(j)(7)(A)(iv). In December 2015, *BC* decided to construct an electric generation power plant for its own use. This plant is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. However, the turbine for the plant had to be manufactured by another person for *BC.* In January 2016, *BC* entered into a written binding contract with *CD* to acquire the turbine. *BC* received the completed turbine in August 2017 at which time *BC* incurred the cost of the turbine. The cost of the turbine is 11 percent of the total cost of the electric generation power plant to be constructed by *BC. BC* began constructing the electric generation power plant in October 2017 and placed in service this new power plant, including all component parts, in 2020.

(B) *BC* uses the safe harbor test in § 1.168(k)–1(b)(4)(iii)(B)(*2*) to determine when physical work of a significant nature begins for the electric generation power plant. Because the turbine that was manufactured by *CD* for *BC* is more than 10 percent of the total cost of the electric generation power plant, physical work of a significant nature for this plant began before September 28, 2017. None of *BC*'s expenditures for components of the power plant that are acquired or self-constructed after September 27, 2017, are eligible for the election specified in this paragraph (c) because the power plant is described in section 168(k)(9)(A) and paragraph (b)(2)(ii)(F) of this section and, therefore, are not eligible for the election pursuant to paragraph (c)(2)(ii)(D) of this section. Assuming all requirements are met under section 168(k)(2) as in effect on the day before the date of the enactment of the Act, the unadjusted depreciable basis of the power plant, including all components, attributable to its construction before January 1, 2020, is eligible for the 30-percent additional first year depreciation deduction pursuant to section 168(k)(8).

(ii) *Example 2.* (A) In August 2017, *BD,* a calendar-year taxpayer, entered into a written binding contract with *CE* for *CE* to manufacture a locomotive for *BD* for use in its trade or business. Before September 28, 2017, *BD* incurred $500,000 of expenses for the locomotive, which is more than 10 percent of the total cost of the locomotive. After September 27, 2017, *BD* incurred $4,000,000 of expenses for components of the locomotive. These components were acquired or self-constructed after September 27, 2017. In February 2019, *CE* delivered the locomotive to *BD* and *BD* placed in service the locomotive. The total cost of the locomotive is $4,500,000. The locomotive is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. On its timely filed Federal income tax return for 2019, *BD* made the election specified in this paragraph (c).

(B) *BD* uses the safe harbor test in § 1.168(k)–1(b)(4)(iii)(B)(*2*) to determine when physical work of a significant nature begins for the locomotive. Because *BD* had incurred more than 10 percent of the total cost of the locomotive before September 28, 2017, physical work of a significant nature for this locomotive began before September 28, 2017. Because *BD* made the election specified in this paragraph (c), the cost of $4,000,000 for the locomotive's components acquired or self-constructed after September 27, 2017, qualifies for the 100-percent additional first year depreciation deduction, assuming all other requirements are met. The remaining cost of the locomotive is $500,000 and such amount qualifies for the 40-percent additional first year depreciation deduction pursuant to section 168(k)(8).

(iii) *Example 3.* (A) In March 2017, *BE,* a calendar-year taxpayer, decided to construct qualified leasehold improvement property, as defined in section 168(e)(6) as in effect on the day before enactment of the Act, for its own use in its trade or business. This qualified leasehold improvement property also met the definition of qualified improvement property as defined in section 168(k)(3) as in effect on the day before enactment of the Act. Physical work of a significant nature for this qualified leasehold improvement property began before September 28, 2017. After September 27, 2017, *BE* acquired components of the qualified leasehold improvement property at a cost of $100,000. *BE* placed in service the qualified leasehold improvement property in February 2018.

(B) Because *BE* placed in service the qualified leasehold improvement property after December 31, 2017, none of *BE*'s expenditures of $100,000 for components of the qualified leasehold improvement property that are acquired after September 27, 2017, are eligible for the election specified in this paragraph (c) pursuant to paragraph (c)(2)(ii)(F) of this section. Additionally, *BE*'s unadjusted depreciable basis of the qualified leasehold improvement property, including all components, is not eligible for any additional first year depreciation deduction under section 168(k) and this section nor under section 168(k) as in effect on the day before enactment of the Act.

* * * * *

(e) * * *

(1) * * *

(iii) * * * The amounts of unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2020, are referred to as ''progress expenditures.'' Rules similar to the rules in section 4.02(1)(b) of Notice 2007–36 (2007–17 I.R.B. 1000) (see § 601.601(d)(2)(ii)(*b*) of this chapter) apply for determining progress expenditures.

* * * * *

(g) * * *

(11) *Mid-quarter convention.* In determining whether the mid-quarter convention applies for a taxable year under section 168(d)(3) and § 1.168(d)–1, the depreciable basis, as defined in § 1.168(d)–1(b)(4), for the taxable year the qualified property is placed in service by the taxpayer is not reduced by the allowed or allowable additional first year depreciation deduction for that taxable year. See § 1.168(d)–1(b)(4).

(h) * * *

(4) *Regulation project REG–106808–19*—(i) *In general.* Except as provided in paragraph (h)(4)(ii) of this section, the rules of this section in this regulation project REG–106808–19 apply to—

(A) Qualified property under section 168(k)(2) that is placed in service by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**;

(B) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**; and

(C) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in effect before the enactment of the Act and placed in service by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(ii) *Early application of regulation project REG–106808–19.* A taxpayer may rely on the provisions of this section in this regulation project REG–106808–19, in its entirety, for—

(A) Qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**;

(B) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**; and

(C) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in effect before the enactment of the Act and placed in service by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–20035 Filed 9–17–19; 4:15 pm]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 185 September 24, 2019

Part IV

Department of the Treasury

Office of Investment Security

31 CFR Part 800

Provisions Pertaining to Certain Investments in the United States by Foreign Persons; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

RIN 1505–AC64

Provisions Pertaining to Certain Investments in the United States by Foreign Persons

AGENCY: Office of Investment Security, Department of the Treasury

ACTION: Proposed rule.

SUMMARY: This proposed rule would replace the current regulations that implement section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). While this proposed rule retains many provisions of the existing regulations, a number of substantive changes are proposed, primarily to implement FIRRMA.

DATES: Written comments must be received by October 24, 2019.

The Department of the Treasury is considering holding during the comment period a teleconference regarding the proposed rule for members of the public. Information about any public teleconference, including the date, time, and how to attend, will be published on the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

ADDRESSES: Written comments on this proposed rule may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury to make the comments available to the public. Please note that comments submitted through *https://www.regulations.gov* will be public, and can be viewed by members of the public.
- *Mail:* Send to U.S. Department of the Treasury, Attention: Thomas Feddo, Deputy Assistant Secretary for Investment Security, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

In general, the Department of the Treasury will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; David Shogren, Senior Policy Advisor; or Alexander Sevald, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115–232, 132 Stat. 2173, which amends section 721 (section 721) of the Defense Production Act of 1950, as amended (DPA), requires the issuance of regulations implementing its provisions. In Executive Order 13456, 73 FR 4677 (Jan. 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. This proposed rule is being issued pursuant to that authority.

FIRRMA was passed by Congress as H.R. 5515 and was enacted on August 13, 2018. Prior to the enactment of FIRRMA, section 721 authorized the President, acting through the Committee on Foreign Investment in the United States (CFIUS or the Committee), to review mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States.

FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and broadens the authorities of the President and CFIUS under section 721 to address national security concerns arising from certain investments and real estate transactions. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction (which FIRRMA describes as ''covered transactions''). In enacting FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reiterated its support of the United States' open investment policy, consistent with the protection of national security. A brief summary of key provisions of FIRRMA, as relevant for this rulemaking, follows.

FIRRMA expands and clarifies the jurisdiction of the Committee by explicitly adding four types of transactions as covered transactions in the DPA: (1) The purchase or lease by, or concession to, a foreign person of certain real estate in the United States; (2) non-controlling ''other investments'' that afford a foreign person an equity interest in and specified access to information in the possession of, rights in, or involvement in the decisionmaking of certain U.S. businesses involved in certain critical technologies, critical infrastructure, or sensitive personal data; (3) any change in a foreign person's rights if such change could result in foreign control of a U.S. business or an other investment in certain U.S. businesses; and (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721. With respect to the Committee's expanded jurisdiction over certain real estate transactions and other investments, FIRRMA instructs the Committee to specify criteria to limit the application of that expansion of jurisdiction to certain categories of foreign persons. The proposed rule addresses all of these types of covered transactions except for real estate transactions, which are the subject of a separate and concurrent rulemaking.

In addition to expanding the Committee's jurisdiction, FIRRMA prescribes certain process changes. FIRRMA allows parties to submit an abbreviated filing for any covered transaction through a declaration, as an alternative to CFIUS's traditional voluntary notice, both of which are discussed below. Declarations will allow parties to submit basic information regarding a transaction in an abbreviated form that should generally not exceed five pages in length. FIRRMA also sets forth an abbreviated timeframe for the Committee to respond to submitted declarations.

FIRRMA introduces a mandatory declaration requirement in certain circumstances. Specifically, FIRRMA creates a mandatory declaration requirement for certain covered transactions where a foreign government has a substantial interest. Additionally, FIRRMA authorizes CFIUS to mandate

through regulations the submitting of a declaration for covered transactions involving certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. In both cases, parties have the option of filing a notice rather than submitting a declaration if they so choose.

FIRRMA also codifies certain processes related to the Committee's authority to identify non-notified and non-declared transactions.

FIRRMA permits a party to a transaction to stipulate that a transaction is a covered transaction and, as relevant, a foreign government-controlled transaction. A party can make a stipulation in either a notice or a declaration. If a party makes a stipulation in a notice, CFIUS must provide comments on or accept the notice no later than 10 business days after the date of the filing.

Additionally, FIRRMA extends the timing of the review period for transactions filed as notices from 30 days to 45 days and allows the Secretary of the Treasury to grant one 15-day extension of the 45-day investigation period in ''extraordinary circumstances.'' These provisions were made effective in a rulemaking on October 11, 2018. 83 FR 51316. FIRRMA establishes a 30-day review period for transactions submitted as declarations. The notice and declarations processes are discussed in further detail below.

B. Effective Date of Certain Provisions

Congress divided FIRRMA's provisions into two categories: Those effective immediately and those that become effective no later than February 13, 2020.

Specifically, section 1727(a) of FIRRMA lists the provisions that became effective immediately upon enactment of the statute. A number of the immediately effective provisions required revisions to the CFIUS regulations existing at that time at part 800 of title 31 of the Code of Federal Regulations. On October 11, 2018, the Department of the Treasury published an interim rule implementing the immediately effective provisions of, and making updates consistent with, FIRRMA. 83 FR 51316. That interim rule was intended to provide clarity regarding the processes and procedures of the Committee pending the full implementation of FIRRMA. The interim rule provided for a public comment period of 30 days. One comment was received and is discussed below.

Section 1727(b) of FIRRMA delayed the effectiveness of any provision of FIRRMA not specified in section 1727(a) until the earlier of: (1) The date that is 18 months after the date of enactment of FIRRMA (*i.e.,* February 13, 2020); or (2) the date that is 30 days after publication in the **Federal Register** of a determination by the chairperson of the Committee that the regulations, organizational structure, personnel, and other resources necessary to administer the new provisions are in place. The proposed regulations in this notice are intended to fully implement the provisions of FIRRMA, with the exception of (1) CFIUS's new jurisdiction over certain real estate transactions, (2) CFIUS's new authority to impose filing fees, and (3) CFIUS's authority to mandate declarations for certain transactions involving critical technologies, each of which is the subject of a separate rulemaking, as discussed below.

Notwithstanding section 1727(b), section 1727(c) of FIRRMA authorizes CFIUS to conduct one or more pilot programs to implement any authority provided pursuant to any provision of, or amendment made by, FIRRMA that did not take effect immediately upon enactment. On October 11, 2018, the Department of the Treasury published an interim rule setting forth the scope of, and procedures for, a pilot program to review certain transactions involving foreign persons and critical technologies (Pilot Program Interim Rule). 83 FR 51322. That Pilot Program Interim Rule, which went into effect on November 10, 2018, established mandatory declarations for certain transactions involving investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. The Pilot Program Interim Rule provided for a public comment period of 30 days, and a number of comments were received. As discussed below, the Committee is still considering those comments and the scope of mandatory declarations for covered transactions involving critical technologies. The Department of the Treasury expects to address in the final rule the comments previously received on the Pilot Program Interim Rule and any new comments provided in response to this proposed rule.

C. Structure of FIRRMA Rulemaking and This Proposed Rule

Consistent with CFIUS processes generally, the proposed rule reflects extensive consultation with CFIUS member agencies, as well as other relevant agencies. The proposed rule retains many of the basic features of the existing regulations, while implementing the changes that FIRRMA made to CFIUS's jurisdiction and process.

Given the number of revisions, the proposed rule amends and restates part 800 in its entirety. Although the new part 800 is being restated here in full, many of the provisions of the prior part 800 are not being materially modified. The Committee will consider all comments provided to the proposed rule, but is particularly interested in receiving comments relating to the new provisions and revisions being proposed here and outlined below, rather than comments relating to the text of part 800 that has not been changed.

In updating part 800 to incorporate CFIUS's new jurisdiction over non-controlling other investments (which this rule describes as ''covered investments''), certain conforming edits were made to existing provisions. For example, the coverage section in subpart C of the proposed rule on ''covered control transactions'' is based on the ''covered transactions'' section in the existing part 800 regulations and provides examples of the different bases of jurisdiction over control transactions and covered investments. In that respect, there is also now a covered investment section within the coverage subpart for the new jurisdiction. Finally, the proposed rule incorporates the changes made to part 800 in the interim rule published in October 2018, and updates certain other provisions.

This proposed rule does not implement the authority FIRRMA provided to the Committee to review the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. A concurrent proposed rule implements such authority under a separate part 802 within title 31 of the CFR. The Department of the Treasury determined that the technical and procedural aspects of CFIUS's review of transactions involving real estate are sufficiently distinct from those related to control transactions and covered investments to warrant separate rulemaking.

Parties should be aware that certain transactions that are not covered transactions under this proposed rule could potentially be covered real estate transactions under the proposed part 802 real estate regulations.

FIRRMA authorizes the Committee to assess and collect fees with respect to covered transactions for which a written notice is filed, and the Committee is considering how to implement this authority. The proposed rule also does not address filing fees. The Department of the Treasury will publish a separate

proposed rule regarding fees at a later date.

The proposed rule does not modify the regulations currently at 31 CFR part 801, which sets forth the Pilot Program Interim Rule. CFIUS continues to evaluate the Pilot Program Interim Rule, and the Department of the Treasury welcomes comments on the retention of the mandatory declaration aspect of the Pilot Program Interim Rule for certain transactions involving critical technologies. The Department of the Treasury received comments regarding the Pilot Program Interim Rule from a variety of commenters and expects to address these comments in the final rule associated with this proposed rule.

The proposed rule seeks to provide clarity to the business and investment communities with respect to the types of U.S. businesses that are covered under FIRRMA's other investment authority. Given the level of specificity provided in certain provisions of the proposed rule, the pace of technological development, the evolving use of data, and the evolving national security landscape more generally, the Department of the Treasury anticipates that it will periodically review, and as necessary, make changes to the regulations, consistent with applicable law.

II. Discussion of Proposed Rule

A. Subpart A—General

The following discussion describes several key changes to subpart A.

Section 800.102—Risk-based analysis. FIRRMA requires that any determination of the Committee to suspend a covered transaction, to refer a covered transaction to the President, or to negotiate, enter into or impose, or enforce any agreement or condition with respect to a covered transaction, be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which must include an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. The proposed rule includes definitions of the terms ''threat,'' ''vulnerabilities,'' and ''consequences to national security'' used in risk-based analyses undertaken by the Committee.

Section 800.104—Applicability rule. The proposed rule clarifies the existing applicability rule. The proposed rule also removes the provision previously found at § 800.103(b)(4) that established applicability to a transaction based upon a Committee determination that a commitment had been made.

B. Subpart B—Definitions

Several key changes to the existing part 800 definitions and several key new definitions that are broadly applicable to both control transactions and covered investments are discussed immediately below. Certain new definitions that are applicable to specific substantive areas regarding covered investments are discussed in the applicable subsections below.

Section 800.203—Business day. The proposed rule modifies the definition for ''business day'' to exclude days where there U.S. Office of Personnel Management has announced the closure of Federal offices in the Washington, DC area. The proposed rule also addresses the impact on certain timing requirements where a submission is received after 5 p.m. (Eastern Time).

Section 800.206—Completion date. The proposed rule includes a definition for ''completion date.'' The proposed rule clarifies that, in the event that a covered transaction will be effectuated through multiple or staged closings, the completion date is the earliest date on which any transfer of interest or change in rights that constitutes a covered transaction occurs.

Section 800.207—Contingent equity interest. FIRRMA uses the term ''contingent equity interest'' in the definition of investment. The proposed rule eliminates the term ''convertible voting instrument'' in the existing part 800 in light of the new definition of ''contingent equity interest.'' The proposed rule also updates the references in the timing rule at § 800.308.

Section 800.214—Critical infrastructure. The proposed rule revises the definition for ''critical infrastructure'' to conform to the language in FIRRMA. As discussed further below, however, for the purposes of an other investment, FIRRMA requires CFIUS to specify a subset of critical infrastructure.

Section 800.252—U.S. business. The proposed rule revises the definition for ''U.S. business'' to conform to the definition in FIRRMA.

C. Covered Investments

The proposed rule implements CFIUS's authority, provided under FIRRMA, to review an investment by a foreign person in certain types of U.S. businesses that affords the foreign person certain access to information in the possession of, rights in, or involvement in the decisionmaking of certain U.S. businesses but that does not afford the foreign person control over the U.S. business. The proposed rule uses the term ''covered investments'' for these investments, as defined in § 800.211.

The types of access, rights, or involvement that could give rise to a covered investment are set forth in § 800.211(b). That section implements the definitions in FIRRMA describing transactions that afford the foreign person (1) access to material non-public technical information in the possession of the U.S. business, (2) membership or observer rights on the board of directors (or equivalent body) of the U.S. business, or (3) any involvement in substantive decisionmaking of the U.S. business regarding certain actions related to critical technologies, critical infrastructure, or sensitive personal data. The proposed rule further defines ''material non-public technical information'' (see § 800.233) and ''substantive decisionmaking'' (see § 800.245).

The types of businesses in which an investment may constitute a covered investment are those that have certain involvement in critical technologies, critical infrastructure, and sensitive personal data, as further described below and in the proposed rule. These businesses are referred to as ''TID U.S. businesses'' in the proposed rule (see § 800.248). ''TID'' is an acronym for Technology, Infrastructure, and Data. FIRRMA, moreover, limits such covered investments to those made in an unaffiliated business. Thus, the proposed rule adds a definition for ''unaffiliated TID U.S. business,'' which excludes entities in which the foreign person already holds a majority of the voting interest or the right to appoint the majority of the entity's board or equivalent governing body.

Notably, CFIUS retains jurisdiction over any transaction through which any foreign person could acquire control of any U.S. business, regardless of whether the transaction involves critical technology, critical infrastructure, or sensitive personal data.

In connection with the new jurisdiction over covered investments, FIRRMA requires that the Committee prescribe regulations to limit its application to the investments of certain categories of foreign persons. This proposed rule implements this requirement by ''excepting'' certain foreign persons from the provisions relating to covered investments if the foreign persons meet specified criteria. It also includes clarifications contained in FIRRMA regarding the treatment of certain investments through investment funds and an exception specified in FIRRMA for investments involving air carriers.

1. Covered Investments Involving Critical Technology

FIRRMA expands CFIUS's jurisdiction to include covered investments by a foreign person in an unaffiliated U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies.

Section 800.215—Critical technologies. The proposed rule defines ''critical technologies'' consistent with the language in FIRRMA. Subpart (f) of FIRRMA's definition of critical technology, as set out in this proposed rule, captures emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (ECRA), Subtitle B of Title XVII of Public Law 115–232. Pursuant to ECRA, the Bureau of Industry and Security within the Department of Commerce identifies and places export controls on specified emerging and foundational technologies. As technologies become controlled pursuant to rulemaking under ECRA, they will automatically be covered under the definition of ''critical technologies'' under part 800.

As noted above, CFIUS will continue to have authority to review any transaction that could result in control by a foreign person of any U.S. business, including a U.S. business with technology, critical or otherwise, and export controlled or otherwise.

2. Covered Investments Involving Critical Infrastructure

FIRRMA expands CFIUS's jurisdiction to include covered investments by a foreign person in an unaffiliated U.S. business that ''owns, operates, manufactures, supplies, or services critical infrastructure.'' FIRRMA requires that the regulations implementing this provision limit the application of covered investment jurisdiction to a subset of critical infrastructure that must be specified in the regulations. Moreover, FIRRMA specifically provides that any definition of ''critical infrastructure'' established under any provision of law other than section 721 is not determinative for the purposes of section 721, including this proposed rule. Similarly, the subset of critical infrastructure identified in appendix A is not intended to alter the definition of ''critical infrastructure'' as used in any other regulatory regime or context.

Section 800.212—Covered investment critical infrastructure. The proposed rule identifies the subset of critical infrastructure that is relevant for the Committee's jurisdiction over covered investments through a list of specific types of infrastructure in appendix A. As noted above, the Department of the Treasury anticipates periodically revising the regulations, potentially including revisions to this list. To distinguish this subset of critical infrastructure from critical infrastructure more broadly, this proposed rule creates a new term, ''covered investment critical infrastructure'' (see § 800.212).

As noted above, FIRRMA describes, subject to the regulations implementing this provision, a U.S. business that falls under other investment jurisdiction with respect to critical infrastructure as one that ''owns, operates, manufactures, supplies, or services'' the subset of critical infrastructure. This proposed rule refers to these activities as ''functions.'' In furtherance of FIRRMA's requirement to limit the application of other investment jurisdiction regarding critical infrastructure, the proposed rule sets forth which functions apply to each enumerated specific type of covered investment critical infrastructure. The proposed rule therefore links the relevant functions with the enumerated specific types of covered investment critical infrastructure in appendix A. Column 1 of appendix A lists the covered investment critical infrastructure and Column 2 lists the relevant functions that apply to enumerated specific types of covered investment critical infrastructure.

Appendix A is integral to the proposed rule and key to determining whether a U.S. business is a TID U.S. business for purposes of critical infrastructure covered investment jurisdiction. Only a U.S. business that performs one of the specified functions listed in Column 2 of appendix A with respect to the enumerated specific type of covered investment infrastructure listed in Column 1 is a TID U.S. business for purposes of critical infrastructure covered investments. The proposed rule also clarifies the meaning of certain of the functions listed in FIRRMA.

Section 800.235—Own. The proposed rule defines ''own'' solely for the purpose of Column 2 of appendix A, which in turn determines which owners of covered investment critical infrastructure are TID U.S. businesses for purposes of covered investment jurisdiction. The term limits owners to only those of U.S. businesses that directly possess the systems or assets constituting the applicable covered investment critical infrastructure.

Sections 800.232—Manufacture; 800.242—Service; and 800.246—Supply. The proposed rule also defines ''manufacture,'' ''service,'' and ''supply.'' It does not define ''operate'' given the commonly understood meaning of that term.

Importantly, appendix A only applies to the subset of critical infrastructure subject to covered investment jurisdiction, and is not applicable in any other context. Appendix A implements FIRRMA's direction to identify a subset of critical infrastructure for purposes of covered investments and therefore does not modify the definition of critical infrastructure as it applies to CFIUS's jurisdiction more broadly over control transactions.

As noted above, CFIUS will continue to have authority to review any transaction that could result in control by a foreign person of any U.S. business, regardless of whether the U.S. business involves critical infrastructure as broadly defined by FIRRMA or the narrower subset of covered investment critical infrastructure introduced in this proposed rule.

3. Covered Investments Involving Sensitive Personal Data

FIRRMA expands CFIUS's jurisdiction to include covered investments by a foreign person in an unaffiliated U.S. business that maintains or collects sensitive personal data of U.S. citizens that ''may be exploited in a manner that threatens to harm national security.''

Section 800.241—Sensitive personal data. To implement this provision, the proposed rule sets forth a detailed definition for ''sensitive personal data.'' The Committee anticipates periodically revising the regulations, potentially including revisions to this definition.

Given that most companies collect some type of data on individuals, the proposed rule protects national security while attempting to minimize any chilling effect on beneficial foreign investment by focusing on the sensitivity of the data itself, as well as the sensitivity of the population about whom the data is maintained or collected. In particular, the proposed rule identifies specific categories of data that constitute sensitive personal data only if the U.S. business (a) targets or tailors its products or services to sensitive U.S. Government personnel or contractors, (b) maintains or collects such data on greater than one million individuals, or (c) has a demonstrated business objective to maintain or collect such data on greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services. The proposed definition also includes all genetic information and generally carves

out data pertaining to a U.S. business's own employees.

The proposed rule defines ''targets or tailors'' (see § 800.247) and provides examples of businesses that meet the definition. By focusing on U.S. businesses that target or tailor their products or services to these potentially sensitive populations, the Committee expects to review transactions involving U.S. businesses that are more likely to have sensitive personal data concerning such individuals. Even if a U.S. business does not target or tailor its products or services to such individuals, however, if the U.S. business maintains or collects data on a large number of individuals, it is more likely to capture data on sensitive populations. The proposed threshold of one million accounts for this possibility. Similarly, if a U.S. business is a data-driven company that plans to maintain or collect sensitive personal data on a large number of individuals in the future, as demonstrated by the U.S. business's statements or actions, it may capture data on sensitive populations.

Section 800.241(a)(1)(ii)(A)—This section describes certain financial data that could be used to determine if an individual is experiencing financial hardship. The types of data the proposed rule seeks to capture include bank account statements or detailed financial information included in an application for a home mortgage or credit card. Information regarding ordinary consumer transactions, such as a record of a credit card purchase at a retail establishment, would not generally fall into this category.

Section 800.241(a)(1)(ii)(B)—This section describes information that is collected by consumer reporting agencies, such as an individual's credit score, or summaries of debts and payment histories. Many companies periodically receive information about an individual's credit from a consumer reporting agency, and § 800.241(a)(1)(ii)(B) generally excludes these companies from its scope if they receive a limited set of the information, such as a credit score, for the legitimate purposes described in the Fair Credit Reporting Act.

Section 800.241(a)(1)(ii)(C)—This section describes data contained in certain types of personal insurance applications, many of which contain detailed personal information related to financial status and health.

Section 800.241(a)(1)(ii)(D)—This section describes health-related data.

Section 800.241(a)(1)(ii)(E)—This section describes non-public electronic communications, including email, which may include all manner of sensitive information, but only if the U.S. business is providing communications platforms used by third parties. For example, email communications between a U.S. business and its own customers would not be covered. Rather, this section describes the situation where a U.S. business offers email, chat, or messaging services, a primary purpose of which is to allow third parties to communicate with each other.

Section 800.241(a)(1)(ii)(F)—This section describes geolocation data that is often collected by mobile mapping applications, GPS services, or wireless communications providers.

Section 800.241(a)(1)(ii)(G)—This section describes data that is generated by companies that provide biometric identification services.

Section 800.241(a)(1)(ii)(H)–(J)—These sections describes certain data that is held by companies, typically government contractors, that issue official government identification cards or process personnel security clearances.

Section 800.227—Identifiable data; § 800.239—Personal identifier. The proposed rule also includes a definition of ''identifiable data.'' In some cases, a U.S. business may maintain or collect the data described in § 800.241(a)(1)(ii)(A)–(J), but it is not possible to attribute such data to any specific individual. For example, a U.S. business may store health records on its servers, but those records are encrypted such that only a third party in possession of the encryption key can read the data. The U.S. business in these circumstances would not be maintaining or collecting sensitive personal data. The proposed rule makes clear, however, that identifiable data is not limited to data that includes an individual's name or other obvious identifier, but rather includes any personal identifier, as defined in § 800.239.

Finally, § 800.241(a)(2) describes genetic information, as defined pursuant to the regulations implementing HIPAA. Unlike the categories described in sections 800.241(a)(1)(ii)(A)–(J), the requirement that the U.S. business target or tailor to certain U.S. Government personnel or contractors, maintain or collect data on greater than one million individuals, or have a demonstrated business objective to maintain or collect such data on greater than one million individuals if such data is an integrated part of the U.S. business's primary products or services as well as the requirement that the data be identifiable, does not apply to genetic information.

As noted above, CFIUS will continue to have authority to review any transaction that could result in control by a foreign person of any U.S. business, regardless of whether the U.S. business maintains or collects sensitive personal data.

4. Country Specification for Covered Investments

FIRRMA requires CFIUS to specify criteria to limit the application of FIRRMA's expanded jurisdiction over other investments to certain categories of foreign persons. The proposed rule addresses FIRRMA's requirement through three new defined terms, ''excepted investor,'' ''excepted foreign state,'' and ''minimum excepted ownership,'' which operate together to exclude from CFIUS's jurisdiction covered investments by certain foreign persons who meet certain criteria establishing sufficiently close ties to certain foreign states. Sections 800.220, 800.219, and 800.234 define excepted investor, excepted foreign state, and minimum excepted ownership, respectively.

Section 800.220—Excepted investor. The proposed rule sets forth a narrow definition of excepted investor in the interest of protecting national security, in light of increasingly complex ownership structures, and to prevent foreign persons from circumventing CFIUS's jurisdiction. Thus, the criteria specified in § 800.220 require that a foreign person have a substantial connection (*e.g.,* nationality of ultimate beneficial owners and place of incorporation) to one or more particular foreign states in order to be deemed an excepted investor. Note that foreign persons who have violated, or whose parents or subsidiaries have violated, certain U.S. laws, executive orders, regulations, orders, directives, or licenses, or who have submitted a material misstatement or omission in a CFIUS notice or declaration or violated a material provision of a mitigation agreement, among other things, will not be considered excepted investors. Additionally, note that a foreign person who is an excepted investor at the time of the transaction, but, who, for up to three years after the completion date, fails to meet to certain criteria, is deemed not to be an excepted investor and the transaction is thus subject to CFIUS jurisdiction as a covered investment. Any member of the Committee may file an agency notice of the transaction for up to one year (and the Chairperson of the Committee for up to three years in extraordinary circumstances).

Section 800.219—Excepted foreign state. The rule proposes that the excepted foreign state definition operate as a two-factor conjunctive test. First, the foreign state must be included in a defined group of eligible foreign states, which will be separately published on the Department of the Treasury website. As this is a new concept with potentially significant implications for the national security of the United States, CFIUS initially intends to designate a limited number of eligible foreign states. CFIUS plans to review this group in the future and potentially expand the number of eligible foreign states.

Second, in furtherance of CFIUS's efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and to increase cooperation with the United States, the Secretary of the Treasury, with the agreement of a super-majority of Committee member agencies, will also make a determination, as described in subpart J, for each eligible foreign state as to whether such foreign state has established and is effectively utilizing a robust process to assess foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security. In making these determinations, CFIUS will consider factors that will be made available on the Department of the Treasury website. The Committee is considering delaying the effectiveness of this requirement in order to provide the eligible foreign states time to enhance their foreign investment review processes and bilateral cooperation. Any such determinations identifying a foreign state as an excepted foreign state will be published in the **Federal Register** and incorporated into the Committee's list of excepted foreign states, which will be made available on the Department of the Treasury website.

D. Subpart C—Coverage

Subpart C of the proposed rule includes provisions that describe with particularity transactions that are, or are not, covered control transactions (§ 800.301–302). Similar provisions address covered investments (§ 800.303–304). The proposed rule contains numerous examples in this subpart to clarify the coverage of certain transactions.

Section 800.305—Incremental acquisitions. Under the existing § 800.204(e), ''[a]ny transaction in which a foreign person acquires an additional interest in a U.S. business that was previously the subject of a covered transaction for which the Committee concluded all action under section 721 shall not be deemed to be a transaction that could result in foreign control over that U.S. business (*i.e.,* it is not a covered transaction).'' This provision was introduced when the scope of CFIUS's jurisdiction included only transactions that could result in foreign control of a U.S. business and when the only means to file was by filing a written notice. This proposed rule moves the provision to Subpart C and clarifies that a transaction shall not be deemed to be a covered transaction if a foreign person acquires an additional interest in a U.S. business over which the same foreign person or any of its direct or indirect wholly-owned subsidiaries previously acquired direct control in the U.S. business in a covered control transaction for which the Committee concluded all action under Section 721 on the basis of a notice. It further clarifies that this provision does not apply to incremental acquisitions in a U.S. business by a foreign person that had not previously acquired control of the U.S. business nor to a transaction for which the Committee had concluded all action under section 721 on the basis of a declaration. In other words, the incremental acquisition rule does not apply where the initial transaction was submitted only as declaration or was a covered investment.

Section 800.307—Specific clarifications for investment funds. The proposed rule implements provisions in FIRRMA relating to investment funds. Specifically, it clarifies that, in the context of an indirect investment by a foreign person in an unaffiliated TID U.S. business through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner or equivalent on an advisory board or committee of the fund, where all of the criteria in § 800.307 are satisfied, a limited partner's membership on the investment fund's advisory board or committee does not in and of itself render the foreign person's indirect investment in an unaffiliated TID U.S. business a covered investment.

E. Subpart D—Declarations

FIRRMA introduces an abbreviated filing process through the submission of a declaration, which allows parties to submit basic information regarding a transaction to the Committee. A declaration may be submitted for any covered transaction and, in certain cases, is mandated. Parties may choose to file a notice in lieu of declaration to satisfy a mandatory declaration requirement.

Declarations differ from notices in three key ways. First, declarations are shorter in length, generally not exceeding five pages. As part of the Pilot Program Interim Rule, CFIUS developed a standard fillable declaration form for parties to use when submitting a transaction for review. To facilitate the submission of declarations under the proposed rule, CFIUS intends to maintain a standard fillable form, making certain modifications to the form for use with respect to different types of transactions. Parties will be able to use the form to submit voluntary and mandatory declarations to the Committee.

Second, the timeline for the Committee to take action on declarations is shorter than for notices. FIRRMA provides CFIUS up to 30 days to respond to a declaration. This differs from the timeline for notices, which is 45 days for a review and an additional 45 days for an investigation, with a possibility of a 15-day extension in ''extraordinary circumstances.''

Third, FIRRMA provides CFIUS with several potential responses to a declaration, and CFIUS need not make a final determination with respect to action under section 721 on the basis of a declaration.

1. Mandatory Declarations

Section 800.401—Mandatory declarations. The proposed rule implements FIRRMA's requirement for mandatory declarations for certain transactions in which a foreign person obtains a ''substantial interest'' in a U.S. business where a foreign government in turn holds a ''substantial interest'' in the foreign person. The proposed rule defines the term substantial interest with respect to a person's ability to influence the actions of another person in a manner that has the potential, directly or indirectly, to impair the national security of the United States. In most cases, the foreign person best placed to influence a U.S. business—and therefore exploit any vulnerability in a U.S. business—is the foreign person with the closest relationship to the U.S. business. With respect to an investment involving multiple tiers of investing entities, this foreign person is very frequently the one that sits closest to the U.S. business on the post-closing organizational chart. This entity, when compared to other entities higher in the organizational chart, often has a greater ability to interact directly with—and therefore influence—the U.S. business, both from a corporate governance perspective as well as an operational

perspective. The proposed rule therefore establishes in § 800.244(a) the voting interest threshold for substantial interest between a foreign person and U.S. business at a 25 percent voting interest, direct or indirect, and between a foreign government and a foreign person at a 49 percent or greater voting interest, direct or indirect. For purposes of determining the percentage of voting interest held indirectly by one entity in another, the rule establishes that any voting interest of a parent entity in a subsidiary entity will be deemed to be a 100 percent voting interest. The proposed rule also clarifies in § 800.244(b) how the voting interest in a limited partnership is to be calculated. The proposed rule does not provide for a waiver of this requirement.

As discussed above, CFIUS is considering whether to continue the mandatory declaration requirement under the Pilot Program Interim Rule, which requires declarations for covered control transactions and covered investments in certain U.S. businesses with critical technologies involved in one or more of 27 specified industries.

Section 800.401(e)(2). FIRRMA also provides that, for mandatory declarations, the Committee can require that a declaration be submitted up to 45 days prior to the completion of the transaction. Under the proposed rule, mandatory declarations would need to be submitted to CFIUS at least 30 days in advance of the completion date.

Section 800.401(d). Where there is a mandatory declaration requirement, parties may choose to submit a written notice at least 30 days prior to the completion date of the transaction instead of a declaration.

2. Voluntary Declarations

Section 800.402—Voluntary declarations. The proposed rule implements FIRRMA's provision enabling parties to choose to file a declaration with CFIUS instead of a written notice.

3. Procedures and Contents for Declarations

Section 800.403—Procedures for declarations. The proposed rule outlines the process under which parties submit a declaration. The contents and procedures for submitting mandatory and voluntary declarations are identical. In order to submit a declaration, the parties need to provide the information required by § 800.404, including certifications. The rule does not permit parties to submit a declaration regarding a transaction that is also the subject of a notice without written approval from the Staff Chairperson. Conversely, parties may not file a notice regarding a transaction that is the subject of a declaration until such time as the Committee's assessment of the declaration has been completed (see § 800.501(j)).

Section 800.404—Contents of declarations. The proposed rule sets forth the information that is required in a declaration, consistent with FIRRMA's requirement that CFIUS establish declarations as ''abbreviated notices that would not generally exceed five pages in length.'' As part of a declaration, parties may voluntarily stipulate that the transaction is a covered transaction and, if so, whether the transaction is a foreign-government controlled transaction.

Section 800.405—Beginning of 30-day assessment period. The proposed rule requires that the Committee take action on a declaration within 30 days of the Committee's receipt of the declaration from the Staff Chairperson. One distinction from the provisions regarding declarations in the Pilot Program Interim Rule is that the proposed rule explicitly provides that the Staff Chairperson may invite parties to a declaration to attend a meeting with Committee Staff to discuss and clarify issues pertaining to the transaction that is the subject of the declaration.

Section 800.406—Rejection, disposition, or withdrawal of declarations. The proposed rule provides that the Committee may reject a declaration if it is incomplete, there is a material change in the transaction that has been notified, information comes to light that contradicts material information provided by the parties in the declaration, or parties to a submitted declaration fail to provide information requested by the Committee within two business days of the request (unless such timeframe is extended by the Staff Chairperson). The proposed rule also establishes procedures for parties to withdraw a declaration, and makes clear that parties may not submit more than one declaration for the same or substantially similar transaction without approval from the Staff Chairperson.

Section 800.407—Committee actions. The proposed rule implements FIRRMA's mandate that the Committee take one of four actions in response to a declaration: (1) Request that the parties file a notice; (2) inform the parties that CFIUS cannot complete action under section 721 on the basis of the declaration, and that they may file a notice to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction; (3) initiate a unilateral review of the transaction through an agency notice; or (4) notify the parties that CFIUS has concluded all action under section 721.

F. Subpart E—Notices

The proposed rule does not make significant changes to the procedures and requirements for notices.

Section 800.502(o)—Contents of voluntary notices. FIRRMA allows parties to ''stipulate'' that the transaction is a covered transaction and, as relevant, a foreign government-controlled transaction. FIRRMA directs the Committee to provide comments or accept the notice within 10 business days from the submission date of the draft or formal written notice in cases where the transaction parties have stipulated that the transaction is a covered transaction. In addition, stipulating control reduces certain information requirements, and will allow the Committee to more quickly turn to reviewing the substance of the transaction. (See § 800.502(j)(2).) In making a stipulation, parties acknowledge that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered transaction and/or a foreign government-controlled transaction, and parties making a stipulation waive the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721, with respect to any covered transaction.

Section 800.502(c)(1)(xi) and (c)(3)(ix)–(xi)—Contents of voluntary notices. The rule proposes additions to the information requirements to require submission of information necessary to analyze covered investments. A few additional changes to the information requirements have been introduced for clarity and to include information that CFIUS determined was necessary based on experience.

Section 800.503—Beginning of 45-day review period. FIRRMA changes the timeframe for CFIUS's review of a transaction filed as a notice, extending it from 30 days to 45 days. This change was one of the immediately effective provisions of FIRRMA that was implemented through the interim rule published at 83 FR 51316. The proposed rule, consistent with the interim rule, incorporates that timing change.

G. Subpart G—Finality of Action

FIRRMA maintains that a covered transaction that has been notified to CFIUS as a notice and on which CFIUS has concluded action under section 721

after determining that there are no unresolved national security concerns, qualifies for a ''safe harbor,'' and extends the same treatment to transactions submitted as a declaration. This means that, unless a party to a transaction submitted false or misleading material information or omitted material information, and subject to compliance with the terms of any mitigation agreement entered into with or conditions imposed by CFIUS, the transaction can proceed without the possibility of subsequent suspension or prohibition under section 721. A covered transaction on which CFIUS has not concluded action does not qualify for the safe harbor, and CFIUS has the authority to initiate review of the transaction on its own, even after the transaction has been completed, which CFIUS may choose to do if it believes the transaction presents national security considerations.

H. Subpart I—Penalties and Damages

The Department of the Treasury amended the penalty provisions of its regulations in the interim rule published at 83 FR 51316, which updated CFIUS's penalties provision consistent with revisions made to section 721 by FIRRMA. The proposed rule adopts the revisions from the interim rule and makes certain other updates to subpart I.

Section 800.901—Penalties and damages. The proposed rule, consistent with the interim rule, removes the qualifier ''intentionally or through gross negligence'' with respect to a material misstatement or omission in the context of the imposition of civil penalties. These revisions did not, and do not, apply to material misstatements, omissions, or certifications made prior to the interim rule's effective date (October 11, 2018), or to violations occurring after the implementation of the interim rule of a material provision of a mitigation agreements or material conditions of an order entered into or imposed prior to the implementation of the interim rule.

Section 800.902—Effect of lack of compliance. The proposed rule, consistent with the interim rule, includes a provision authorizing the Committee to negotiate a remediation plan for lack of compliance with a mitigation agreement or condition entered into or imposed under section 721(l), require filings for future covered transactions for five years, or seek injunctive relief, in addition to other available remedies.

The proposed rule includes certain other modifications to subpart I, including with respect to how penalties are calculated, imposed, and enforced.

III. Public Comments

The Department of the Treasury received one comment to the interim rule. The commenter sought additional information about what circumstances the Committee believes would warrant a 15-day extension of an investigation in order ''to protect the national security of the United States.''

Response: The interim rule provides that where a Committee member requests to extend an investigation, that request must include a description, ''with particularity, [of] the extraordinary circumstances that warrant the Chairperson extending the investigation.'' 31 CFR 800.506. Accordingly, whether ''extraordinary circumstances'' exist depends on the specific facts of a particular investigation, and are difficult to generalize. While we understand the commenter's interest in additional information from the Committee, at this time we are not considering altering or expanding on the extraordinary circumstances provisions relating to a 15-day extension of an investigation in part 800.

IV. Rulemaking Requirements

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget, because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or via email to *OIRA_Submission@omb.eop.gov,* with copies to Thomas Feddo, Deputy Assistant Secretary for Investment Security, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Comments on the collection of information should be received by November 25, 2019.

In accordance with 5 CFR 1320.8(d)(1), the Department of the Treasury is soliciting comments from members of the public concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology.

The burden of the information collections in this proposed rule is estimated as follows:

For Notices

Estimated total annual reporting and/or recordkeeping burden: 26,000 hours.

Estimated average annual burden per respondent: 130 hours.

Estimated number of respondents: 200 per year.

Estimated annual frequency of responses: Not applicable.

For Declarations

Estimated total annual reporting and/or recordkeeping burden: 11,000 hours.

Estimated average annual burden per respondent: 20 hours.

Estimated number of respondents: 550 per year.

Estimated annual frequency of responses: Not applicable.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The RFA applies whenever an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553) (APA), or any other law. As set forth below, because regulations issued pursuant to the DPA, such as these

regulations, are not subject to the APA, or another law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

The proposed rule implements section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit the acquisition, merger, or takeover of, or certain other investments in, a U.S. business by a foreign person if such a transaction would threaten to impair the national security of the United States, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

Notwithstanding the inapplicability of the RFA, the Department of the Treasury has undertaken an analysis of the proposed rule's potential impact on small businesses in the United States. While the Department of the Treasury believes that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 605(b)), the Department of the Treasury does not have complete data at this time to make this determination, and therefore invites the public to comment on its analysis.

As discussed above, the proposed rule expands the jurisdiction of the Committee to include additional types of transactions not previously subject to CFIUS review. Additionally, the Committee will retain its existing jurisdiction over any transaction through which any foreign person could acquire control of any U.S. business. Accordingly, the proposed rule may impact any U.S. business, including a small U.S. business that engages in a covered transaction.

There is no single source for information on the number of small U.S. businesses that receive foreign investment (direct or indirect), including those involved with critical technologies, critical infrastructure, or sensitive personal data, such that they would be directly impacted by this rule. However, the Bureau of Economic Analysis (BEA) within the Department of Commerce collects, on an annual basis, data on new foreign direct investment in the United States through its Survey of New Foreign Direct Investment in the United States (Form BE-13). While these data are self-reported, and include only direct investments in U.S. businesses in which the foreign person acquires at least 10 percent of the voting shares (and consequently, do not capture investments below 10 percent, which may nevertheless be covered transactions), they nonetheless provide relevant information on a category of U.S. businesses that receive foreign investment, some of which may be covered by the proposed rule.

According to the BEA, in 2018, the most current year for which data is available, foreign persons obtained at least a 10 percent voting share in 832 U.S. businesses. U.S. Bureau of Economic Analysis, ''Number of Investments Initiated in 2018, Distribution of Planned Total Expenditures, Size by Type of Investment,'' *https://apps.bea.gov/international/xls/Table15-14-15-16-17-18.xls* (last visited September 11, 2019). The BEA only reports the general size of the investment transaction, not the type of the U.S. business involved, nor whether the U.S. business is considered a ''small business'' by the Small Business Administration (SBA), which defines small businesses based on annual revenue or number of employees. The smallest foreign investment transactions that the BEA reports are those with a dollar value below $50 million. While not all U.S. businesses receiving a foreign investment of less than $50 million are considered ''small'' for the purposes of the RFA, many might be, and the number of U.S. businesses receiving foreign investments of less than $50 million can serve as a proxy for the number of transactions involving small U.S. businesses that might be subject to CFIUS's jurisdiction.

Of the above mentioned 832 U.S. businesses receiving foreign investment in 2018, 576 were involved in transactions valued at less than $50 million. Although this figure is under inclusive because it does not capture all transactions that could potentially fall under the proposed rule, it also is over inclusive because it is not limited to any particular type of U.S. business. We believe the figure of 576 is the best estimate based on the available data of the number of small U.S. businesses that may be impacted by this rule.

According to the SBA, there are 30.2 million small businesses (defined as ''firms employing fewer than 500 employees'') in the United States. *https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf.* If approximately 600 small U.S. businesses will be potentially impacted by this rule, then the rule may potentially impact less than one percent of all small U.S. businesses. Accordingly, the Department of the Treasury does not believe the rule will impact a ''substantial number of small entities.''

Nonetheless, the proposed rule includes provisions that would reduce the costs to all businesses, including small businesses. For example, the availability of a shorter declaration for covered transactions may result in smaller cost to entities than having to prepare a lengthier notice. Additionally, having a fillable form for declarations may reduce some of the cost for parties.

The Department of the Treasury seeks information and comment on the types and number of small entities potentially impacted by this proposed rule. If necessary, the Department of the Treasury will undertake a final regulatory flexibility analysis in the final rule.

List of Subjects in 31 CFR Part 800

Foreign investments in the United States, Investigations, Investments, Investment companies, National defense, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Treasury proposes to revise part 800 of title 31 of the Code of Federal Regulations, to read as follows:

PART 800—REGULATIONS PERTAINING TO CERTAIN INVESTMENTS IN THE UNITED STATES BY FOREIGN PERSONS

Subpart A—General

Subpart B—Definitions

Subpart C—Coverage

Subpart D—Declarations

Subpart E—Notices

Subpart F—Committee Procedures

Subpart G—Finality of Action

Subpart H—Provision and Handling of Information

Subpart I—Penalties and Damages

Subpart J—Foreign National Security Investment Review Regimes

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart A—General

§ 800.101 Scope.

(a) Section 721 of title VII of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended, authorizes the President to suspend or prohibit any covered transaction, when, in the President's judgment, there is credible evidence that leads the President to believe that the foreign person engaging in a covered transaction might take action that threatens to impair the national security of the United States, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President. Section 721 also authorizes the Committee to review covered transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions.

(b) This part implements regulations pertaining to covered transactions as defined in § 800.213 of this part. Regulations pertaining to covered real estate transactions are addressed in part 802 of this title.

§ 800.102 Risk-based analysis.

Any determination of the Committee with respect to a covered transaction to suspend, refer to the President, or to negotiate, enter into or impose, or enforce any agreement or condition under section 721 shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction. Any such risk-based analysis shall include credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. For purposes of this part, any such analysis of risk shall include and be informed by consideration of the following elements:

(a) The *threat,* which is a function of the intent and capability of a foreign person to take action to impair the national security of the United States;

(b) The *vulnerabilities,* which are the extent to which the nature of the U.S. business presents susceptibility to impairment of national security; and

(c) The *consequences to national security,* which are the potential effects on national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.

§ 800.103 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under

any other provision of federal law, including without limitation the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 800.104 Applicability rule.

(a) Except as provided in paragraphs (b) and (c) of this section and otherwise in this part, the regulations in this part apply from [EFFECTIVE DATE OF FINAL RULE].

(b) For any transaction for which the following has occurred before [EFFECTIVE DATE OF FINAL RULE], the corresponding provisions of the regulations in this part that were in effect the day before [EFFECTIVE DATE OF FINAL RULE] will apply:

(1) The completion date;

(2) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction;

(3) A party has made a public offer to shareholders to buy shares of a U.S. business; or

(4) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or an owner or holder of a contingent equity interest has requested the conversion of the contingent equity interest.

(c) For any transaction that, between November 10, 2018 and [EFFECTIVE DATE], fell within the scope of part 801 of this title, the regulations in part 801 will continue to apply.

Note 1 to § 800.104: See subpart I (Penalties and Damages) of this part for specific applicability rules pertaining to that subpart.

Subpart B—Definitions

§ 800.201 Aggregated data.

The term *aggregated data* means data that have been combined or collected together in summary or other form such that the data cannot be identified with any individual.

§ 800.202 Anonymized data.

The term *anonymized data* means data from which all personal identifiers have been completely removed.

§ 800.203 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, DC, area are closed to the public. For purposes of calculating any deadline imposed by this part triggered by the submission of a party to a transaction under § 800.401(e)(2) or § 800.501(i), any submissions received after 5 p.m. Eastern Time are deemed to be submitted on the next business day.

Note 1 to § 800.203: See § 800.604 regarding the tolling of deadlines during a lapse in appropriations.

§ 800.204 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party filing a notice, declaration, or information, certifying under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notice, declaration, or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction, and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice, declaration, or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking partners, officers, or directors, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer or director of a corporation; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (4) of this section, such designee must possess actual authority to make the certification on behalf of the party filing a notice, declaration, or information.

Note 1 to § 800.204: A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

§ 800.205 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 800.206 Completion date.

The term *completion date* means, with respect to a transaction, the earliest date upon which any ownership interest, including a contingent equity interest, is conveyed, assigned, delivered, or otherwise transferred to a person, or a change in rights that could result in a covered control transaction or covered investment occurs.

Note 1 to § 800.206: See § 800.308 regarding the timing rule for a contingent equity interest.

§ 800.207 Contingent equity interest.

The term *contingent equity interest* means a financial instrument that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event.

§ 800.208 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers or in the case of a partnership, the general partner;

(9) The appointment or dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(5) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such shares; and

(6) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (5) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

(e) Examples:

(1) *Example 1.* Corporation A is a U.S. business. A U.S. investor owns 50 percent of the voting interest in Corporation A, and the remaining voting interest is owned in equal shares by five unrelated foreign investors. The foreign investors jointly financed their investment in Corporation A and vote as a single block on matters affecting Corporation A. The foreign investors have an informal arrangement to act in concert with regard to Corporation A, and, as a result, the foreign investors control Corporation A.

(2) *Example 2.* Same facts as in Example 1 of this section with regard to the composition of Corporation A's shareholders. The foreign investors in Corporation A have no contractual or other commitments to act in concert, and have no informal arrangements to do so. Assuming no other relevant facts, the foreign investors do not control Corporation A.

(3) *Example 3.* Corporation A, a foreign person, is a private equity fund that routinely acquires equity interests in companies and manages them for a period of time. Corporation B is a U.S. business. In addition to its acquisition of seven percent of Corporation B's voting shares, Corporation A acquires the right to terminate significant contracts of Corporation B. Corporation A controls Corporation B.

(4) *Example 4.* Corporation A, a foreign person, acquires a nine percent interest in the shares of Corporation B, a U.S. business. As part of the transaction, Corporation A also acquires certain veto rights that determine important matters affecting Corporation B, including the right to veto the dismissal of senior executives of Corporation B. Corporation A controls Corporation B.

(5) *Example 5.* Corporation A, a foreign person, acquires a thirteen percent interest in the shares of Corporation B, a U.S. business, and the right to appoint one member of Corporation B's seven-member Board of Directors. Corporation A receives minority shareholder protections listed in § 800.208(c) but receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

(6) *Example 6.* Corporation A, a foreign person, acquires a twenty percent interest in the shares of Corporation B, a U.S. business. Corporation A has negotiated an irrevocable passivity agreement that completely precludes it from controlling Corporation B. Corporation A does, however, receive the right to prevent Corporation B from entering into contracts with majority investors or their affiliates and to prevent Corporation B from guaranteeing the obligations of majority investors or their affiliates. Assuming no other relevant facts, Corporation A does not control Corporation B.

(7) *Example 7.* Limited Partnership A comprises two limited partners, each of which holds 49 percent of the interest in the partnership, and a general partner, which holds two percent of the interest. The general partner has sole authority to determine, direct, and decide all important matters affecting the partnership and a fund operated by the partnership. The general partner alone controls Limited Partnership A and the fund.

(8) *Example 8.* Same facts as in Example 7 of this section, except that each of the limited partners has the authority to veto major investments proposed by the general partner and to choose the fund's representatives on the boards of the fund's portfolio companies. The general partner and the limited partners each have control over Limited Partnership A and the fund.

Note 1 to § 800.208: See § 800.302(b) regarding the Committee's treatment of transactions in which a foreign person holds or acquires ten percent or less of the outstanding voting interest in a U.S. business solely for the purpose of passive investment. See § 800.303 regarding the Committee's treatment of transactions that do not result in control over a U.S. business by a foreign person, but may be covered investments. See § 800.305 regarding the Committee's treatment of a subsequent transaction involving a foreign person that previously acquired control of the U.S. business.

§ 800.209 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of a particular financial instrument to exchange any such instrument for an equity interest.

§ 800.210 Covered control transaction.

The term *covered control transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business, including without limitation such a transaction carried out through a joint venture.

§ 800.211 Covered investment.

The term *covered investment* means an investment, direct or indirect, by a foreign person other than an excepted investor in an unaffiliated TID U.S. business that is proposed or pending after [EFFECTIVE DATE OF FINAL RULE], and that:

(a) Is not a covered control transaction; and

(b) Affords the foreign person:

(1) Access to any material nonpublic technical information in the possession of the TID U.S. business;

(2) Membership or observer rights on the board of directors or equivalent

governing body of the TID U.S. business or the right to nominate an individual to a position on the board of directors or equivalent governing body of the TID U.S. business; or

(3) Any involvement, other than through voting of shares, in substantive decisionmaking of the TID U.S. business regarding:

(i) The use, development, acquisition, safekeeping, or release of sensitive personal data of U.S. citizens maintained or collected by the TID U.S. business;

(ii) The use, development, acquisition, or release of critical technologies; or

(iii) The management, operation, manufacture, or supply of covered investment critical infrastructure.

(c) Notwithstanding paragraphs (a) and (b) of this section, no investment involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102 shall be a covered investment.

§ 800.212 Covered investment critical infrastructure.

The term *covered investment critical infrastructure* means, in the context of a particular covered investment, the systems and assets, whether physical or virtual, set forth in Column 1 of appendix A to part 800.

§ 800.213 Covered transaction.

The term *covered transaction* means any of the following:

(a) A covered control transaction;

(b) A covered investment;

(c) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in a covered control transaction or a covered investment; or

(d) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721.

Note 1 to § 800.213: Any transaction described in (a) through (d) of this section that arises pursuant to a bankruptcy proceeding or other form of default on debt is a covered transaction. See also § 800.306 for the treatment of certain lending transactions.

§ 800.214 Critical infrastructure.

The term *critical infrastructure* means, in the context of a particular covered control transaction, systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security.

§ 800.215 Critical technologies.

The term *critical technologies* means the following:

(a) Defense articles or defense services included on the United States Munitions List (USML) set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130);

(b) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774), and controlled—

(1) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(2) For reasons relating to regional stability or surreptitious listening;

(c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810 (relating to assistance to foreign atomic energy activities);

(d) Nuclear facilities, equipment, and material covered by 10 CFR part 110 (relating to export and import of nuclear equipment and material);

(e) Select agents and toxins covered by 7 CFR part 331, 9 CFR part 121, or 42 CFR part 73; and

(f) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

§ 800.216 Effective date.

The term *effective date* means [EFFECTIVE DATE OF FINAL RULE].

§ 800.217 Encrypted data.

The term *encrypted data* means data to which National Institute of Standards and Technology (NIST)-allowed cryptographic techniques, as identified in the most current NIST special publication 800–175B, or superseding publication, have been applied.

§ 800.218 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the U.S. Government, a subnational government within the United States, and any of their respective departments, agencies, or instrumentalities). (See examples in § 800.301(g)(5) through (14) and § 800.302(g)(5) through (10).)

§ 800.219 Excepted foreign state.

The term *excepted foreign state* means each foreign state from time to time identified by the Chairperson of the Committee, with the agreement of two-thirds of the voting members of the Committee, and, beginning on [TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE] with respect to which the Chairperson of the Committee has made a determination pursuant to § 800.1001(a).

Note 1 to § 800.219: The name of each foreign state identified by the Chairperson of the Committee as an excepted foreign state will be published in a notice in the **Federal Register** and incorporated into the Committee's list of excepted foreign states.

§ 800.220 Excepted investor.

(a) The term *excepted investor* means a foreign person who is, as of the completion date and subject to paragraphs (c) and (d) of this section:

(1) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(2) A foreign government of an excepted foreign state; or

(3) A foreign entity that meets each of the following conditions with respect to itself and each of its parents (if any):

(i) Such entity is organized under the laws of an excepted foreign state or in the United States;

(ii) Such entity has its principal place of business in an excepted foreign state or the United States;

(iii) Each member or observer of the board of directors or similar body of such entity is a U.S. national or, if a foreign national, is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(iv) Any foreign person that individually holds, or each foreign person that is part of a group of foreign persons that, in the aggregate, holds, five percent or more of the outstanding voting interest of such entity; holds the right to five percent or more of the profits of such entity; holds the right in the event of dissolution to five percent or more of the assets of such entity; or could exercise control over such entity, is:

(A) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(B) A foreign government of an excepted foreign state; or

(C) A foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or in the United States; and

(v) The minimum excepted ownership of such entity is held, individually or in the aggregate, by one or more persons each of whom is:

(A) Not a foreign person;

(B) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(C) A foreign government of an excepted foreign state; or

(D) A foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or in the United States.

(b) When more than one person holds an ownership interest in an entity, in determining whether the ownership interests of such persons should be aggregated for purposes of paragraph (a)(3)(iv) of this section, consideration will be given to factors such as whether the persons holding the ownership interests are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another foreign person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) Notwithstanding paragraph (a) of this section, a foreign person is not an excepted investor with respect to a transaction if:

(1) In the five years prior to the completion date of the transaction the foreign person or any of its parents or subsidiaries:

(i) Has received written notice from the Committee that it has submitted a material misstatement or omission in a notice or declaration or made a false certification under this part or parts 801 or 802 of this title;

(ii) Has received written notice from the Committee that it has violated a material provision of a mitigation agreement entered into with, material condition imposed by, or an order issued by, the Committee or a lead agency under section 721(l);

(iii) Has been subject to action by the President under section 721(d);

(iv) Has:

(A) Received a written Finding of Violation or Penalty Notice imposing a civil monetary penalty from the Department of the Treasury Office of Foreign Assets Control (OFAC); or

(B) Entered into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including without limitation the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act, each as amended, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(v) Has received a written notice of debarment from the Department of State Directorate of Defense Trade Controls, as described in 22 CFR parts 127 and 128;

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including without limitation the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232, 132 Stat. 2208, 50 U.S.C. 4801, *et seq.*), the EAR, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(vii) Has received a final decision from the Department of Energy National Nuclear Security Administration imposing a civil penalty with respect to a violation of section 57 b. of the Atomic Energy Act of 1954, as implemented under 10 CFR part 810; or

(viii) Has been convicted of a crime under, or has entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to a violation of, any felony crime in any jurisdiction within the United States; or

(2) The foreign person or any of its parents or subsidiaries is, on the date on which the parties to the transaction first execute a binding written agreement, or other binding document, establishing the material terms of the transaction, listed on either the BIS Unverified List or Entity List in 15 CFR part 744.

(d) Irrespective of whether the foreign person satisfies the criteria in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date, the foreign person no longer meets all the criteria set forth in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section, the foreign person is not an excepted investor with respect to the transaction from the completion date onward. This paragraph does not apply when an excepted investor no longer meets any of the criteria solely due to a rescission of a determination under § 800.1001(b) or if a particular foreign state otherwise ceases to be an excepted foreign state.

(e) A foreign person may waive its status as an excepted investor with respect to a transaction at any time by submitting a declaration pursuant to § 800.403 or filing a notice pursuant to § 800.501 regarding the transaction in which it explicitly waives such status. In such case, the foreign person will be deemed not to be an excepted investor and the provisions of Subpart D or E, as applicable, will apply.

Note 1 to § 800.220: See § 800.501(c)(2) regarding an agency notice where a foreign person is not an excepted investor solely due to § 800.220(d).

§ 800.221 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

§ 800.222 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the U.S. Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

§ 800.223 Foreign government-controlled transaction.

The term *foreign government-controlled transaction* means any covered control transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government.

§ 800.224 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

§ 800.225 Foreign person.

(a) The term *foreign person* means:

(1) Any foreign national, foreign government, or foreign entity; or

(2) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

(b) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is engaged in business only outside the United States. All of its shares are held by Corporation X, which solely controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and only operating outside the United States, is not a foreign person.

(2) *Example 2.* Same facts as in the first sentence of Example 1 of this section. The government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A because a law establishing Corporation A gives the foreign state the right to appoint Corporation A's board members. Corporation A is a foreign person.

(3) *Example 3.* Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch is also a U.S. business.

(5) *Example 5.* Corporation A is a corporation organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the voting interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement to act in concert with regard to Corporation A with any other holder of voting interest in Corporation A. Corporation A demonstrates that the remainder of the voting interest in Corporation A is held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign person.

(6) *Example 6.* Same facts as Example 5 of this section, except that one of the foreign investors controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity pursuant to § 800.221(b), but it is a foreign person because it is controlled by a foreign person.

§ 800.226 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.

§ 800.227 Identifiable data.

The term *identifiable data* means data that can be used to distinguish or trace an individual's identity, including without limitation through the use of any personal identifier. For the avoidance of doubt, aggregated data or anonymized data is identifiable data if any party to the transaction has, or as a result of the transaction will have, the ability to disaggregate or de-anonymize the data, or if the data is otherwise capable of being used to distinguish or trace an individual's identity. Identifiable data does not include encrypted data, unless the U.S. business that maintains or collects the encrypted data has the means to de-encrypt the data so as to distinguish or trace an individual's identity.

§ 800.228 Investment.

The term *investment* means the acquisition of equity interest, including contingent equity interest.

§ 800.229 Investment fund.

The term *investment fund* means any entity that is an ''investment company,'' as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or would be an ''investment company'' but for one or more of the exemptions provided in section 3(b) or 3(c) thereunder.

§ 800.230 Involvement.

The term *involvement* means the right or ability to participate, whether or not exercised, including without limitation by doing any of the following:

(a) Providing input into a final decision;

(b) Consulting with or providing advice to a decisionmaker;

(c) Exercising special approval or veto rights;

(d) Participating on a committee with decisionmaking authority; or

(e) Advising on the appointment officers or selecting employees who are engaged in substantive decisionmaking.

§ 800.231 Lead agency.

The term *lead agency* means the Department of the Treasury and any other agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including without limitation all or a portion of an assessment, a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

§ 800.232 Manufacture.

Solely for the purposes of Column 2 of appendix A to part 800, the term *manufacture* means to produce or reproduce, whether physically or virtually.

§ 800.233 Material nonpublic technical information.

(a) The term *material nonpublic technical information* means information that:

(1) Provides knowledge, know-how, or understanding not available in the public domain, of the design, location, or operation of critical infrastructure, including without limitation vulnerability information such as that related to physical security or cybersecurity; or

(2) Is not available in the public domain and is necessary to design, fabricate, develop, test, produce, or manufacture a critical technology, including without limitation processes, techniques, or methods;

(b) The term *material nonpublic technical information* does not include financial information regarding the performance of an entity.

(c) Example: Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is a U.S. business that services an industrial control system utilized by an interstate oil pipeline that has the capacity to transport 600,000 barrels per day of crude oil (ICS B). ICS B is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. The source code for ICS B is not available in the public domain. Pursuant to the terms of the investment, Corporation A will have access to the source code for ICS B. The proposed investment therefore affords Corporation A access to material nonpublic technical information in the possession Corporation B regarding the design and operation of covered investment critical infrastructure.

§ 800.234 Minimum excepted ownership.

The term *minimum excepted ownership* means:

(a) With respect to an entity whose equity securities are primarily traded on an exchange in an excepted foreign state or the United States, a majority of its voting interest, the right to a majority of its profits, and the right in the event of dissolution to a majority of its assets; and

(b) With respect to an entity whose equity securities are not primarily traded on an exchange in an excepted foreign state or the United States, 90 percent or more of its voting interest, the right to 90 percent or more of its profits, and the right in the event of

dissolution to 90 percent or more of its assets.

§ 800.235 Own.

Solely for the purposes of Column 2 of appendix A to part 800, the term *own* means to directly possess the applicable covered investment critical infrastructure.

§ 800.236 Parent.

(a) The term *parent* means a person who or which directly or indirectly:

(1) Holds or will hold at least 50 percent of the outstanding voting interest in an entity; or

(2) Holds or will hold the right to at least 50 percent of the profits of an entity, or has or will have the right in the event of the dissolution to at least 50 percent of the assets of that entity.

(b) Any entity that meets the conditions of paragraph (a)(1) or (2) of this section with respect to another entity (*i.e.,* the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

(c) Examples:

(1) *Example 1.* Corporation P holds 50 percent of the voting interest in Corporations R and S. Corporation R holds 40 percent of the voting interest in Corporation X; Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

(2) *Example 2.* Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

§ 800.237 Party to a transaction.

(a) The term *party to a transaction* means:

(1) In the case of an acquisition of an ownership interest in an entity, the person acquiring the ownership interest, the person from which such ownership interest is acquired, and the entity whose ownership interest is being acquired, without regard to any person providing brokerage or underwriting services for the transaction;

(2) In the case of a merger, the surviving entity, and the entity or entities that are merged into that entity as a result of the transaction;

(3) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;

(4) In the case of a proxy solicitation, the person soliciting proxies, and the person who issued the voting interest;

(5) In the case of the acquisition or conversion of contingent equity interests, the issuer and the person holding the contingent equity interests;

(6) In the case of a change in rights that a person has with respect to an entity in which that person has an investment, the person whose rights change as a result of the transaction and the entity to which those rights apply;

(7) In the case of a transfer, agreement, arrangement, or any other type of transaction, the structure of which is designed or intended to evade or circumvent the application of section 721, any person that participates in such transfer, agreement, arrangement, or other type of transaction;

(8) In the case of any other type of transaction, any person who is in a role comparable to that of a person described in paragraphs (a)(1) through (7) of this section; and

(9) In all cases, each party that submitted a declaration or notice to the Committee regarding a transaction.

(b) For purposes of section 721(l), the term *party to a transaction* includes any affiliate of any party described in paragraphs (a)(1) through (9) of this section that the Committee, or a lead agency acting on behalf of the Committee, determines is relevant to mitigating a risk to the national security of the United States.

§ 800.238 Person.

The term *person* means any individual or entity.

§ 800.239 Personal identifier.

The term *personal identifier* means name, physical address, email address, social security number, phone number, or other information that identifies a specific individual.

§ 800.240 Section 721.

The term *section 721* means section 721 of title VII of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended.

§ 800.241 Sensitive personal data.

(a) The term *sensitive personal data* means, except as provided in paragraph (b) of this section:

(1) Identifiable data that is:

(i) Maintained or collected by a U.S. business that:

(A) Targets or tailors products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or to personnel and contractors thereof;

(B) Has maintained or collected such data on greater than one million individuals at any point over the preceding twelve (12) months; or

(C) Has a demonstrated business objective to maintain or collect such data on greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services; and

(ii) Within any of the following categories:

(A) Data that could be used to analyze or determine an individual's financial distress or hardship;

(B) The set of data in a consumer report, as defined pursuant to 15 U.S.C. 1681a, unless such data is obtained from a consumer reporting agency for one or more purposes identified in 15 U.S.C. 1681b(a) and such data is not substantially similar to the full contents of a consumer file as defined pursuant to 15 U.S.C. 1681a.;

(C) The set of data in an application for health insurance, long-term care insurance, professional liability insurance, mortgage insurance, or life insurance;

(D) Data relating to the physical, mental, or psychological health condition of an individual;

(E) Non-public electronic communications, including without limitation email, messaging, or chat communications, between or among users of a U.S. business's products or services if a primary purpose of such product or service is to facilitate third-party user communications;

(F) Geolocation data collected using positioning systems, cell phone towers, or WiFi access points such as via a mobile application, vehicle GPS, other onboard mapping tool, or wearable electronic device;

(G) Biometric enrollment data including without limitation facial, voice, retina/iris, and palm/fingerprint templates;

(H) Data stored and processed for generating a state or federal government identification card;

(I) Data concerning U.S. Government personnel security clearance status; or

(J) The set of data in an application for a U.S. Government personnel security clearance or an application for employment in a position of public trust; and

(2) Genetic information, as defined pursuant to 45 CFR 160.103.

(b) The term *sensitive personal data* shall not include, regardless of the applicability of the criteria described in paragraph (a) of this section:

(1) Data maintained or collected by a U.S. business concerning the employees of that U.S. business, unless the data pertains to employees of U.S. Government contractors who hold U.S. Government personnel security clearances; or

(2) Data that is a matter of public record, such as court records or other

government records that are generally available to the public.

§ 800.242 Service.

Solely for the purposes of Column 2 of appendix A to part 800, the term *service* means to repair, maintain, refurbish, replace, overhaul, or update.

§ 800.243 Solely for the purpose of passive investment.

(a) Ownership interests are held or acquired *solely for the purpose of passive investment* if the person holding or acquiring such interests does not plan or intend to exercise control and—

(1) Is not afforded any rights that if exercised would constitute control;

(2) Does not acquire any access, rights, or involvement specified § 800.211(b);

(3) Does not possess or develop any purpose other than passive investment; and

(4) Does not take any action inconsistent with holding or acquiring such interests solely for the purpose of passive investment. (See § 800.302(b).)

(b) Example: Corporation A, a foreign person, acquires a voting interest in Corporation B, a U.S. business. In addition to the voting interest, Corporation A negotiates the right to appoint a member of Corporation B's Board of Directors. The acquisition by Corporation A of a voting interest in Corporation B is not solely for the purpose of passive investment.

§ 800.244 Substantial interest.

(a) The term *substantial interest* means a voting interest, direct or indirect, of 25 percent or more by a foreign person in a U.S. business and a voting interest, direct or indirect, of 49 percent or more by a foreign government in a foreign person.

(b) In the case of entity organized as a limited partnership, a foreign government will be considered to have a *substantial interest* in such partnership if either:

(1) It holds 49 percent or more of the voting interest in the general partner; or

(2) It is a limited partner and holds 49 percent or more of the voting interest of the limited partners.

(c) For purposes of determining the percentage of voting interest held indirectly by one entity in another entity, any voting interest of a parent will be deemed to be a 100 percent voting interest in any entity of which it is a parent.

§ 800.245 Substantive decisionmaking.

(a) The term *substantive decisionmaking* means the process through which decisions regarding significant matters affecting an entity are undertaken, including without limitation, as applicable:

(1) Pricing, sales, and specific contracts, including without limitation the license, sale, or transfer of sensitive personal data to any third party, including without limitation pursuant to a customer, vendor, or joint venture agreement;

(2) Supply arrangements;

(3) Corporate strategy and business development;

(4) Research and development, including without limitation location and budget allocation;

(5) Manufacturing locations;

(6) Access to critical technologies, covered investment critical infrastructure, material nonpublic technical information, or sensitive personal data, including without limitation pursuant to a customer, vendor, or joint venture agreement;

(7) Physical and cyber security protocols, including without limitation the storage and protection of critical technologies, covered investment critical infrastructure, or sensitive personal data;

(8) Practices, policies, and procedures governing the collection, use, or storage of sensitive personal data, including without limitation:

(i) The establishment or maintenance of, or changes to, the architecture of information technology systems and networks used in collecting or maintaining sensitive personal data; or

(ii) Privacy policies and agreements for individuals from whom sensitive personal data is collected setting forth parameters regarding whether and how sensitive personal data may be collected, maintained, accessed, or disseminated; or

(9) Strategic partnerships.

(b) The term *substantive decisionmaking* does not include strictly administrative decisions.

(c) Examples:

(1) *Example 1.* Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is an unaffiliated TID U.S. business that operates a container terminal at a strategic seaport within the National Port Readiness Network (Terminal B). Pursuant to the terms of the investment, Corporation A will have approval rights over which customers may utilize Terminal B. The proposed investment therefore affords Corporation A involvement in substantive decisionmaking of Corporation B regarding the management, operation, manufacture, or supply of covered investment critical infrastructure.

(2) *Example 2.* Same facts as Example 1 of this section, except that instead of customer approval rights, Corporation A has the right to decide whether to claim certain tax credits with respect to Terminal B on its own income tax filing, which prevents Corporation B from claiming such credits. Assuming no other relevant facts, the proposed investment does not afford Corporation A involvement in substantive decisionmaking of Corporation B regarding the management, operation, manufacture, or supply of covered investment critical infrastructure.

§ 800.246 Supply.

Solely for the purposes of Column 2 of appendix A to part 800, the term *supply* means to provide third-party physical or cyber security.

§ 800.247 Targets or tailors.

(a) The term *targets or tailors* means customizing products or services for use by a person or group of persons or actively marketing to or soliciting a person or group of persons.

(b) Examples:

(1) *Example 1.* Corporation A, a U.S. business, operates facilities throughout the United States that offer healthcare-related products and services. Some of Corporation A's facilities are located within metropolitan areas that also include U.S. military facilities. Absent additional relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

(2) *Example 2.* Same facts as Example 2 of this section, except that Corporation A operates a facility on the premises of a U.S. military facility. Corporation A targets or tailors its products or services for purposes of § 800.241(a)(1)(i)(A).

(3) *Example 3.* Corporation A, a U.S. business, offers a discount to all customers that are employed in the public sector broadly, including active duty U.S. military personnel. Absent additional relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

(4) *Example 4.* Same facts as Example 3 of this section, except that Corporation A offers a discount solely to uniformed U.S. military personnel or distributes marketing materials that promote the particular usefulness of Corporation A's products to military personnel. Corporation A targets or tailors its products or services for purposes of § 800.241(a)(1)(i)(A).

§ 800.248 TID U.S. business.

The term *TID U.S. business* means any U.S. business that:

(a) Produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies;

(b) Performs the functions as set forth in Column 2 of appendix A to part 800 with respect to covered investment critical infrastructure; or

(c) Maintains or collects, directly or indirectly, sensitive personal data of U.S. citizens.

(d) Examples:

(1) *Example 1.* Corporation A, a U.S. business, operates a munitions plant in the

United States that produces a variety of military grade explosives. Some of the explosives manufactured by Corporation A are subject to export controls because they are listed on the USML. Corporation A manufactures critical technologies and is therefore a TID U.S. business.

(2) *Example 2.* Facility A is a crude oil storage facility with the capacity to hold 50 million barrels of crude oil. Corporation A is a U.S. business that operates Facility A. Corporation B is a U.S. business that provides third-party physical security to Facility A by guarding the gate to Facility A and patrolling the fence surrounding Facility A. Corporation C produces the fencing used by Facility A. Corporation D produces the commercially available off-the-shelf cyber security software utilized in Facility A. Corporation E provides third-party cyber security to Facility by running Facility A's cyber security defenses. Facility A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A, Corporation B, and Corporation E each perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Facility A and each is therefore a TID U.S. business. Assuming no other relevant facts, neither Corporation C nor Corporation D perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Facility A and neither is therefore a TID U.S. business.

(3) *Example 3.* Pipeline A is an interstate natural gas pipeline with an outside diameter of 36 inches. Corporation A is a U.S. business that owns Pipeline A. Corporation B is a U.S. business that manufactures the pipe segments with an outside diameter of 36 inches that are used in Pipeline A. Pipeline A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Pipeline A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Pipeline A and is therefore not a TID U.S. business.

(4) *Example 4.* IXP A is an internet exchange point that supports public peering. Corporation A is a U.S. business that operates IXP A. Corporation B is a U.S. business that maintains the physical premises of IXP A. IXP A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to IXP A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to IXP A and is therefore not a TID U.S. business.

(5) *Example 5.* SCADA System A is a supervisory control and data acquisition system utilized by a public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, that regularly serves 15,000 individuals. Corporation A is a U.S. business that produces SCADA System A by building the hardware and integrating all the software. Corporation B is a U.S. business that produces commercially available off-the-shelf software that is sold to Corporation A and used as a component in SCADA System A. SCADA System A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A, as the manufacturer of SCADA System A, performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to SCADA System A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to SCADA System A and is therefore not a TID U.S. business.

(6) *Example 6.* Same facts as Example 5 of this section. Corporation B later releases a patch that updates the commercially available off-the-shelf software that is a component of SCADA System A. As the software is only a component of SCADA System A, the software itself is not covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to SCADA System A and is therefore not a TID U.S. business.

(7) *Example 7.* Alloy A is a steel alloy containing two percent manganese. Corporation A is a U.S. business that manufactures Alloy A in Facility A by melting the constituent metals. Facility A is in the United States. Corporation B is a U.S. business that purchases Alloy A from Corporation A and resells it to a prime contractor of the Department of Defense. Facility A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Alloy A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Alloy A and is therefore not a TID U.S. business.

(8) *Example 8.* Corporation A, a U.S. business, is a credit reporting agency and maintains consumer reports on greater than one million individuals. Corporation A maintains sensitive personal data and is therefore a TID U.S. business.

(9) *Example 9.* Same facts as in Example 8 of this section, except that Corporation A maintains the sensitive personal data through its subsidiary, Corporation X. Corporation A is a TID U.S. business because it indirectly maintains sensitive personal data. Corporation X is also a TID U.S. business because it directly maintains sensitive personal data.

§ 800.249 Transaction.

The term *transaction* means any of the following, whether proposed or completed:

(a) A merger, acquisition, or takeover, including without limitation:

(1) The acquisition of an ownership interest in an entity;

(2) The acquisition of proxies from holders of a voting interest in an entity;

(3) A merger or consolidation;

(4) The formation of a joint venture; or

(5) A long-term lease or concession arrangement under which a lessee (or equivalent) makes substantially all business decisions concerning the operation of a leased entity (or equivalent), as if it were the owner;

(b) An investment; or

(c) The conversion of a contingent equity interest.

(d) *Example.* Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. Corporation B, however, is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

Note 1 to § 800.249: See § 800.308 regarding factors the Committee will consider in determining whether to include the access, rights, or involvement to be acquired by a foreign person upon the conversion of contingent equity interests as part of the Committee's analysis of whether a transaction that involves such interests is a covered transaction.

§ 800.250 Unaffiliated TID U.S. business.

The term *unaffiliated TID U.S. business* means, with respect to a foreign person, a TID U.S. business in which that foreign person does not directly hold more than 50 percent of the outstanding voting interest or have the right to appoint more than half of the members of the board of directors or equivalent governing body.

§ 800.251 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331(a)). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America,

one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized ''in the United States.''

§ 800.252 U.S. business.

(a) The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States.

(b) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in interstate commerce in the United States through a branch or subsidiary. Its branch or subsidiary is a U.S. business. Corporation A and its branch or subsidiary is each also a foreign person should any of them engage in a transaction involving a U.S. business.

(2) *Example 2.* Same facts as in the first sentence of Example 1 of this section. Corporation A, however, does not have a branch office, subsidiary, or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

(3) *Example 3.* Corporation A, a company organized under the laws of a foreign state, is wholly owned and controlled by Corporation X. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports goods to Corporation X and to unrelated companies in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

§ 800.253 U.S. national.

The term *U.S. national* means an individual who is a U.S. citizen or an individual who, although not a U.S. citizen, owes permanent allegiance to the United States.

§ 800.254 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage

§ 800.301 Transactions that are covered control transactions.

Transactions that are covered control transactions include, without limitation:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreign person. (See the examples in § 800.301(g)(1),(2), and (3).)

(b) A transaction in which a foreign person conveys its control of a U.S. business to another foreign person. (See the example in § 800.301(g)(4).)

(c) A transaction that results or could result in control by a foreign person of any part of an entity or of assets, if such part of an entity or assets constitutes a U.S. business. (See § 800.302(c) and the examples in § 800.301(g)(5) through (14).)

(d) A joint venture in which the parties enter into a contractual or other similar arrangement, including an agreement on the establishment of a new entity, but only if one or more of the parties contributes a U.S. business and a foreign person could control that U.S. business by means of the joint venture. (See the examples in § 800.301(g)(15) through (17).)

(e) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in foreign control of the U.S. business. (See the example in § 800.301(g)(18).)

(f) A transaction the structure of which is designed to evade or circumvent the application of section 721. (See the example in § 800.301(g)(19).)

(g) Examples:

(1) *Example 1.* Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, which is a U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation X, and those directors will have the right to make decisions about the closing and relocation of particular production facilities and the termination of significant contracts. The directors also will have the right to propose to Corporation A, the sole shareholder, the dissolution of Corporation X and the sale of its principal assets. The proposed transaction is a covered control transaction.

(2) *Example 2.* Same facts as in Example 1 of this section, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals. Although Corporation A may choose not to exercise its power to elect new directors for Corporation X, Corporation A nevertheless will have that exercisable power. The proposed transaction is a covered control transaction.

(3) *Example 3.* Corporation A, a foreign person, proposes to purchase 50 percent of the shares in Corporation X, a U.S. business, from Corporation B, also a U.S. business. Corporation B would retain the other 50 percent of the shares in Corporation X, and Corporation A and Corporation B would contractually agree that Corporation A would not exercise its voting and other rights for ten years. The proposed transaction is a covered control transaction.

(4) *Example 4.* Corporation X is a U.S. business, but is wholly owned and controlled by Corporation Y, a foreign person. Corporation Z, also a foreign person, but not related to Corporation Y, seeks to acquire Corporation X from Corporation Y. The proposed transaction is a covered control transaction because it could result in control of Corporation X, a U.S. business, by another foreign person, Corporation Z.

(5) *Example 5.* Corporation X, a foreign person, has a branch office located in the United States. Corporation A, a foreign person, proposes to buy that branch office. The proposed transaction is a covered control transaction.

(6) *Example 6.* Corporation A, a foreign person, buys a branch office located entirely outside the United States of Corporation Y, which is incorporated in the United States. Assuming no other relevant facts, the branch office of Corporation Y is not a U.S. business, and the transaction is not a covered control transaction.

(7) *Example 7.* Corporation A, a foreign person, makes a start-up, or ''greenfield,'' investment in the United States. That investment involves activities such as the foreign person separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel, and purchasing the necessary technology. The investment involves incorporating a newly formed subsidiary of the foreign person. Assuming no other relevant facts, Corporation A will not have acquired a U.S. business, and its greenfield investment is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(8) *Example 8.* Corporation A, a foreign person, intends to make an early-stage investment in a start-up company in the United States. Prior to the investment by the foreign person, the start-up has incorporated, established a domain name, hired personnel, developed business plans, sought financing, rented office space, and engaged in other activities that constitute interstate commerce in the United States, without the involvement of the foreign person. As a result of the investment, Corporation A could control the U.S. business. Under these facts, Corporation A is acquiring a U.S. business and the proposed transaction is a covered control transaction.

(9) *Example 9.* Corporation A, a foreign person, purchases substantially all of the assets of Corporation B. Corporation B, which is incorporated in the United States, was in the business of producing industrial equipment, but stopped producing and selling such equipment one week before Corporation A purchased substantially all of its assets. At the time of the transaction, Corporation B continued to have employees on its payroll, maintained know-how in producing the industrial equipment it previously produced, and maintained relationships with its prior customers, all of which were transferred to Corporation A. The acquisition of substantially all of the assets

of Corporation B by Corporation A is a covered control transaction.

(10) *Example 10.* Corporation X, a foreign person, seeks to acquire from Corporation A, a U.S. business, an empty warehouse facility located in the United States. The acquisition would be limited to the physical facility, and would not include customer lists, intellectual property, or other proprietary information, or other intangible assets or the transfer of personnel. Assuming no other relevant facts, the facility is not an entity and therefore not a U.S. business, and the proposed acquisition of the facility is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(11) *Example 11.* Same facts as Example 6 of this section, except that, in addition to the proposed acquisition of Corporation A's warehouse facility, Corporation X would acquire the personnel, customer list, equipment, and inventory management software used to operate the facility. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(12) *Example 12.* Corporation A, a foreign person, seeks to acquire from Corporation X, a U.S. business, certain tangible and intangible assets that Corporation X operates as a business in the United States. Corporation A intends to use the assets to establish a business undertaking in a foreign country. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(13) *Example 13.* Corporation A, a foreign person, seeks to acquire from Corporation X, a U.S. business, proprietary software developed by Corporation X. The acquisition would be limited to the software and would not include customer lists, marketing material, or other proprietary information; any other tangible or intangible assets; or the transfer of personnel. Assuming no other relevant facts, the software does not constitute an entity and therefore not a U.S. business, and the proposed acquisition of the software is not a covered control transaction.

(14) *Example 14.* Same facts as Example 9 of this section, except that, in addition to the proposed acquisition of Corporation X's proprietary software, Corporation A would acquire Corporation X's customer lists, advertising and promotional material, branding, trademarks, domain names, and internet presence. Under these facts, Corporation A is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(15) *Example 15.* Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes only cash and Corporation X contributes a U.S. business. Each owns 50 percent of the shares of JV Corporation and, under the Articles of Incorporation of JV Corporation, both Corporation A and Corporation X have veto power over all of the matters affecting JV Corporation identified under § 800.208, giving them both control over JV Corporation. The place of incorporation of JV Corporation is not relevant to the determination of whether the transaction is a covered control transaction. The formation of JV Corporation is a covered control transaction.

(16) *Example 16.* Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes funding and managerial and technical personnel, while Corporation X contributes certain land and equipment that do not in this example constitute a U.S. business. Corporations A and X each have a 50 percent interest in the joint venture. Assuming no other relevant facts, the formation of JV Corporation is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(17) *Example 17.* Same facts as Example 2 of this section, except that, in addition to contributing certain land and equipment, Corporation X also contributes intellectual property, other proprietary information, and other intangible assets, that together with the land and equipment constitute a U.S. business, to JV Corporation. Under these facts, Corporation X has contributed a U.S. business, and the formation of JV Corporation is a covered control transaction.

(18) *Example 18.* Corporation A, a foreign person, holds a 10 percent ownership interest in Corporation X, a U.S. business. Corporation X subsequently provides Corporation A the right to appoint the Chief Executive Officer and the Chief Technical Officer of Corporation X. Corporation A does not acquire any additional ownership interest in Corporation X. The change in rights is a covered control transaction.

(19) *Example 19.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. The transaction is a covered control transaction.

§ 800.302 Transactions that are not covered control transactions.

Transactions that are not covered control transactions include, without limitation:

(a) A stock split or pro rata stock dividend that does not involve a change in control. (See the example in § 800.302(g)(1).)

(b) A transaction that results in a foreign person holding ten percent or less of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest so acquired), but only if the transaction is solely for the purpose of passive investment. (See § 800.243 and the examples in § 800.302(g)(2) through (4).)

(c) An acquisition of any part of an entity or of assets, if such part of an entity or assets do not constitute a U.S. business. (See § 800.301(c) and the examples in § 800.302(g)(5) through (10).)

(d) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(e) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

(f) A change in the rights that a foreign person has with respect to a U.S. business in which that foreign person has an investment, if that change could not result in foreign control of the U.S. business. (See the example in § 800.302(g)(11).)

(g) Examples:

(1) *Example 1.* Corporation A, a foreign person, holds 10,000 shares of Corporation B, a U.S. business, constituting ten percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting ten percent of the stock of Corporation B. Assuming no other relevant facts, the acquisition of additional shares is not a covered control transaction.

(2) *Example 2.* In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person, acquires seven percent of the voting securities of Corporation X, which is a U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered control transaction.

(3) *Example 3.* Corporation A, a foreign person, acquires nine percent of the voting shares of Corporation X, a U.S. business. Corporation A also negotiates contractual rights that give it the power to control important matters of Corporation X. The acquisition by Corporation A of the voting shares of Corporation X is not solely for the purpose of passive investment and is a covered control transaction.

(4) *Example 4.* Corporation A, a foreign person, acquires five percent of the voting shares in Corporation B, a U.S. business. In addition to the securities, Corporation A obtains the right to appoint one out of eleven seats on Corporation B's Board of Directors. The acquisition by Corporation A of Corporation B's securities is not solely for the purpose of passive investment. Whether the transaction is a covered control transaction would depend on whether Corporation A obtains control of Corporation B as a result of the transaction. See § 800.303 for transactions that are covered investments.

(5) *Example 5.* Corporation A, a foreign person, acquires, from separate U.S. nationals: products held in inventory; land, and; machinery for export. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and this acquisition is not a covered control transaction.

(6) *Example 6.* Corporation X, a U.S. business, produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation

X under a long-term contract. Assuming no other relevant facts, this transaction is not a covered control transaction.

(7) *Example 7.* Same facts as Example 2 of this section, except that Corporation X, a U.S. business, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Assuming no other relevant facts, neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is a covered control transaction.

(8) *Example 8.* Same facts as Example 2 of this section, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business operations of Corporation X, including production facilities, customer lists, technology, and staff, which together constitute a U.S. business. This transaction is a covered control transaction.

(9) *Example 9.* Same facts as Example 2 of this section, except that Corporation X suspended all activities of its armored personnel carrier business a year ago and currently is in bankruptcy proceedings. Existing equipment provided by Corporation X is being serviced by another company, which purchased the service contracts from Corporation X. The business's production facilities are idle but still in working condition, some of its key former employees have agreed to return if the business is resuscitated, and its technology and customer and vendor lists are still current. Corporation X's personnel carrier business constitutes a U.S. business, and its purchase by Corporation A is a covered control transaction.

(10) *Example 10.* Same facts as Example 2 of this section, except that Corporation A and Corporation X establish a joint venture that will be controlled by Corporation A to manufacture armored personnel carriers outside the United States, and Corporation X contributes assets constituting a U.S. business, including intellectual property and other intangible assets required to manufacture the armored personnel carriers, to the joint venture. Corporation X has contributed a U.S. business to the joint venture, and the establishment of the joint venture is a covered control transaction.

(11) *Example 11.* Corporation A, a foreign person, holds a 10 percent ownership interest in Corporation X, a U.S. business. Corporation A and Corporation X enter into a contractual arrangement pursuant to which Corporation A gains the right to purchase an additional interest in Corporation X to prevent the dilution of Corporation A's *pro rata* interest in Corporation X in the event that Corporation X issues additional instruments conveying interests in Corporation X. Corporation A does not acquire any additional rights or ownership interest in Corporation X pursuant to the contractual arrangement. Assuming no other relevant facts, the transaction is not a covered control transaction.

§ 800.303 Transactions that are covered investments.

Transactions that are covered investments include, without limitation:

(a) A transaction that meets the requirements of § 800.211 irrespective of the percentage of voting interest acquired. (See the examples in § 800.303(f)(1) through (3).)

(b) A transaction that meets the requirements of § 800.211, irrespective of the fact that the Committee concluded all action under section 721 for a previous covered investment by the same foreign person in the same TID U.S. business, where such transaction involves the acquisition of access, rights, or involvement specified in § 800.211 in addition to those notified to the Committee in the transaction for which the Committee previously concluded action. (See the example in § 800.303(f)(4).)

(c) A transaction that meets the requirements of § 800.211, irrespective of the fact that the critical technology produced, designed, tested, manufactured, fabricated, or developed by the TID U.S. business became controlled pursuant to section 1758 of the Export Control Reform Act of 2018 after the effective date, unless any of the criteria set forth in § 800.104(b) are satisfied with respect to the transaction prior to the critical technology becoming controlled. (See the example in § 800.303(f)(5).)

(d) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in a covered investment. (See the example in § 800.303(f)(6).)

(e) A transaction the structure of which is designed to evade or circumvent the application of section 721. (See the example in § 800.303(f)(7).)

(f) Examples:

(1) *Example 1.* Corporation A, a foreign person who is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is a U.S. business that manufactures a critical technology. Corporation B is therefore a TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. The proposed transaction is a covered investment.

(2) *Example 2.* Same facts as Example 1 of this section, except that, pursuant to the terms of the investment, instead of observer rights, Corporation A has consultation rights with respect to Corporation B's licensing of a critical technology to third parties. Corporation A is therefore involved in substantive decisionmaking with respect to Corporation B and the proposed transaction is a covered investment.

(3) *Example 3.* Corporation A is a foreign person that is an excepted investor. Corporation B, a foreign person that is not an excepted investor, owns a three percent, non-controlling equity interest in Corporation A. Corporation A proposes to acquire a four percent, non-controlling equity interest in Corporation C, an unaffiliated TID U.S. business. Pursuant to the terms of the investment in Corporation C and Corporation A's governance documents, Corporation A and Corporation B will each have access to material nonpublic technical information in Corporation C's possession. The transaction is a covered investment because Corporation B is making an investment that will result in access to material nonpublic technical information pursuant to § 800.211(b).

(4) *Example 4.* The Committee concludes all action under section 721 with respect to a covered investment by Corporation A, a foreign person who is not an excepted investor, in which Corporation A acquires a four percent, non-controlling equity interest with access to material non-public information in Corporation B, an unaffiliated TID U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, resulting in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. Pursuant to the terms of the additional investment, Corporation A will receive the right to appoint a member to the board of directors of Corporation B. The proposed transaction is a covered investment because the transaction involves both an acquisition of an equity interest in an unaffiliated TID U.S. business and a new right under § 800.211.

(5) *Example 5.* Corporation A, a foreign person who is not an excepted investor, has executed a binding written agreement establishing the material terms of a proposed non-controlling investment in Corporation B, an unaffiliated TID U.S. business. The proposed investment will afford Corporation A access to material nonpublic technical information in the possession of Corporation B. The only controlled technology produced, designed, tested, manufactured, fabricated, or developed by Corporation B became controlled pursuant to section 1758 of the Export Control Reform Act of 2018 after the effective date but prior to the date upon which the binding written agreement establishing the material terms of the investment was executed. The proposed transaction is a covered investment.

(6) *Example 6.* Corporation A, a foreign person who is not an excepted investor, holds a four percent non-controlling ownership interest in Corporation X, an unaffiliated TID U.S. business, but Corporation A was not afforded any of the access, rights, or involvement specified in § 800.211(b) at the time of its investment. Corporation A subsequently gains the right to appoint a member of the board of directors of Corporation X. Assuming no other relevant facts, the transaction is a covered investment.

(7) *Example 7.* Corporation A is organized under the laws of a foreign state, is wholly owned and controlled by a foreign national,

and is not an excepted investor. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, makes a non-controlling minority equity investment in Corporation X, an unaffiliated TID U.S. business that maintains and collects sensitive personal data on U.S. citizens. In connection with the investment, the U.S. citizen is afforded the right to be involved in substantive decisionmaking regarding the release of sensitive personal data of U.S. citizens maintained by Corporation X. The transaction is a covered investment.

§ 800.304 Transactions that are not covered investments.

Transactions that are not covered investments include, without limitation:

(a) An investment by a foreign person in an unaffiliated TID U.S. business that does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b). (See the examples in § 800.304(f)(1) and (2).)

(b) An investment by a foreign person who is an excepted investor in an unaffiliated TID U.S. business. (See the example in § 800.304(f)(3).)

(c) A transaction that results or could result in control by a foreign person of an unaffiliated TID U.S. business. (See the example in § 800.304(f)(4).)

(d) A stock split or pro rata stock dividend that does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b). (See the example in § 800.304(f)(5).)

(e) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(f) Examples:

(1) *Example 1.* In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person who is not an excepted investor, acquires seven percent of the voting securities of Corporation X, an unaffiliated TID U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered investment.

(2) *Example 2.* The Committee concluded all action under section 721 with respect to a covered investment in which Corporation A, a foreign person who is not an excepted investor, acquired a four percent, non-controlling equity interest with board observer rights in Corporation B, an unaffiliated TID U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, which would result in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. The proposed investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including the access, rights, or involvement specified in § 800.211(b). Assuming no other relevant facts, the proposed transaction is not a covered investment.

(3) *Example 3.* Corporation A, a foreign person who is an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an unaffiliated TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment.

(4) *Example 4.* Corporation A, a foreign person who is an excepted investor, proposes to purchase all of the shares of Corporation B, an unaffiliated TID U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment. It is, however, a covered control transaction. Whether Corporation A is an excepted investor or whether Corporation B is an unaffiliated TID U.S. business are not relevant to the determination of whether the transaction is a covered control transaction. (See § 800.301).

(5) *Example 5.* Corporation A, a foreign person who is not an excepted investor, holds 10,000 shares and board observer rights in Corporation B, an unaffiliated TID U.S. business, constituting ten percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting ten percent of the stock of Corporation B. The proposed investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including those specified in § 800.211(b). Assuming no other relevant facts, the acquisition of additional shares is not a covered investment.

§ 800.305 Incremental acquisitions.

(a) Any transaction in which a foreign person acquires an additional interest in a U.S. business over which the same foreign person, or any of its direct or indirect wholly-owned subsidiaries, previously acquired direct control in the U.S. business in a covered control transaction for which the Committee concluded all action under section 721 on the basis of a notice filed pursuant to § 800.501 shall not be deemed to be a covered transaction. If, however, a foreign person that did not acquire control of the U.S. business in the prior transaction is a party to the later transaction, the later transaction may be a covered transaction.

(b) Examples:

(1) *Example 1.* Corporation A, a foreign person, directly acquires a 40 percent interest and important rights with respect to Corporation B, a U.S. business. The documentation pertaining to the transaction gives no indication that Corporation A's interest in Corporation B may increase at a later date. Corporation A and Corporation B file a voluntary notice of the transaction with the Committee. Following its review of the transaction, the Committee informs the parties that the notified transaction is a covered control transaction, and concludes action under section 721. Three years later, Corporation A acquires the remainder of the voting interest in Corporation B. Assuming no other relevant facts, because the Committee, on the basis of the notice submitted by the parties, concluded all action with respect to Corporation A's earlier direct investment in the same U.S. business, and because no other foreign person is a party to this subsequent transaction, this subsequent transaction is not a covered transaction.

(2) *Example 2.* Same facts as Example 1 of this section, except that Corporation A and Corporation B file a declaration of the transaction, rather than a notice, with the Committee, and the Committee concluded all action on the basis of the declaration. The subsequent transaction may be a covered transaction, depending on the specific facts and circumstances.

§ 800.306 Lending transactions.

(a) The extension of a loan or a similar financing arrangement by a foreign person to a U.S. business, regardless of whether accompanied by the creation in favor of the foreign person of a secured interest over securities or other assets of the U.S. business, shall not, by itself, constitute a covered transaction.

(1) The Committee will accept notices or declarations concerning a loan or a similar financing arrangement that does not, by itself, constitute a covered transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of a U.S. business, or acquire equity interest and access, rights, or involvement specified in § 800.211(b) over a TID U.S. business, as a result of the default or other condition.

(2) Where the Committee accepts a notice or declaration concerning a loan or a similar financing arrangement pursuant to paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer management decisions, or day-to-day control over the U.S. business to U.S. nationals for purposes of determining whether such loan or financing arrangement constitutes a covered transaction.

(b) Notwithstanding paragraph (a) of this section, a loan or a similar financing arrangement through which a foreign person acquires an interest in profits of a U.S. business, the right to appoint members of the board of directors of the U.S. business, or other

comparable financial or governance rights characteristic of an equity investment but not of a typical loan may constitute a covered transaction.

(c) An acquisition of voting interest in or assets of a U.S. business by a foreign person upon default or other condition involving a loan or a similar financing arrangement does not constitute a covered transaction, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-à-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to control the debtor such that control for purposes of § 800.208 could not be acquired.

(d) Examples:

(1) *Example 1.* Corporation A, which is a U.S. business, borrows funds from Corporation B, a bank organized under the laws of a foreign state and controlled by foreign persons. As a condition of the loan, Corporation A agrees not to sell or pledge its principal assets to any person. Assuming no other relevant facts, this lending arrangement does not alone constitute a covered transaction.

(2) *Example 2.* Same facts as in Example 1 of this section, except that Corporation A defaults on its loan from Corporation B and seeks bankruptcy protection. Corporation A has no funds with which to satisfy Corporation B's claim, which is greater than the value of Corporation A's principal assets. Corporation B's secured claim constitutes the only secured claim against Corporation A's principal assets, creating a high probability that Corporation B will receive title to Corporation A's principal assets, which constitute a U.S. business. Assuming no other relevant facts, the Committee would accept a notice of the impending bankruptcy court adjudication transferring control of Corporation A's principal assets to Corporation B, which would constitute a covered control transaction.

(3) *Example 3.* Corporation A, a foreign bank, makes a loan to Corporation B, a U.S. business. The loan documentation extends to Corporation A rights in Corporation B that are characteristic of an equity investment but not of a typical loan, including dominant minority representation on the board of directors of Corporation B and the right to be paid dividends by Corporation B. This loan is a covered control transaction.

(4) *Example 4.* Same facts as in Example 3 of this section, except that Corporation B is an unaffiliated TID U.S. business and the loan documentation extends to Corporation A's involvement in substantive decisionmaking with respect to Corporation B. Whether the loan is a covered control transaction would depend on whether Corporation A obtains control of Corporation B as a result of the loan, but, if it could not result in Corporation A's control of Corporation B, this loan is a covered investment.

§ 800.307 Specific clarifications for investment funds.

(a) Notwithstanding § 800.303, an indirect investment by a foreign person in a TID U.S. business through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner or equivalent on an advisory board or a committee of the fund shall not be considered a covered investment with respect to the foreign person if:

(1) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(2) The foreign person is not the general partner, managing member, or equivalent;

(3) The advisory board or committee does not have the ability to approve, disapprove, or otherwise control:

(i) Investment decisions of the investment fund; or

(ii) Decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested;

(4) The foreign person does not otherwise have the ability to control the investment fund, including without limitation the authority:

(i) To approve, disapprove, or otherwise control investment decisions of the investment fund;

(ii) To approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested; or

(iii) To unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent;

(5) The foreign person does not have access to material nonpublic technical information as a result of its participation on the advisory board or committee; and

(6) The investment does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b).

(b) For the purposes of paragraphs (a)(3) and (4) of this section, and except as provided in paragraph (c) of this section, a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund shall not be considered to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

(c) In extraordinary circumstances, the Committee may consider the waiver of a potential conflict of interest, the waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund, to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

(d) *Example:* Limited Partner A, a foreign person, is a limited partner in an investment fund that invests in Corporation B, an unaffiliated TID U.S. business. The investment fund is managed exclusively by a general partner, who is not a foreign person. The investment affords Limited Partner A membership on an advisory board of the investment fund. The advisory board provides industry expertise, assists with the sourcing of transactions, and votes on the compensation of the general partner, but it does not control investment decisions of the fund or decisions made by the general partner related to entities in which the fund is invested. Limited Partner A does not otherwise have the ability to control the fund. Limited Partner A's investment in Corporation B does not afford it access to any material nonpublic technical information in the possession of Corporation B, the right to be a member or observer, or to nominate a member or observer, to the board of Corporation B, nor any involvement in the substantive decisionmaking of Corporation B. Assuming no other facts, the investment by Limited Partner A is not a covered investment.

§ 800.308 Timing rule for a contingent equity interest.

(a) For purposes of determining whether to include the rights that a holder of contingent equity interest will acquire upon conversion of, or exercise of a right provided by, those interests in the Committee's analysis of whether a notified transaction is a covered transaction, the Committee will consider factors that include:

(1) The imminence of conversion or satisfaction of contingent conditions;

(2) Whether conversion or satisfaction of contingent conditions depends on factors within the control of the acquiring party; and

(3) Whether the amount of interest and the rights that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion or satisfaction

of contingent condition will not be included in the Committee's analysis of whether a notified transaction is a covered transaction, the Committee will disregard the contingent equity interest for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

(c) Examples:

(1) *Example 1.* Corporation A, a foreign person, notifies the Committee that it intends to buy common stock and debentures of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock only upon the occurrence of an event the timing of which is not in the control of Corporation A, and the number of common shares that would be acquired upon conversion cannot now be determined. Assuming no other relevant facts, the Committee will disregard the debentures in the course of its covered transaction analysis at the time that Corporation A acquires the debentures. In the event that it determines that the acquisition of the common stock is not a covered transaction, the Committee will so inform the parties. Once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from the conversion and whether the conversion is a covered transaction. The conversion of those debentures into common stock could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A would receive and what powers those securities would confer on Corporation A.

(2) *Example 2.* Same facts as Example 1 of this section, except that the debentures at issue are convertible at the sole discretion of Corporation A after six months, and if converted, would represent a 50 percent interest in Corporation X. The Committee may consider the rights that would result from the conversion as part of its analysis.

Subpart D—Declarations

§ 800.401 Mandatory declarations.

(a) Except as provided in paragraph (c) or (d) of this section, the parties to a transaction described in paragraph (b) of this section shall submit to the Committee a declaration with information regarding the transaction in accordance with § 800.403.

(b) A covered transaction that results in the acquisition of a substantial interest in a TID U.S. business by a foreign person in which a foreign government has a substantial interest.

(c) The submission of a declaration shall not be required pursuant to paragraph (b) of this section with respect to an investment by an investment fund if:

(1) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(2) The general partner, managing member, or equivalent that exclusively manages the fund is not a foreign person; and

(3) The investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in § 800.307(a)(3) and (4);

(d) Notwithstanding paragraph (a) of this section, parties to a covered transaction may elect to submit a written notice pursuant to subpart E of this part regarding the transaction instead of a declaration.

(e) Parties shall submit to the Committee the declaration required pursuant to paragraph (a) of this section, or a written notice pursuant to paragraph (d) of this section, no later than:

(1) [EFFECTIVE DATE OF FINAL RULE], or promptly thereafter, if the completion date of the transaction is between [EFFECTIVE DATE OF FINAL RULE] and [DATE WHICH IS 30 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]; or

(2) Thirty days before the completion date of the transaction, if the completion date of the transaction is after [DATE THAT IS 30 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE].

(f) Notwithstanding paragraph (e)(2) of this section, the parties to a covered transaction may complete a transaction subject to a mandatory declaration or notice under this section at any time after having been informed in writing by the Committee that the Committee has concluded all action under section 721 or that the Committee is not able to complete action pursuant to § 800.807(a)(2).

(g) In the event that the Committee rejects or permits a withdrawal of a declaration or notice required under section, the parties shall not complete the transaction earlier than 30 days after the date of the resubmission, except with the written approval of the Staff Chairperson.

§ 800.402 Voluntary declarations.

Except as otherwise prohibited under § 800.403(e), a party to any proposed or completed transaction may submit to the Committee a declaration regarding the transaction in accordance with the procedures and requirements set forth in § 800.403 and § 800.404 instead of a written notice.

§ 800.403 Procedures for declarations.

(a) A party or parties shall submit a declaration of a covered transaction pursuant to § 800.401 or § 800.402 by submitting electronically the information set out in § 800.404, including the certifications required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(b) No communications other than those described in paragraph (a) of this section shall constitute the submission of a declaration for purposes of section 721.

(c) Information and other documentary material submitted to the Committee pursuant to this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.802.

(d) Persons filing a declaration shall, during the time that the matter is pending before the Committee, promptly advise the Staff Chairperson of any material changes in plans, facts, or circumstances addressed in the declaration, and any material change in information provided or required to be provided to the Committee under § 800.404. Unless the Committee rejects the declaration on the basis of such material changes in accordance with § 800.406(a)(2)(i), such changes shall become part of the declaration filed by such persons under § 800.403, and the certification required under § 800.405(d) shall apply to such changes.

(e) Parties to a covered transaction that have filed with the Committee a written notice regarding a transaction pursuant to § 800.501 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the written approval of the Staff Chairperson.

§ 800.404 Contents of declarations.

(a) The party or parties submitting a declaration of a covered transaction pursuant to § 800.403 shall provide the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraphs (d) and (e) of this section.)

(b) If fewer than all the parties to a transaction submit a declaration, the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 800.501, if the Staff Chairperson determines that the information provided by the submitting party or parties in the declaration is insufficient for the Committee to assess the transaction.

(c) Subject to paragraph (e) of this section, a declaration submitted pursuant to § 800.403 shall describe or provide, as applicable:

(1) The name of the foreign person(s) and U.S. business(es) that are parties to, or, in applicable cases, the subject of the transaction, as well as the name, telephone number, and email address of the primary point of contact for each party.

(2) The following information regarding the transaction in question, including:

(i) A brief description of the rationale and nature of the transaction, including its structure (*e.g.,* share purchase, merger, asset purchase);

(ii) The percentage of voting interest acquired and the resulting aggregate voting interest held by the foreign person and its affiliates;

(iii) The percentage of economic interest acquired and the resulting aggregate economic interest held by the foreign person and its affiliates;

(iv) Whether the U.S. business has multiple classes of ownership;

(v) The total transaction value in U.S. dollars;

(vi) The actual or expected completion date of the transaction;

(vii) All sources of financing for the transaction; and

(viii) A copy of the definitive documentation of the transaction, or if none exists, the document establishing the material terms of the transaction.

(3) The following:

(i) A statement as to whether a party to the transaction is stipulating that the transaction is a covered transaction and a description of the basis for the stipulation; and

(ii) A statement as to whether a party to the transaction is stipulating that the transaction is a foreign government-controlled transaction and a description of the basis for the stipulation.

(4) A statement as to whether the foreign person will acquire any of the following with respect to the U.S. business:

(i) Access to any material nonpublic technical information in the possession of the U.S. business, and if so, a brief explanation of the type of access and type of information;

(ii) Membership, observer rights, or nomination rights as set forth in § 800.211(b)(2), and if so, a statement as to the composition of the board or other body both before and after the completion date of the transaction;

(iii) Any involvement, other than through voting shares, in substantive decisionmaking of the U.S. business regarding critical infrastructure, critical technologies, or sensitive personal data as set forth in § 800.211(b)(3), and if so, a statement as to the involvement in such substantive decisionmaking; or

(iv) Any rights that could result in the foreign person acquiring control of the U.S. business and, if any, a brief explanation of these rights.

(5) The following information regarding the covered transaction U.S. business:

(i) Website address;

(ii) Principal place of business;

(iii) Place of incorporation or organization; and

(iv) A list of the addresses or geographic coordinates (to at least the fourth decimal) of all locations of the U.S. business, including the U.S. business' headquarters, facilities, and operating locations.

(6) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent, a brief summary of their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including the applicable six-digit North American Industry Classification System (NAICS) Codes, Commercial and Government Entity Code (CAGE Code) assigned by the Department of Defense, and any applicable Dun and Bradstreet identification (DUNS) numbers assigned to the U.S. business.

(7) A statement as to whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies.

(8) A statement as to whether the U.S. business performs any of the functions with respect to covered investment critical infrastructure as set forth in Column 2 of appendix A to part 800.

(9) A statement as to whether the U.S. business maintains or collects sensitive personal data on U.S. citizens.

(10) A statement as to whether the U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past three years with any U.S. Government agency or component, or in the past 10 years if the contract included access to personally identifiable information of U.S. Government personnel. If so, provide an annex listing such contracts, including the name of the U.S. Government agency or component, the delivery order number or contract number, the primary contractor (if the U.S. business is a subcontractor), the start date, and the estimated completion date.

(11) A statement as to whether the U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past five years involving information, technology, or data that is classified under Executive Order 12958, as amended.

(12) A statement as to whether the U.S. business has received any grant or other funding from the Department of Defense or the Department of Energy, or participated in or collaborated on any defense or energy program or product involving one or more critical technologies or critical infrastructure within the past five years.

(13) A statement as to whether the U.S. business participated in a Defense Production Act Title III Program (50 U.S.C. 4501, *et seq.*) within the past seven years.

(14) A statement as to whether the U.S. business has received or placed priority rated contracts or orders under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700), and the level(s) of priority of such contracts or orders (DX or DO) within the past three years.

(15) The name of the ultimate parent of the foreign person.

(16) The principal place of business and address of the foreign person, ultimate parent and ultimate owner of such parent.

(17) Complete organizational charts, both pre- and post-transaction, including information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent;

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent; and

(iv) The U.S. business that is the subject of the transaction, both before and after completion of the transaction.

(18) Information regarding all foreign government ownership in the foreign person's ownership structure, including nationality and percentage of ownership, as well as any rights that a foreign government holds, directly or indirectly, with respect to the foreign person.

(19) With respect to the foreign person that is party to the transaction and any of its parents, as applicable, a brief summary of their respective business activities, as, for example, set forth in annual reports.

(20) A statement as to whether any party to the transaction has been party to another transaction previously notified or submitted to the Committee, and the case number assigned by the Committee regarding such transaction(s).

(21) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the U.S. business, the foreign person, or any parent or subsidiary of the foreign person has been convicted in the last ten years of a crime in any jurisdiction.

(22) If applicable, a description (which may group similar items into general product categories) of the items, their uses, and a list of any relevant classifications for the critical technologies that the U.S. business produces, designs, tests, manufactures, fabricates, or develops.

(23) If applicable, a statement as to which functions set forth in Column 2 of appendix A to part 800 that the U.S. business performs with respect to covered investment critical infrastructure, including a description of such functions and the applicable covered investment critical infrastructure.

(24) If applicable:

(i) The category or categories of sensitive personal data, as specified at § 800.241, that the U.S. business maintains or collects, or intends to maintain or collect;

(ii) The approximate number of total unique individuals from whom sensitive personal data is currently maintained, and has been collected over the last 12 months;

(iii) Whether the U.S. business targets or tailors its products or services to U.S. Government personnel or contractors from whom it maintains or collects sensitive personal data.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 800.204 of this chapter. A sample certification may be found on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(e) A party that offers a stipulation pursuant to paragraph (c)(3) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered investment, a covered control transaction, or a foreign government-controlled transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

§ 800.405 Beginning of 30-day assessment period.

(a) Upon receipt of a declaration submitted pursuant to § 800.403, the Staff Chairperson shall promptly inspect the declaration and shall promptly notify in writing all parties to a transaction that have submitted a declaration that:

(1) The Staff Chairperson has accepted the declaration and circulated the declaration to the Committee, and the date on which the assessment described in paragraph (b) of this section begins; or

(2) The Staff Chairperson has determined not to accept the declaration and circulate the declaration to the Committee because the declaration is incomplete, and an explanation of the material respects in which the declaration is incomplete.

(b) A 30-day period for assessment of a covered transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) During the 30-day assessment period, the Staff Chairperson may invite the parties to a covered transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction.

(d) If the Committee notifies the parties to a transaction that have submitted a declaration pursuant to § 800.403 that the Committee intends to conclude all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(e) If a party fails to provide the certification required under paragraph (d) of this section, the Committee may, at its discretion, take any of the actions under § 800.407.

§ 800.406 Rejection, disposition, or withdrawal of declarations.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any declaration that does not comply with § 800.404 and so inform the parties promptly in writing;

(2) Reject any declaration at any time, and so inform the parties promptly in writing, if, after the declaration has been submitted and before the Committee has taken one of the actions specified in § 800.407:

(i) There is a material change in the covered transaction as to which a declaration has been submitted; or

(ii) Information comes to light that contradicts material information provided in the declaration by the party (or parties); or

(3) Reject any declaration at any time after the declaration has been submitted, and so inform the parties promptly in writing, if the party (or parties) that submitted the declaration does not provide follow-up information requested by the Staff Chairperson within two business days of the request, or within a longer time frame if the party (or parties) so request in writing and the Staff Chairperson grants that request in writing.

(b) The Staff Chairperson shall notify the parties that submitted a declaration when the Committee has found that the transaction that is the subject of a declaration is not a covered transaction.

(c) Parties to a transaction that have submitted a declaration pursuant to § 800.403 may request in writing, at any time prior to the Committee taking action under § 800.407, that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the declaration is being fully and permanently abandoned. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(d) The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a covered transaction to correct material errors or omissions, or describe material changes to the transaction, in the declaration submitted with respect to that covered transaction.

(e) A party (or parties) may not submit more than one declaration for the same or a substantially similar transaction without approval from the Staff Chairperson.

Note 1 to § 800.406: See § 800.403(e) regarding the prohibition on submitting a

declaration regarding the same transaction or a substantially similar transaction for which a written notice has been filed without the approval of the Staff Chairperson.

§ 800.407 Committee actions.

(a) Upon receiving a declaration submitted pursuant to § 800.403 with respect to a covered transaction, the Committee may, at the discretion of the Committee:

(1) Request that the parties to the transaction file a written notice pursuant to subpart E;

(2) Inform the parties to the transaction that the Committee is not able to conclude action under section 721 with respect to the transaction on the basis of the declaration and that the parties may file a written notice pursuant to subpart E to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction;

(3) Initiate a unilateral review of the transaction under § 800.501(c); or

(4) Notify the parties in writing that the Committee has concluded all action under section 721 with respect to the transaction.

(b) The Committee shall take action under paragraph (a) of this section within the time period set forth in § 800.405(b).

Subpart E—Notices

§ 800.501 Procedures for notices.

(a) A party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 800.502, including the certification required under paragraph (l) of that section. For electronic submission instructions, see the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee determines that the transaction is a covered transaction, to file a notice under paragraph (a) of such covered transaction.

(c) With respect to any transaction:

(1) Subject to paragraph (c)(2) of this section, any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding a transaction if:

(i) That member has reason to believe that the transaction is a covered transaction and may raise national security considerations and:

(A) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(B) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; or

(ii) The transaction is a covered transaction and:

(A) The Committee has informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction, or the President has announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; and

(B) Either:

(1) A party to such transaction submitted false or misleading material information to the Committee in connection with the Committee's consideration of such transaction or omitted material information, including material documents, from information submitted to the Committee; or

(2) A party to such transaction or the entity resulting from consummation of such transaction materially breaches a mitigation agreement or condition described in section 721(l)(3)(A), such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach, and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(2)(i) That is an investment where a foreign person is not an excepted investor due to the application of § 800.220(d), any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding such investment if:

(A) That member has reason to believe that the transaction is a covered transaction and may raise national security considerations;

(B) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(C) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction.

(ii) No notice filed pursuant to this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 800.220(a)(1), (2), or (3)(i) through (iii) the transaction may threaten to impair the national security of the United States, and in no event shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

(d) Notices filed under paragraph (c) of this section are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under paragraph (c)(1) of this section shall be made with respect to a transaction more than three years after the completion date of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, files such an agency notice.

(e) No communications other than those described in paragraphs (a) and (c) of this section shall constitute the filing or submitting of a notice for purposes of section 721.

(f) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 800.502(l), the Staff Chairperson shall promptly inspect such notice for completeness.

(g) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee pursuant to

this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.802.

(h) Information and other documentary material provided by the parties to the Committee after the filing of a voluntary notice under this section shall be part of the notice, and shall be subject to the certification requirements of § 800.502(m).

(i) For any voluntarily submitted draft or formal written notice that includes a stipulation pursuant to section § 800.502(o) that a transaction is a covered transaction, the Committee shall provide comments on a draft or formal written notice or accept a formal written notice of a covered transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(j) No party to a transaction may file a notice pursuant to paragraph (a) of this section if the transaction has been subject to a declaration submitted pursuant to subpart D and the Committee has not yet taken action with respect to the transaction pursuant to § 800.407.

§ 800.502 Contents of voluntary notices.

(a) If the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraph (l) of this section and § 800.204 regarding certification requirements.)

(b) If fewer than all the parties to a transaction file a voluntary notice, for example in the case of a hostile takeover, each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(c) A voluntary notice filed pursuant to § 800.501 shall describe or provide, as applicable:

(1) The transaction in question, including:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside of the United States;

(ii) The nature of the transaction, for example, whether the acquisition is by merger, consolidation, the purchase of voting interest, or otherwise;

(iii) The name, United States address (if any), website address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the U.S. business that is the subject of the transaction;

(v) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent;

(vi) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of each person that will control the U.S. business being acquired;

(vii) The expected date for completion of the transaction, or the date it was completed;

(viii) A good faith approximation of the net value of the interest acquired in the U.S. business in U.S. dollars, as of the date of the notice;

(ix) The name of any and all financial institutions involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction;

(x) A copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction;

(xi) A statement as to whether the foreign person will acquire any of the following in the U.S. business:

(A) Access to any material nonpublic technical information in the possession of the U.S. business, and if so, a brief explanation of the type of access and type of information;

(B) Membership, observer rights, or nomination rights as set forth in § 800.211(b)(2), and if so, a statement as to the composition of the board or other body both before and after the completion date of the transaction;

(C) Any involvement, other than through voting shares, in substantive decisionmaking of the U.S. business regarding critical infrastructure, critical technologies, or sensitive personal data as set forth in § 800.211(b)(3);

(2) With respect to a transaction structured as an acquisition of assets of a U.S. business, a detailed description of the assets of the U.S. business being acquired, including the approximate value of those assets in U.S. dollars;

(3) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent (unless that entity is excluded from the scope of the transaction):

(i) Their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including an estimate of U.S. market share for such product or service categories and the methodology used to determine market share, a list of direct competitors for those primary product or service categories, and their NAICS Code, if any;

(ii) The street address (and mailing address, if different) within the United States and website address (if any) of each facility that is manufacturing classified or unclassified products or producing services described in paragraph (c)(3)(v) of this section, and their respective CAGE Codes, their DUNS number;

(iii) Each contract (identified by agency and number) that is currently in effect or was in effect within the past five years with any agency of the U.S. Government involving any information, technology, or data that is classified under Executive Order 12958, as amended, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(iv) Any other contract (identified by agency and number) that is currently in effect or was in effect within the past three years with any U.S. Government agency or component with national defense, homeland security, or other national security responsibilities, including law enforcement responsibility as it relates to defense, homeland security, or national security, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(v) Any products or services (including research and development):

(A) That it supplies, directly or indirectly, to any agency of the U.S. Government, including as a prime contractor or first tier subcontractor, a supplier to any such prime contractor or subcontractor, or, if known by the parties filing the notice, a subcontractor at any tier; and

(B) If known by the parties filing the notice, for which it is a single qualified source (*i.e.,* other acceptable suppliers are readily available to be so qualified) or a sole source (*i.e.,* no other supplier has needed technology, equipment, and manufacturing process capabilities) for any such agencies and whether there are

other suppliers in the market that are available to be so qualified;

(vi) Any products or services (including research and development) that:

(A) It supplies to third parties and it knows are rebranded by the purchaser or incorporated into the products of another entity, and the names or brands under which such rebranded products or services are sold; and

(B) In the case of services, it provides on behalf of, or under the name of, another entity, and the name of any such entities;

(vii) For the prior three years—

(A) A list of priority rated contracts or orders under DPAS regulation that the U.S. business that is the subject of the transaction has received and the level of priority of such contracts or orders (''DX'' or ''DO''); and

(B) A list of such priority rated contracts or orders that the U.S. business has placed with other entities and the level of priority of such contracts or orders, and the acquiring party's plan to ensure that any new entity formed at the completion of the notified transaction (or the U.S. business, if no new entity is formed) complies with the DPAS regulations;

(viii) A description and copy of the cyber security plan, if any, that will be used to protect against cyber attacks on the operation, design, and development of the U.S. business's services, networks, systems, data storage (including the collection or maintenance of sensitive personal data), and facilities;

(ix) A description of whether the U.S. business performs any of the functions, if any, as set forth in Column 2 of appendix A to part 800. This statement shall include a description of such functions, including the applicable covered investment critical infrastructure;

(x) A description of whether it produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies;

(xi) A description of whether it maintains or collects sensitive personal data, including:

(A) The category or categories of sensitive personal data specified in § 800.241 that the U.S. business maintains or collects or intends to maintain or collect;

(B) For each category of sensitive personal data, the approximate number of total unique persons from whom the sensitive personal data is currently maintained or has been collected during the previous three years, if known;

(C) A description of how the U.S. business targets or tailors its products or services to U.S. Government personnel or contractors (as described in § 800.247) about whom it collects sensitive personal data, if applicable;

(D) The commercial rationale of the U.S. business for maintaining or collecting such sensitive personal data and a description of how the U.S. business uses and protects such sensitive personal data, including a description of how decisions regarding the use of sensitive personal data are made, and by whom;

(E) A description of the U.S. business's policies and practices regarding the sale, license, or transfer of, or grant of access to, sensitive personal data to third parties, including a copy of any notice provided to customers regarding the use and transfer of sensitive personal data;

(F) A description of the U.S. business's policies and practices regarding retention of sensitive personal data; and

(G) Any plans by the foreign party to the transaction to alter any of the foregoing;

(4) Whether the U.S. business that is being acquired produces or trades in:

(i) Items that are subject to the EAR and, if so, a description (which may group similar items into general product categories) of the items and a list of the relevant commodity classifications set forth on the CCL (*i.e.,* Export Control Classification Numbers (ECCNs) or EAR99 designation);

(ii) Defense articles and defense services, and related technical data covered by the USML in the ITAR, and, if so, the category of the USML; articles and services for which commodity jurisdiction requests (22 CFR 120.4) are pending; and articles and services (including those under development) that may be designated or determined in the future to be defense articles or defense services pursuant to 22 CFR 120.3;

(iii) Products and technology that are subject to export authorization administered by the Department of Energy (10 CFR part 810), or export licensing requirements administered by the Nuclear Regulatory Commission (10 CFR part 110);

(iv) Select Agents and Toxins (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73); or

(v) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (codified at 50 U.S.C. 4817);

(5) Whether the U.S. business that is the subject of the transaction:

(i) Possesses any licenses, permits, or other authorizations other than those under the regulatory authorities listed in paragraph (c)(4) of this section that have been granted by an agency of the U.S. Government (if applicable, identification of the relevant licenses shall be provided); or

(ii) Has technology that has military applications (if so, an identification of such technology and a description of such military applications shall be included);

(6) With respect to the foreign person engaged in the transaction and its parents:

(i) The business or businesses of the foreign person and its ultimate parent, as such businesses are described, for example, in annual reports, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the U.S. business with respect to:

(A) Reducing, eliminating, or selling research and development facilities;

(B) Changing product quality;

(C) Shutting down or moving outside of the United States facilities that are within the United States;

(D) Consolidating or selling product lines or technology;

(E) Modifying or terminating contracts referred to in paragraphs (c)(3)(iii) and (iv) of this section; or

(F) Eliminating domestic supply by selling products solely to non-domestic markets;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including without limitation as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls ownership interests, including contingent equity interest, of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and amount of any such interests, and with regard to contingent equity interest, the terms and timing of conversion;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors (including other persons who perform the duties usually associated with such titles) of the foreign person that is a party to the transaction or any parent of that foreign person;

(C) Holds any other contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers that could be

relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction, and if there are any such rights or powers, their source (for example, a ''golden share,'' shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) Any formal or informal arrangements among foreign persons that hold an ownership interest in the foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the U.S. business that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements;

(vi) For each member of the board of directors or similar body (including external directors and other persons who perform the duties usually associated with such titles) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the acquiring foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information:

(A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and

(B) The following ''personal identifier information,'' which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice:

(1) Full name (last, first, middle name);

(2) All other names and aliases used;

(3) Business address;

(4) Country and city of residence;

(5) Date of birth, in the format MM/DD/YYYY;

(6) Place of birth;

(7) U.S. Social Security number (where applicable);

(8) National identity number, including nationality, date and place of issuance, and expiration date (where applicable);

(9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and

(10) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country; and

(vii) The following ''business identifier information'' for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, website address, and email address; and

(D) Employer identification number or other domestic tax or corporate identification number.

(d) The voluntary notice shall list any filings with, or reports to, agencies of the U.S. Government that have been or will be made with respect to the transaction prior to its completion, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

(1) *Example:* Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, ''Industrial Security Regulation,'' DOD 5220.22–R, and ''Industrial Security Manual for Safeguarding Classified Information,'' DOD 5220.22–M. Corporation X accordingly files a revised Form DD SF–328, and enters into discussions with the Defense Security Service about effectively insulating its facilities from the foreign person. Corporation X may also have made filings with the U.S. Securities and Exchange Commission, the Department of Commerce, the Department of State, or other federal departments and agencies. Paragraph (d) of this section requires that certain specific information about these filings be reported to the Committee in a voluntary notice.

(e) In the case of the establishment of a joint venture in which one or more of the parties is contributing a U.S. business, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made an acquisition of the existing U.S. business that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(f) In the case of the acquisition of some but not all of the assets of an entity, paragraph (c) of this section requires submission of the specified information only with respect to the assets of the entity that have been or are proposed to be acquired.

(g) Persons filing a voluntary notice shall, with respect to the foreign person that is a party to the transaction, its immediate parent, the U.S. business that is the subject of the transaction, and each entity of which the foreign person is a parent, append to the voluntary notice the most recent annual report of each such entity, in English. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any parent of any such entity, unless the transaction involves the acquisition of a U.S. business whose parent is not being acquired, in which case the notice shall include the most recent audited financial statement of the U.S. business that is the subject of the transaction. If a U.S. business does not prepare an annual report and its financial results are not included within the consolidated financial results stated in the annual report of a parent, the filing shall include, if available, the entity's most recent audited financial statement (or, if an audited financial statement is not available, the unaudited financial statement).

(h) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under this section, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 800.501, and the certifications required under paragraphs (l) and (m) of this section shall apply to such amendments.

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the agreed terms of the transaction.

(j) Persons filing a voluntary notice shall include:

(1) Complete organizational charts, both pre- and post-transaction, including without limitation, information that identifies the name,

principal place of business and place of incorporation or other legal organization (for entities), nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent;

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent; and

(iv) The U.S. business that is the subject of the transaction, both before and after completion of the transaction; and

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government;

(iii) A foreign government holds a substantial interest in the foreign person that is party to the transaction; and

(iv) The transaction has resulted or could result in a covered control transaction or a covered investment, and the reasons for its view, focusing in particular on any powers (for example, by virtue of a shareholders agreement, contract, statute, or regulation) that the foreign person will have with regard to the U.S. business, and how those powers can or will be exercised, or any other access, rights, or involvement the foreign person will have in a U.S. business with respect to critical technologies, critical infrastructure, or sensitive personal data.

(k) Persons filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the U.S. Government signatories; and

(2) Any party to the transaction (including such party's parents, subsidiaries, or entities under common control with the party) has been a party to a transaction previously notified to the Committee.

(l) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(m) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 800.204.) A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(n) Parties filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

(o) A party filing a voluntary notice may stipulate that the transaction is a covered transaction and, if the party stipulates that the transaction is a covered transaction, that the transaction is a foreign government-controlled transaction. A stipulation offered by any party pursuant to this section must be accompanied by a detailed description of the basis for the stipulation. The required description of the basis shall include, but is not limited to, discussion of all relevant information responsive to paragraphs (c)(6)(iii) through (v) of this section. A party that offers such a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered transaction, a foreign government-controlled transaction, and/or subject to mandatory declaration or notice for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

§ 800.503 Beginning of a 45-day review period.

(a) The Staff Chairperson of the Committee shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 800.502; and

(2) Disseminated the notice to all members of the Committee.

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the Committee, or the Chairperson of the Committee has requested a notice pursuant to § 800.501(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(c) The Staff Chairperson shall promptly advise in writing all parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after receipt of an agency notice by the Staff Chairperson, the Staff Chairperson shall send written advice of such notice to the parties to the transaction that is subject to the notice. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any complete notice, and any subsequent information filed by the parties.

§ 800.504 Deferral, rejection, or disposition of certain voluntary notices.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 800.501 or § 800.502 and so inform the parties promptly in writing;

(2) Reject any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not

submitted the final certification required by § 800.502(m).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the review period specified by § 800.503, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or parties that notice has been filed with respect to a proposed transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered transaction.

(d) Examples:

(1) *Example 1.* The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint notice does not contain any information described under § 800.502 concerning classified materials and products or services supplied to the U.S. military services. The Staff Chairperson may reject the notice or defer the start of the review period until the parties have supplied the omitted information.

(2) *Example 2.* Same facts as in the first sentence of Example 1 of this section, except that the joint notice indicates that Corporation A does not intend to purchase Corporation X's Division Y, which is engaged in classified work for a U.S. Government agency. Corporations A and X notify the Committee on the 40th day of the 45-day notice period that Division Y will also be acquired by Corporation A. This fact constitutes a material change with respect to the transaction as originally notified, and the Staff Chairperson may reject the notice.

(3) *Example 3.* The Staff Chairperson receives a joint notice by Corporation A, a foreign person, and Corporation X, a U.S. business, indicating that Corporation A intends to purchase five percent of the voting securities of Corporation X. Under the particular facts and circumstances presented, the Committee concludes that Corporation A's purchase of this interest in Corporation X could not result in a covered investment in or foreign control of Corporation X. The Staff Chairperson shall advise the parties in writing that the transaction as presented is not subject to section 721.

(4) *Example 4.* The Staff Chairperson receives a voluntary notice involving the acquisition by Company A, a foreign person, of the entire interest in Company X, a U.S. business. The notice mentions the involvement of a second foreign person in the transaction, Company B, but states that Company B is merely a passive investor in the transaction. During the course of the review, the parties provide information that clarifies that Company B has the right to appoint two members of Company X's board of directors. This information contradicts the material assertion in the notice that Company B is a passive investor. The Committee may reject this notice without concluding review under section 721.

§ 800.505 Determination of whether to undertake an investigation.

(a) After a review of a notified transaction under § 800.503, the Committee shall undertake an investigation of any transaction that it has determined to be a covered transaction if:

(1) A member of the Committee (other than a member designated as ex officio under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered transaction under § 800.503, an investigation to determine the effects on national security of any covered transaction that:

(1) Is a foreign government-controlled transaction; or

(2) Would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered transaction will not impair the national security of the United States.

§ 800.506 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 800.503, not to undertake an investigation of a notified covered transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly inform the parties to a covered transaction in writing of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 800.507 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the review period described in § 800.503.

(b) An official of the Department of the Treasury shall promptly inform the parties to a covered transaction in writing of the commencement of an investigation.

§ 800.508 Completion or termination of investigation and report to the President.

(a) Subject to paragraph (e) of this section, the Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation pursuant to this paragraph with respect to a covered transaction, the Committee shall promptly notify the parties to the transaction of the extension.

(f) For purposes of paragraph (e) of this section, ''extraordinary circumstances'' means circumstances for which extending an investigation is necessary and the appropriate course of action due to a force majeure event or to protect the national security of the United States.

§ 800.509 Withdrawal of notices.

(a) A party (or parties) to a transaction that has filed notice under § 800.501(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered transaction before notice is refiled under § 800.501; and

(ii) Interim protections to address specific national security concerns with the transaction identified during the review or investigation of the transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted pursuant to paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 800.701.

Subpart F—Committee Procedures

§ 800.601 General.

(a) In any assessment, review, or investigation of a covered transaction, the Committee should consider the factors specified in section 721(f) and, as appropriate, require parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered transaction;

(2) There is credible evidence to support a belief that any foreign person party to a covered transaction might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During an assessment, review, or investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

(e) The parties' description of a transaction in a declaration or notice does not limit the ability of the Committee to, as appropriate, assess, review, or investigate, or exercise any other authorities available under section 721 with respect to any covered transaction that the Committee identifies as having been notified to the Committee based upon the facts set forth in the declaration or notice, any additional information provided to the Committee subsequent to the original declaration or notice, or any other information available to the Committee.

§ 800.602 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 800.603 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

§ 800.604 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under subparts D or E imposed on the Committee shall be tolled during a lapse in appropriations.

Subpart G—Finality of Action

§ 800.701 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including without limitation divestment authority, shall remain available at the discretion of the President with respect to:

(1) Covered control transactions proposed or pending on or after August 23, 1988;

(2) Transactions that, between November 10, 2018, and [EFFECTIVE DATE], fell within the scope of part 801 of this title; and

(3) Covered investments proposed or pending after the effective date.

(b) Subject to § 800.501(c)(1)(ii), such authority shall not be exercised if:

(1) The Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which a voluntary notice or a declaration has been filed is not a covered transaction;

(2) The parties to the transaction have been advised in writing pursuant to § 800.407(a)(4), § 800.506, or § 800.508(d) that the Committee has concluded all action under section 721 with respect to the covered transaction; or

(3) The President has previously announced, pursuant to section 721(d),

his decision not to exercise his authority under section 721 with respect to the covered transaction.

(c) Divestment or other relief under section 721 shall not be available with respect to transactions that were completed prior to August 23, 1988.

Subpart H—Provision and Handling of Information

§ 800.801 Obligation of parties to provide information.

(a) Parties to a transaction that is notified or declared under subparts D or E, or a transaction for which no notice or declaration has been submitted and for which the Staff Chairperson has requested information to assess whether the transaction is a covered transaction, shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairperson of any material changes in plans or information pursuant to § 800.403(d) or § 800.502(h). If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, pursuant to the Defense Production Act Reauthorization of 2003, as amended, Public Law 108–195 (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language, shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required pursuant to section 721(l)(3)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(1)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 800.204. A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

§ 800.802 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material submitted or filed with the Committee pursuant to this part, including information or documentary material filed pursuant to § 800.501(g) shall be exempt from disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552, *et seq.*), and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties.

(c) This section shall continue to apply with respect to information and documentary material submitted or filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw a notice or a declaration is granted under § 800.509 or § 800.406(c), respectively, or where a notice or a declaration has been rejected under § 800.504(a) or § 800.406(a), respectively;

(3) The Committee determines that a notified or declared transaction is not a covered transaction; or

(4) Such information or documentary material was filed pursuant to subpart D and the parties do not subsequently file a notice pursuant to subpart E.

(d) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has submitted or filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

(e) The provisions of the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(d)) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart I—Penalties and Damages

§ 800.901 Penalties and damages.

(a) Any person who submits a material misstatement or omission in a declaration or notice, or makes a false certification under § 800.404, § 800.405, or § 800.502 may be liable to the United States for a civil penalty not to exceed $250,000 per violation. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(b) Any person who fails to comply with the requirements of § 800.401 may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(c) Any person who, after October 11, 2018, violates, intentionally or through gross negligence, a material provision of a mitigation agreement entered into before October 11, 2018 with, a material condition imposed before October 11, 2018 by, or an order issued before October 11, 2018 by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. Any person who violates a material provision of a mitigation agreement entered into on or after October 11, 2018 with, a material condition imposed on or after October 11, 2018 by, or an order issued on or after October 11, 2018 by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(d) A mitigation agreement entered into or amended under section 721(l) after December 22, 2008, may include a provision providing for liquidated or actual damages for breaches of the agreement. The Committee shall set the amount of any liquidated damages as a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee will consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the agreement.

(e) A determination to impose penalties under paragraphs (a) through (c) of this section must be made by the

Committee. Notice of the penalty, including a written explanation of the penalized conduct and the amount of the penalty, shall be sent to the penalized party electronically and by U.S. mail.

(f) Upon receiving notice of the imposition of a penalty under paragraphs (a) through (c) of this section, the penalized party may, within 15 days of receipt of the notice of the penalty, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the penalized conduct. The Committee will review the petition and issue a final decision within 15 days of receipt of the petition.

(g) The penalties and damages authorized in paragraphs (a) through (d) of this section may be recovered in a civil action brought by the United States in federal district court.

(h) Section 2 of the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), shall apply to all information provided to the Committee under section 721, including by any party to a covered transaction.

(i) The penalties and damages available under this section are without prejudice to other penalties, civil or criminal, available under law.

(j) The imposition of a civil monetary penalty or damages pursuant to these regulations creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty or damages assessed if not paid within the time prescribed by the Committee and notified to the applicable party or parties. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty or damages.

§ 800.902 Effect of lack of compliance.

(a) If, at any time after a mitigation agreement or condition is entered into or imposed under section 721(l), the Committee or a lead agency in coordination with the Staff Chairperson, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or a lead agency, in coordination with the Staff Chairperson may, in addition to the authority of the Committee to impose penalties pursuant to section 721(h) and to unilaterally initiate a review of any covered transaction pursuant to section 721(b)(1)(D)(iii):

(1) Negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition;

(2) Require that the party or parties submit a written notice or declaration under clause (i) of section 721(b)(1)(C) with respect to a covered transaction initiated after the date of the determination of noncompliance and before the date that is five years after the date of the determination to the Committee to initiate a review of the transaction under section 721(b); or

(3) Seek injunctive relief.

Subpart J—Foreign National Security Investment Review Regimes

§ 800.1001 Determinations.

(a) The Chairperson of the Committee, with the agreement of two-thirds of the voting members of the Committee, may determine at any time that a foreign state has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

(b) The Chairperson of the Committee may rescind a determination under paragraph (a) of this section if the Chairperson of the Committee determines, with the agreement of two-thirds of the voting members of the Committee, that such a rescission is appropriate.

(c) The Chairperson of the Committee shall publish a notice of any determination or rescission of a determination under paragraph (a) or (b) of this section, respectively, in the **Federal Register**.

§ 800.1002 Effect of determinations.

(a) A determination under § 800.1001(a) shall take effect immediately upon publication of a notice of such determination under § 800.1001(c) and remain in effect unless rescinded pursuant to paragraph (b) of this section.

(b) A rescission of a determination under § 800.1001(b) shall take effect on the date specified in the notice published under § 800.1001(c).

(c) A determination under § 800.1001(a) does not apply to any transaction for which a declaration or notice has been accepted by the Staff Chairperson pursuant to § 800.405(a)(1) or § 800.503(a), respectively.

(d) A rescission of a determination under § 800.1001(b) does not apply to any transaction for which:

(1) The completion date is prior to the date upon which the rescission of a determination under paragraph (b) of this section becomes effective; or

(2) The following has occurred before publication of the rescission of determination under § 800.1001(c):

(i) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction that is ultimately consummated;

(ii) A party has made a public offer to shareholders to buy shares of a U.S. business; or

(iii) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or has requested the conversion of convertible voting securities.

Appendix A to Part 800—Covered Investment Critical Infrastructure and Functions Related to Covered Investment Critical Infrastructure

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(i) Any: (a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or (b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934 (47 U.S.C. 153), as amended, or fiber optic cable that directly serves any military installation identified in § 802.229. (ii) Any internet exchange point that supports public peering.	(i) Own or operate any: (a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or (b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934 (47 U.S.C. 153), as amended, or fiber optic cable that directly serves any military installation identified in § 802.229. (ii) Own or operate any internet exchange point that supports public peering.

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(iii) Any submarine cable system requiring a license pursuant to section 1 of the Cable Landing Licensing Act of 1921 (47 U.S.C. 34), as amended, which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.	(iii) Own or operate any submarine cable system requiring a license pursuant to section 1 of the Cable Landing Licensing Act of 1921 (47 U.S.C. 34), as amended, which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.
(iv) Any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of Column 1 of appendix A to part 800.	(iv) Supply or service any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of Column 1 of appendix A to part 800.
(v) Any data center that is collocated at a submarine cable landing point, landing station, or termination station.	(v) Own or operate any data center that is collocated at a submarine cable landing point, landing station, or termination station.
(vi) Any satellite or satellite system providing services directly to the Department of Defense or any component thereof.	(vi) Own or operate any satellite or satellite system providing services directly to the Department of Defense or any component thereof.
(vii) Any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, that is manufactured or operated for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987 (10 U.S.C. 2430), as amended, or a Major System, as defined in 10 U.S.C. 2302d, as amended and:	(vii) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, or operate any industrial resource that is a facility, in each case, for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987 (10 U.S.C. 2430), as amended, or a Major System, as defined in 10 U.S.C. 2302d, as amended and:
(a) the U.S. business is a ''single source,'' ''sole source,'' or ''strategic multisource,'' to the extent the U.S. business has been notified of such status; or	(a) the U.S. business is a ''single source,'' ''sole source,'' or ''strategic multisource,'' to the extent the U.S. business has been notified of such status; or
(b) the industrial resource:	(b) the industrial resource:
(1) requires 12 months or more to manufacture; or	(1) requires 12 months or more to manufacture; or
(2) is a ''long lead'' item, to the extent the U.S. business has been notified that such industrial resource is a ''long lead'' item.	(2) is a ''long lead'' item, to the extent the U.S. business has been notified that such industrial resource is a ''long lead'' item.
(viii) Any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, that is manufactured pursuant to a ''DX'' priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) in the preceding 24 months.	(viii) Manufacture any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, pursuant to a ''DX'' priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) within 24 months of the transaction in question.
(ix) Any facility in the United States that manufactures:	(ix) Manufacture any of the following in the United States:
(a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 2533b), as amended;	(a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 2533b), as amended;
(b) covered material, as defined in 10 U.S.C. 2533c, as amended;	(b) covered material, as defined in 10 U.S.C. 2533c, as amended;
(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or	(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or
(d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.	(d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.
(x) Any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, that has been funded, in whole or in part, by any of the following sources in the last 60 months:	(x) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, or operate any industrial resource that is a facility, in each case, that has been funded, in whole or in part, by any of the following sources within 60 months of the transaction in question:
(a) Defense Production Act of 1950 Title III program (50 U.S.C. 4501, et seq.), as amended;	(a) Defense Production Act of 1950 Title III program (50 U.S.C. 4501, et seq.), as amended;
(b) Industrial Base Fund pursuant to section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2508), as amended;	(b) Industrial Base Fund pursuant to section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2508), as amended;
(c) Rapid Innovation Fund pursuant to section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2359a), as amended;	(c) Rapid Innovation Fund pursuant to section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2359a), as amended;
(d) Manufacturing Technology Program pursuant to 10 U.S.C. 2521, as amended;	(d) Manufacturing Technology Program pursuant to 10 U.S.C. 2521, as amended;
(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program—Manage the WarStopper Program; or	(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program—Manage the WarStopper Program; or
(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.	(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.
(xi) Any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act (16 U.S.C. 824o(a)(1)), as amended.	(xi) Own or operate any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act (16 U.S.C. 824o(a)(1)), as amended.

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(xii) Any electric storage resource, as defined in 18 CFR § 35.28(b)(9), as amended, that is physically connected to the bulk-power system.	(xii) Own or operate any electric storage resource, as defined in 18 CFR § 35.28(b)(9), as amended, that is physically connected to the bulk-power system.
(xiii) Any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.229.	(xiii) Own or operate any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.229.
(xiv) Any industrial control system utilized by:	(xiv) Manufacture or service any industrial control system utilized by:
(a) system comprising the bulk-power system as described above in item (xi) of Column 1 of appendix A to part 800; or	(a) system comprising the bulk-power system as described above in item (xi) of Column 1 of appendix A to part 800; or
(b) a facility directly serving any military installation as described above in item (xiii) of Column 1 of appendix A to part 800.	(b) a facility directly serving any military installation as described above in item (xiii) of Column 1 of appendix A to part 800.
(xv) Any:	(xv) Own or operate:
(a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or	(a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or
(b) collection of one or more refineries owned or operated by a single U.S. business with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.	(b) one or more refineries with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.
(xvi) Any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.	(xvi) Own or operate any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.
(xvii) Any:	(xvii) Own or operate any:
(a) liquefied natural gas (LNG) import or export terminal requiring.	(a) liquefied natural gas (LNG) import or export terminal requiring:
(1) approval pursuant to section 3(e) of the Natural Gas Act (15 U.S.C. 717b(e)), as amended, or	(1) approval pursuant to section 3(e) of the Natural Gas Act (15 U.S.C. 717b(e)), as amended, or
(2) a license pursuant to section 4 of the Deepwater Port Act of 1974 (33 U.S.C. 1503), as amended; or	(2) a license pursuant to section 4 of the Deepwater Port Act of 1974 (33 U.S.C. 1503), as amended; or
(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), as amended.	(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), as amended.
(xviii) Any financial market utility that the Financial Stability Oversight Council has designated as systemically important pursuant to section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5463), as amended.	(xviii) Own or operate any financial market utility that the Financial Stability Oversight Council has designated as systemically important pursuant to section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5463), as amended.
(xix) Any exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended, that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had:	(xix) Own or operate any exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended, that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had:
(a) with respect to all national market system securities that are not options, ten percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or	(a) with respect to all national market system securities that are not options, ten percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or
(b) with respect to all listed options, fifteen percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.	(b) with respect to all listed options, fifteen percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.
(xx) Any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.	(xx) Own or operate any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.
(xxi) Any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.	(xxi) Own or operate any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.
(xxii) Any interstate oil pipeline that:	(xxii) Own or operate any interstate oil pipeline that:
(a) has the capacity to transport:	(a) has the capacity to transport:
(1) 500,000 barrels per day or more of crude oil, or	(1) 500,000 barrels per day or more of crude oil, or
(2) 90 million gallons per day or more of refined petroleum product; or	(2) 90 million gallons per day or more of refined petroleum product; or
(b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act (42 U.S.C. 6232), as amended.	(b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act (42 U.S.C. 6232), as amended.
(xxiii) Any interstate natural gas pipeline with an outside diameter of 20 or more inches.	(xxiii) Own or operate any interstate natural gas pipeline with an outside diameter of 20 or more inches.
(xxiv) Any industrial control system utilized by:	(xxiv) Manufacture or service any industrial control system utilized by:
(a) an interstate oil pipeline as described above in item (xxii) of Column 1 of appendix A to part 800; or	(a) an interstate oil pipeline as described above in item (xxii) of Column 1 of appendix A to part 800; or
(b) an interstate natural gas pipeline as described above in item (xxiii) of Column 1 of appendix A to part 800.	(b) an interstate natural gas pipeline as described above in item (xxiii) of Column 1 of appendix A to part 800.
(xxv) Any airport identified in § 802.201.	(xxv) Own or operate any airport identified in § 802.201.
(xxvi) Any:	(xxvi) Own or operate any:
(a) maritime port identified in § 802.228; or	(a) maritime port identified in § 802.228; or
(b) any individual terminal at such maritime ports.	(b) any individual terminal at such maritime ports.
(xxvii) Any public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, or treatment works, as defined in section 212(2)(A) of the Clean Water Act (33 U.S.C. 1292(2)), as amended, which:	(xxvii) Own or operate any public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, or treatment works, as defined in section 212(2)(A) of the Clean Water Act (33 U.S.C. 1292(2)), as amended, which:

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.229. (xxviii) Any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of Column 1 of appendix A to part 800.	(a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.229. (xxviii) Manufacture or service any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of Column 1 of appendix A to part 800.

Dated: September 11, 2019.

Thomas Feddo,

Deputy Assistant Secretary for Investment Security.

[FR Doc. 2019–20099 Filed 9–17–19; 4:15 pm]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 185 September 24, 2019

Part V

Department of the Treasury

Office of Investment Security

31 CFR Part 802

Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 802

RIN 1505–AC63

Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish new regulations to implement the provisions relating to real estate transactions in section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018. This proposed rule sets forth the scope of, and certain processes and procedures relating to, the national security review by the Committee on Foreign Investment in the United States of certain transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States.

DATES: Written comments must be received by October 17, 2019.

The Department of the Treasury is considering holding during the comment period a teleconference regarding the proposed rule for members of the public. Information about any public teleconference, including the date, time, and how to attend, will be published on the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

ADDRESSES: Written comments on this proposed rule may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury to make the comments available to the public. Please note that comments submitted through *https://www.regulations.gov* will be public, and can be viewed by members of the public.
- *Mail:* Send to U.S. Department of the Treasury, Attention: Thomas Feddo, Deputy Assistant Secretary for Investment Security, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

In general, the Department of the Treasury will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; or James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115–232, 132 Stat. 2173, which amends section 721 (section 721) of the Defense Production Act of 1950, as amended (DPA), requires the issuance of regulations implementing its provisions. In Executive Order 13456, 73 FR 4677 (Jan. 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. This proposed rule is being issued pursuant to that authority.

FIRRMA was passed by Congress as H.R. 5515 and was enacted on August 13, 2018. Prior to the enactment of FIRRMA, section 721 authorized the President, acting through the Committee on Foreign Investment in the United States (CFIUS or the Committee), to review mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States. The existing regulations that implement CFIUS's authority with respect to such transactions are found at part 800 of title 31 of the Code of Federal Regulations (part 800).

FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and broadens the authorities of the President and CFIUS under section 721 to address national security concerns arising from certain investments and real estate transactions. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction (which FIRRMA describes as ''covered transactions''). In enacting FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reiterated its support of the United States' open investment policy, consistent with the protection of national security. A brief summary of key provisions of FIRRMA, as relevant for this rulemaking, follows.

FIRRMA expands and clarifies the jurisdiction of the Committee by explicitly adding four types of transactions as covered transactions in the DPA: (1) The purchase or lease by, or concession to, a foreign person of certain real estate in the United States; (2) non-controlling ''other investments'' that afford a foreign person an equity interest in and specified access to information in the possession of, rights in, or involvement in the decisionmaking of certain U.S. businesses involved in certain critical technologies, critical infrastructure, or sensitive personal data (which a separate and concurrent rulemaking on part 800 describes as ''covered investments''); (3) any change in a foreign person's rights if such change could result in foreign control of a U.S. business or a covered investment in certain U.S. businesses; and (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721. With respect to the Committee's expanded jurisdiction over certain real estate transactions and covered investments, FIRRMA instructs the Committee to specify criteria to limit the application of that expansion of jurisdiction to certain categories of foreign persons. The proposed rule addresses only the provisions that are relevant for real estate transactions. Other provisions in FIRRMA requiring implementing regulations are the subject of a separate and concurrent rulemaking.

Prior to FIRRMA, CFIUS could only review an acquisition of real estate if it was part of a transaction which could result in control by a foreign person of an entity engaged in interstate commerce in the United States. FIRRMA expands CFIUS's jurisdiction to include certain types of real estate transactions involving the purchase or lease by, or a concession to, a foreign person of

certain private or public real estate located in the United States. FIRRMA focuses on two general categories of real estate and provides certain exceptions. The first category of real estate is described by its relation to airports and maritime ports. The second category of real estate is described by its relation to U.S. military installations and other facilities or properties of the U.S. Government that are sensitive for national security reasons. Importantly, FIRRMA authorizes the Committee to prescribe in regulations other criteria to define the types of real estate transactions under its jurisdiction, so long as those criteria do not expand the categories of real estate beyond those described in FIRRMA.

In addition to expanding the Committee's jurisdiction, FIRRMA prescribes certain processes that are applicable to real estate transactions under its jurisdiction (described as ''covered real estate transactions'' in the proposed rule). FIRRMA allows parties to submit an abbreviated filing for any covered real estate transaction through a declaration, as an alternative to CFIUS's traditional voluntary notice, both of which are discussed below. Declarations will allow parties to submit basic information regarding a transaction in an abbreviated form that should generally not exceed five pages in length. FIRRMA also sets forth an abbreviated timeframe for the Committee to respond to submitted declarations.

Although FIRRMA introduces a mandatory declaration requirement in certain circumstances, the statute does not subject real estate transactions to the mandatory declaration requirement. This means that parties to a covered real estate transaction may decide whether to voluntarily file a notice or submit a declaration to CFIUS. FIRRMA also codifies certain processes related to the Committee's authority to identify non-notified and non-declared transactions.

FIRRMA permits a party to a transaction to stipulate that a transaction is a covered transaction. A party can make a stipulation in either a notice or a declaration. If a party makes a stipulation in a notice, CFIUS must provide comments on or accept the notice no later than 10 business days after the date of the filing.

Additionally, FIRRMA establishes a 45-day review period for transactions filed as notices. In the case of any follow-on investigation, which can last up to 45 additional days, FIRRMA allows the Secretary of the Treasury to grant one 15-day extension in ''extraordinary circumstances.'' FIRRMA establishes a 30-day review period for transactions submitted as declarations. The notice and declarations processes are discussed in further detail below.

Finally, FIRRMA authorizes the Committee to assess and collect fees with respect to covered transactions for which a written notice is filed, and the Committee is considering how to implement this authority. The proposed rule does not address filing fees. The Department of the Treasury will publish a separate proposed rule regarding fees at a later date.

B. Structure of FIRRMA Rulemaking and This Proposed Rule

Consistent with CFIUS processes generally, the proposed rule reflects extensive consultation with CFIUS member agencies, as well as other relevant agencies. The proposed rule implements the Committee's authority in a new part 802 of title 31 of the Code of Federal Regulations. The Department of the Treasury determined that the technical and procedural aspects of CFIUS's review of transactions involving real estate are sufficiently distinct from those related to control transactions and covered investments to warrant separate rulemaking. Nevertheless, the proposed rule incorporates certain basic features and relevant provisions from part 800, which should be familiar to parties that have filed with CFIUS in the past.

The Department of the Treasury recognizes that FIRRMA's expansion of the Committee's jurisdiction over certain real estate transactions may impact parties who have not traditionally had reason to file with CFIUS. The proposed rule seeks to provide clarity to the business and investment communities with respect to the types of real estate transactions that are covered by the new authority under FIRRMA. The Department of the Treasury is considering whether it can make available other tools to help the public understand the scope and, in particular, the geographic coverage of the Committee's jurisdiction over certain real estate transactions by the time the final rule becomes effective. The new real estate jurisdiction, as implemented in this proposed rule, is generally structured around specific sites—certain airports, maritime ports, military installations, and other facilities or properties of the U.S. Government—and specific areas in or around those sites. Given the level of specificity provided in certain provisions of the proposed rule and the evolving national security landscape, the Department of the Treasury anticipates that it will periodically review, and as necessary, make changes to the regulations, consistent with applicable law.

As noted above, the proposed rule focuses on the Committee's expanded jurisdiction over certain real estate transactions. As such, the proposed rule would implement one part of the overall scope of CFIUS's jurisdiction. There are additional provisions in FIRRMA that are the subject of a separate and concurrent rulemaking on part 800. Parties should be aware that certain transactions involving real estate could potentially be covered transactions under part 800; for example, transactions involving certain long-term leases and certain collections of assets. A transaction that could result in control of a U.S. business by a foreign person remains subject to the regulations under part 800 (subject to the concurrent rulemaking), and is not a covered real estate transaction under this proposed rule. Additionally, CFIUS's new authority over covered investments in certain U.S. businesses, as provided by FIRRMA, is also outside the scope of this proposed rule (and subject to the concurrent rulemaking). In order to comprehensively understand the transactions that could fall within the scope of this proposed rule, in contrast to the transactions that could fall within the scope of part 800, the public is encouraged to be aware of the separate and concurrent rulemaking on part 800.

Finally, although FIRRMA introduces the term ''close proximity'' in the context of real estate transactions, CFIUS has and will continue to retain the authority to assess, and if necessary, take action with respect to any covered transaction under part 800 that gives rise to national security concerns on the basis of proximity to sensitive government sites and activities. The Committee's authority under part 800 is not limited in any way by the proposed rule for part 802.

II. Discussion of Proposed Rule

The proposed rule is structured similarly to the regulations at part 800. Parties familiar with the part 800 regulations should find that this proposed rule takes a similar approach in terms of defining key terms, describing transactions that are covered and not covered under the rule, listing the information requirements for a filing to be complete, and setting forth the Committee's procedures, among other things. While there are differences between the proposed rule and the existing part 800 regulations, as well as the separate and concurrent proposed rule replacing part 800, the scope and

overall approach taken by the Committee to evaluating, concluding action on, or taking action on a transaction is consistent with part 800 and section 721.

The Committee welcomes public comment on the proposed rule, including with respect to the technical details, practical impact, and other costs or considerations.

A. Subpart A—General Provisions

Section 802.101—Scope. Subpart A to the proposed rule begins by setting forth the scope of the Committee's authority and standards for exercising that authority pursuant to section 721. This is consistent with the existing regulations at part 800 and the concurrent rulemaking for that part.

Section 802.102—Risk-based analysis. FIRRMA requires that any determination of the Committee to suspend a covered transaction, to refer a covered transaction to the President, or to negotiate, enter into or impose, or enforce any agreement or condition with respect to a covered transaction, be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which must include an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. The proposed rule includes definitions of the terms ''threat,'' ''vulnerabilities,'' and ''consequences to national security'' used in risk-based analyses undertaken by the Committee.

Section 802.103—Effect on other law. The proposed rule makes clear that it does not alter or affect any other federal law or any other authority of the President or the Congress under the Constitution.

Section 802.104—Applicability rule. This section sets forth the applicability of the proposed rule based on the effective date, which is defined in § 802.213. This section also clarifies that the rule would not apply to transactions that have been completed or where the material terms of the transaction have been agreed by binding written agreement or other binding document prior to the effective date.

B. Subpart B—Definitions

Subpart B sets forth the defined terms for part 802. More than half of the defined terms in the proposed rule are incorporated from the existing regulations at part 800 or the concurrent rulemaking for that part, with conforming changes to apply in the context of real estate transactions. The remainder of the terms are new in part 802.

As an initial matter, the proposed rule uses the term ''covered real estate transaction'' at § 802.212 to describe the types of real estate transactions that are subject to CFIUS's jurisdiction. This definition implements the authority provided under FIRRMA to prescribe additional criteria to define the real estate transactions under CFIUS's jurisdiction. In particular, this definition combines important elements of the proposed rule including the three transaction types specified in FIRRMA (''purchase,'' ''lease,'' and ''concession'') through which a ''foreign person'' is afforded certain ''property rights'' with respect to ''covered real estate.'' These and several other key definitions are discussed below.

Section 802.201—Airport. The proposed rule defines ''airport'' to capture a subset of airports in the United States, specifically the major passenger and cargo airports in the United States based on volume, as well as ''joint use airports'' where both military and civilian aircraft make shared use of the military airfield. The Federal Aviation Administration publishes information on the specific airports falling within the categories listed in this definition.

Section 802.204—Close proximity. The proposed rule defines ''close proximity'' based on the requirements in FIRRMA. It is defined as a specific distance (one mile) from the relevant military installation or other facility or property of the U.S. Government that is sensitive for reasons relating to national security. Close proximity is the defined area measured outward from the boundary of the relevant installation or other facility or property. The close proximity definition applies with respect to most of the military installations described in the proposed rule and in particular, those identified in the list at part 1 and part 2 of appendix A.

Section 802.206—Completion date. The proposed rule includes a definition for the term ''completion date,'' which is the earliest date on which the purchase, lease, or concession is made legally effective, or a change in rights that could result in a covered real estate transaction occurs.

Section 802.207—Concession. The proposed rule provides a definition of ''concession,'' which is one of the three transaction types specified in FIRRMA. The definition is limited to an arrangement whereby a U.S. public entity grants a right to use real estate for the purpose of developing or operating infrastructure for an airport or maritime port. The Department of the Treasury is considering, and in particular welcomes comment on, whether other types of concessions should be included, such as those relating to certain energy generation and oil and gas activities.

Section 802.209—Control. The proposed rule sets forth the definition of control consistent with part 800 and the concurrent rulemaking on that part. This term is included in part 802 for the purpose of defining a ''foreign person'' in connection with determining whether a transaction is a covered real estate transaction.

Section 802.211—Covered real estate. The definition of ''covered real estate'' identifies the types of real estate that may result in a covered real estate transaction. The definition ties specific sites with the relevant geographic coverage in and around those sites. To assist the public in identifying the specific sites that meet the definition of ''military installation,'' the proposed rule provides the names and locations of the military installations in appendix A. While the structure of the proposed rule provides for coverage around other facilities or properties of the U.S. Government that are sensitive for national security reasons, no such facilities or properties are identified at this time in appendix A to the proposed rule. The Department of the Treasury is considering whether to move this appendix to its website.

Section 802.211(a)— This section implements the provision in FIRRMA's discussion of real estate transactions that is focused on real estate transactions relating to airports and maritime ports. This section incorporates language from FIRRMA capturing real estate that is an airport or maritime port, real estate that is within an airport or maritime port, and real estate that will function as part of an airport or maritime port.

Section 802.211(b)(1) through (b)(4)— These sections implement the provisions of FIRRMA regarding real estate associated with a military installation or another facility or property of the U.S. Government that is sensitive for reasons related to national security. Section 802.211(b)(1) focuses on real estate that is in close proximity (one mile) of such a U.S. Government site. Section 802.211(b)(2) focuses on real estate that is between one and 100 miles from the relevant U.S. Government site, which is defined as the ''extended range'' in § 802.218. Section 802.211(b)(3) focuses on real estate that is within certain listed counties identified in appendix A in connection with the relevant military installations. Finally, § 802.211(b)(4)

focuses on off-shore ranges and includes within CFIUS jurisdiction those portions of the off-shore ranges that are within 12 nautical miles seaward of the coastline of the United States.

As noted above, the Department of the Treasury is considering whether it can make available by the time the final rule becomes effective other tools to assist the public in determining the geographical locations that are covered in the rule, and in particular, this definition. The Department of the Treasury is seeking comments, in particular, on the approach taken in this definition.

Section 802.212—Covered real estate transaction. As discussed above, the definition of ''covered real estate transaction'' is central to the proposed rule and is constructed using other defined terms. In particular, it incorporates the relevant types of transactions—purchases, leases, and concessions—and requires that the foreign person be afforded at least three ''property rights'' (defined in § 802.233) in covered real estate through the relevant transaction. This definition includes, per FIRRMA, transactions that are designed or intended to evade or circumvent CFIUS jurisdiction. This definition also includes a change in rights that a foreign person has with respect to covered real estate and carves out ''excepted real estate transactions'' (defined in § 802.217) from CFIUS's purview under part 802.

Section 802.217—Excepted real estate transaction. The proposed rule defines exceptions to the general coverage described above, some of which are mandated by FIRRMA. The proposed definition of ''excepted real estate transaction'' enumerates specific types of transactions that are not covered real estate transactions, as well as examples. The proposed rule defines certain key terms to clarify the exceptions. In particular, the definitions of ''excepted real estate investor,'' ''housing unit,'' ''urbanized area,'' and ''urban cluster'' (§ 802.216, § 802.224, § 802.239, and § 802.238, respectively) are relevant for purposes of the exceptions. These terms are further discussed below in Section II.C.

Section 802.218—Extended range. FIRRMA authorizes the Committee to review real estate transactions beyond those in ''close proximity'' to particular U.S. Government sites, including those that could reasonably provide a foreign person the ability to collect intelligence or could otherwise expose national security activities to the risk of foreign surveillance. This term applies to a defined subset of the military installations that also are subject to the close proximity one-mile range (as listed in part 2 of appendix A). The proposed rule defines the extended range as the area that extends 99 miles outward from the outer boundary of close proximity. Where any portion of the ''extended range'' falls offshore, the rule proposes that it will only be considered as within the ''extended range'' for up to 12 nautical miles from the coastline.

Section 802.222—Foreign person. The proposed rule defines ''foreign person'' consistent with part 800. This definition includes any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity. A subset of foreign persons (defined as ''excepted real estate investors'' in § 802.216) will be excepted from CFIUS's jurisdiction over covered real estate transactions, as further discussed below. The proposed rule includes a series of examples under this definition.

Section 802.226—Lease. The proposed rule defines ''lease'' consistent with common usage of the term. Under the proposed rule, CFIUS will consider leases in terms of their substance rather than form, including within the Committee's jurisdiction what is typically thought of as a lease, but not transactions that, in substance, are merely licenses, permits, or other non-possessory interests. This term includes a sublease.

Section 802.227—Maritime port. The proposed rule defines ''maritime port'' to capture a subset of maritime ports in the United States. The definition covers the top 25 tonnage, container, and dry bulk ports as well as strategic seaports. The Department of Transportation publishes information on the specific ports falling within the categories listed in this definition.

Section 802.228—Military installation. The proposed rule identifies a subset of military installations around which certain real estate transactions are covered. The specific military installations are listed in appendix A by name and location, and the categories under which they fit are described in the proposed rule at § 802.228. As noted above, the Department of the Treasury is considering whether to move appendix A to its website.

Section 802.233—Property right. The proposed rule includes as an element of a covered real estate transaction that certain ''property rights'' be afforded to the foreign person through the purchase, lease, or concession of covered real estate. The proposed definition of property right includes fundamental rights with respect to real property: The right to physically access, exclude, improve or develop, and attach structures or objects. In order to constitute a covered real estate transaction, a foreign person must be afforded at least three of these property rights. The Department of the Treasury is seeking comments, in particular, on the impact of this approach.

Section 802.234—Purchase. The proposed rule defines ''purchase'' as the conveyance of an ownership interest in exchange for consideration. Consideration can take different forms, as the example illustrates.

Section 802.235—Real estate. The proposed rule defines ''real estate'' to include land and any structure attached to land. The definition clarifies that the term land is not merely limited to the surface area, but also includes subsurface and submerged land.

Section 802.242—U.S. public entity. The proposed rule defines ''U.S. public entity'' inclusive of the U.S. Government, a subnational government of the United States, and any other body exercising governmental functions for the United States, including airport and maritime port authorities. Because FIRRMA expressly applies to private and public real estate, the definition is used in the proposed rule where a public entity is the counterparty in a transaction involving covered real estate and has relevance in terms of the notification procedures, as discussed below.

C. Excepted Real Estate Transactions

1. Section 802.217(a)—Country Specification for Real Estate Transactions

FIRRMA requires CFIUS to specify criteria to limit the application of FIRRMA's expanded jurisdiction over covered real estate transactions to certain categories of foreign persons. The proposed rule addresses FIRRMA's requirement through three defined terms, ''excepted real estate investor,'' ''excepted real estate foreign state,'' and ''minimum excepted ownership,'' which operate together to exclude from CFIUS's jurisdiction covered real estate transactions by certain foreign persons who meet certain criteria establishing sufficiently close ties to certain foreign states. Sections 802.216, 802.215, and 802.229 define excepted real estate investor, excepted real estate foreign state, and minimum excepted ownership, respectively. The definition of excepted real estate transaction at § 802.217(a) carves out from coverage under the proposed rule a purchase or lease by, or concession to, an excepted real estate investor of covered real estate, or a change in rights of an

excepted real estate investor with respect to covered real estate.

Section 802.216—Excepted real estate investor. The proposed rule sets forth a narrow definition of excepted real estate investor in the interest of protecting national security, in light of increasingly complex ownership structures, and to prevent foreign persons from circumventing CFIUS's jurisdiction. Thus, the criteria specified in § 802.216 require that a foreign person have a substantial connection (*e.g.,* nationality of ultimate beneficial owners and place of incorporation) to one or more particular foreign states in order to be deemed an excepted real estate investor. Note that foreign persons who have violated, or whose parents or subsidiaries have violated, certain U.S. laws, executive orders, regulations, orders, directives, or licenses, or who have submitted a material misstatement or omission in a CFIUS notice or declaration or violated a material provision of a mitigation agreement, among other things, will not be considered excepted real estate investors. Additionally, note that a foreign person who is an excepted real estate investor at the time of the transaction, but, who, for up to three years after the completion date, fails to meet certain criteria, is deemed not to be an excepted real estate investor and the transaction is thus subject to CFIUS jurisdiction as a covered investment. Any member of the Committee may file an agency notice of the transaction for up to one year (and the Chairperson of the Committee for up to three years in extraordinary circumstances).

Section 802.215—Excepted real estate foreign state. The rule proposes that the excepted real estate foreign state definition operate as a two-factor conjunctive test. First, the foreign state must be included in a defined group of eligible foreign states, which will be separately published on the Department of the Treasury website. As this is a new concept with potentially significant implications for the national security of the United States, CFIUS initially intends to designate a limited number of eligible foreign states. CFIUS plans to review this group in the future and potentially expand the number of eligible foreign states.

Second, in furtherance of CFIUS's efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and to increase cooperation with the United States, the Secretary of the Treasury, with the agreement of a super-majority of Committee member agencies, will also make a determination, as described in subpart J, for each eligible foreign state as to whether such foreign state has established and is effectively utilizing a robust process to assess foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security. In making these determinations, CFIUS will consider factors that will be made available on the Department of the Treasury website. The Committee is considering delaying the effectiveness of this requirement in order to provide the eligible foreign states time to enhance their foreign investment review processes and bilateral cooperation. Any such determinations identifying a foreign state as an excepted real estate foreign state will be published in the **Federal Register** and incorporated into the Committee's list of excepted real estate foreign states, which will be made available on the Department of the Treasury website.

2. Section 802.217(b)–(g)—Other Excepted Real Estate Transactions

As noted in the definition of excepted real estate transaction above, the proposed rule specifically excepts from its coverage certain types of transactions as summarized below.

Section 802.217(b)—Part 800 transaction. The proposed rule clarifies that a covered transaction as defined by part 800 that includes the purchase, lease, or concession of covered real estate is not a ''covered real estate transaction.'' If a transaction is subject to part 800, the parties should analyze whether to notify CFIUS of a transaction under part 800. Such a transaction should not be filed under part 802, even if it includes real estate. If the transaction is not subject to part 800, parties should review part 802 and analyze whether to notify CFIUS of the transaction under part 802.

Sections 802.217(c) and 802.239—Urbanized area. FIRRMA requires that real estate in ''urbanized areas,'' as defined by the Census Bureau in the most recent U.S. census, be excluded from CFIUS's real estate jurisdiction except as otherwise prescribed by the Committee in regulations in consultation with the Secretary of Defense. The proposed rule was developed through consultation with the Department of Defense, including the approach to urbanized areas. The proposed rule includes the Census Bureau definition and generally excludes transactions involving covered real estate located in urbanized areas. The urbanized area exclusion applies to covered real estate everywhere except where it is in ''close proximity'' to a military installation or another sensitive facility or property of the U.S. Government as listed in appendix A, or is, is within, or will function as part of, an airport or maritime port.

Sections 802.217(c) and 802.238—Urban cluster. The proposed rule also applies the exception for covered real estate in an urbanized area to real estate in an ''urban cluster,'' as that term is defined by the Census Bureau. Similar to urbanized areas, the urban cluster exclusion applies to covered real estate everywhere except where it is in ''close proximity'' or is, is within, or will function as part of, an airport or maritime port.

Sections 802.217(d) and 802.224—Housing unit. FIRRMA requires an exception for a real estate purchase, lease, or concession of a single ''housing unit,'' as defined by the Census Bureau. An important element of the Census Bureau definition is that the housing unit is or is intended for occupancy as a separate living quarters. This means that the resident/occupant lives apart from other residents and has access to the outside. An example is an apartment unit in an apartment building. The Census Bureau definition is focused on the housing structure itself, and does not discuss fixtures or land adjacent to the housing unit. Given that many single housing units are conveyed with adjoining land, the proposed rule includes within the exception any fixtures and adjacent land that is incidental to the intended use of the real estate as a housing unit. Fixtures and land will be considered incidental if the size and nature of such is common for similar single housing units in the locality in which the unit is located. If the fixtures and adjacent land are not common for other similar housing units in the locality, the exception would apply only to the housing unit itself.

Section 802.217(e)—Retail trade and certain other establishments. The proposed rule provides an exception related to real estate transactions in the context of airport and maritime port leases and concessions, where the terms of the lease or concession restrict use to retail trade, accommodation, or food service sector establishments. The Department of the Treasury is considering, and in particular welcomes comment on, whether there are other categories of real estate transactions, outside of the ports context, where the standard terms of the underlying arrangement limit use to these types of establishments.

Section 802.217(f)—Commercial office space. The proposed rule provides an exception for purchases, leases, and concessions of commercial

office space, based on the amount of space occupied by the foreign person and ratio of the foreign person to the total number of tenants in the building. The Department of the Treasury is considering, and in particular welcomes comment on, the approach in this exception as well as its impact and whether there is other similarly situated real estate.

Section 802.217(g)—American Indian and Alaska Native lands. The proposed rule provides an exception for transactions where the covered real estate is owned by certain Alaska Native entities or held in trust by the United States for American Indians, Indian tribes, Alaska Natives and Alaska Native entities.

D. Subpart C—Coverage

Subpart C of the proposed rule includes provisions and examples that describe with particularity the transactions that are, or are not, covered real estate transactions (see § 802.301 and § 802.302).

Subpart C also discusses lending transactions at § 802.303. This would include commercial mortgages. While a lending transaction generally shall not, by itself, constitute a covered real estate transaction, subpart C discusses factors that CFIUS will consider in determining whether the lending transaction is a covered real estate transaction. Among other factors, the Committee will consider whether a default under the lending transaction would afford the foreign person the property rights defined in the proposed rule. In determining whether to accept a declaration or notice, the Committee also will consider the immediacy or occurrence of the default or other condition.

Finally, the proposed rule discusses the timing rule for contingent equity interests at § 802.304. This section sets forth the factors that CFIUS will take into account in determining whether the purchase of contingent equity interests, rather than the conversion or satisfaction of conditions, would potentially be a covered real estate transaction. Among other factors, the Committee would consider whether the interests and rights that would be conveyed are reasonably determined at the time of the purchase of the contingent equity.

E. Subpart D—Declarations

FIRRMA allows parties to inform the Committee of covered real estate transactions by submitting a declaration or filing a notice, which the proposed rule implements in Subparts D and E, respectively.

Declarations differ from notices in three key ways. First, declarations are shorter in length, generally not exceeding five pages. To facilitate the submission of declarations under the proposed rule, CFIUS intends to make available a standard fillable form. Parties will be able to use the form to submit declarations to the Committee.

Second, the timeline for the Committee to take action on declarations is shorter than for notices. FIRRMA provides CFIUS up to 30 days to respond to a declaration. This differs from the timeline for notices, which is 45 days for a review and an additional 45 days for an investigation, with a possibility of a 15-day extension in ''extraordinary circumstances.''

Third, FIRRMA provides CFIUS with several potential responses to a declaration, and CFIUS need not make a final determination with respect to action under section 721 on the basis of a declaration.

Section 802.401—Procedures for declarations. The proposed rule outlines the process under which parties may submit a declaration. In order to submit a declaration, the parties need to provide the information required by § 802.402, including certifications. The rule does not permit parties to submit a declaration regarding a transaction that is also the subject of a notice without written approval from the Staff Chairperson. Conversely, parties may not file a notice regarding a transaction that is the subject of a declaration until such time as the Committee's assessment of the declaration has been completed (see § 802.501(j)).

Section 802.402—Contents of declarations. The proposed rule sets forth the information that is required in a declaration, consistent with FIRRMA's requirement that CFIUS establish declarations as ''abbreviated notices that would not generally exceed five pages in length.'' As part of a declaration, parties may voluntarily stipulate that the transaction is a covered real estate transaction.

Section 802.403—Beginning of 30-day assessment period. The proposed rule requires that the Committee take action on a declaration within 30 days of the Committee's receipt of the declaration from the Staff Chairperson. The proposed rule explicitly provides that the Staff Chairperson may invite parties to a declaration to attend a meeting with Committee Staff to discuss and clarify issues pertaining to the transaction that is the subject of the declaration.

Section 802.404—Rejection, disposition, or withdrawal of declarations. The proposed rule provides that the Committee may reject a declaration if it is incomplete, there is a material change in the transaction that has been notified, information comes to light that contradicts material information provided by the parties in the declaration, or parties to a submitted declaration fail to provide information requested by the Committee within two business days of the request (unless such timeframe is extended by the Staff Chairperson). The proposed rule also establishes procedures for parties to withdraw a declaration and makes clear that parties may not submit more than one declaration for the same or substantially similar transaction without approval from the Staff Chairperson.

Section 802.405—Committee actions. The proposed rule implements FIRRMA's mandate that the Committee take one of four actions in response to a declaration: (1) Request that the parties file a notice; (2) inform the parties that CFIUS cannot conclude action under section 721 on the basis of the declaration, and that they may file a notice to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction; (3) initiate a unilateral review of the transaction through an agency notice; or (4) notify the parties that CFIUS has concluded all action under section 721.

F. Subpart E—Notices

Subpart E implements the process for parties to submit a written notice to CFIUS regarding a covered real estate transaction. As noted above, a notice differs from a declaration in several respects, notably that the proposed rule requires parties to provide a more detailed set of information in a notice. Based on that more detailed set of information, the Committee must ultimately resolve a written notice by either concluding all action under section 721 with respect to the transaction (*i.e.,* ''clearing the transaction''), with or without mitigation, or sending a report to the President requesting the President's decision with respect to the transaction. The proposed rule sets forth the required contents of a written notice, the timeframe in which the Committee is required to act upon it, and actions that the Committee can take upon the submission of a complete notice. For members of the public familiar with existing CFIUS regulations, the process set forth in this part is substantially similar to the process outlined under subpart E of part 800 regarding covered transactions, as modified in the concurrent rulemaking regarding that part.

Section 802.501—Procedures for notice. The proposed rule outlines the process through which parties can file a notice. In order for a filed notice to be considered complete, the party or parties filing the notice must provide the information specified in § 802.502, including certifications. The proposed rule includes a provision allowing and encouraging parties to provide a draft notice to the Committee for review and consultation. Pursuant to § 802.502, parties may include a stipulation that the transaction is a covered real estate transaction. If parties include such a stipulation and accompanying description of the basis for the stipulation, the Committee must provide comments or accept a formal written notice within 10 business days after the submission of the draft or formal written notice. Parties may not file a notice regarding a transaction that is the subject of a declaration until such time as the Committee's assessment of the declaration has been completed.

Section 802.502—Contents of voluntary notice. The proposed rule sets forth the information parties must include in a written notice for it to be considered complete. The information requirements include the submission of information necessary to analyze whether the transaction is a covered real estate transaction. As noted, FIRRMA allows parties to stipulate that the transaction is a covered real estate transaction. In making a stipulation, parties acknowledge that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered real estate transaction, and parties making a stipulation waive the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered real estate transaction.

Section 802.503—Beginning of 45-day review period. The proposed rule implements FIRRMA's 45-day timeframe for CFIUS's review of a real estate transaction filed as a notice.

Section 802.504—Deferral, rejection, or disposition of certain voluntary notices. Among other things, the proposed rule provides that the Committee may reject a notice filed under part 802 in several circumstances, including if the notice is incomplete, there is a material change in the transaction that has been notified, information comes to light that contradicts material information provided by the parties in the notice, or parties to a filed notice fail to provide information requested by the Committee within three business days of the request (unless such timeframe is extended by the Staff Chairperson).

Sections 802.505 through 802.508—Investigations. The proposed rule implements FIRRMA's authority for the Committee to undertake an investigation of a covered real estate transaction following the review period. An investigation will be undertaken in identified circumstances, including upon the Committee's acceptance of a recommendation of the lead agency that an investigation be undertaken. The investigation period commences no later than the end of the review period and must be completed within 45 days, unless extended in ''extraordinary circumstances.''

Section 802.509—Withdrawal of notices. The proposed rule allows parties to withdraw notices filed with the Committee where the request to withdraw the notice is granted by the Committee.

G. Subpart F—Committee Procedures

Subpart F implements various provisions of the DPA, including the Committee's consideration of specified national security factors (§ 802.601), providing a role for the Secretary of Labor with respect to mitigation agreements (§ 802.602), describing the materiality of certain information (§ 802.603), and clarifying the tolling of deadlines during a lapse in appropriations (§ 802.604).

H. Subpart G—Finality of Action

Subpart G of the proposed rule is similar to the existing regulations at part 800 with respect to finality of action. A covered real estate transaction that has been notified to CFIUS as a notice or declaration, and on which CFIUS has concluded action under section 721 after determining that there are no unresolved national security concerns, qualifies for a ''safe harbor'' as described in § 802.701. This means that, unless a party to a transaction submitted false or misleading material information or omitted material information, and subject to compliance with the terms of any mitigation agreement entered into with or conditions imposed by CFIUS, the transaction can proceed without the possibility of subsequent suspension or prohibition under section 721. A covered real estate transaction on which CFIUS has not concluded action does not qualify for the safe harbor, and CFIUS has the authority to initiate review of the transaction on its own, even after the transaction has been completed, which CFIUS may choose to do if it believes the transaction presents national security considerations.

I. Subpart H—Provision and Handling of Information

Subpart H discusses various requirements with respect to providing information to the Committee as well as the Committee's handling of such information, consistent with the existing regulations at part 800. Under the DPA, each notifying party is required to certify in writing that the information it provides to CFIUS is complete and accurate as it relates to itself and the transaction. This requirement pertains both to the information in the notice or declaration and to follow-up information.

Section 802.802 discusses confidentiality requirements, which are fundamental to the CFIUS process and addressed in the DPA.

J. Subpart I—Penalties and Damages

Subpart I of the proposed rule implements CFIUS's authority, consistent with FIRRMA, to impose penalties for certain actions or omissions by parties relating to a real estate transaction. This is similar to the existing regulations at part 800 and the concurrent rulemaking for that part.

Section 802.901—Penalties and damages. The proposed rule allows for the imposition of civil penalties for material misstatements, omissions, or certifications made by a party under part 802 and for violations of a material provision of a mitigation agreement or material conditions of an order entered into or imposed after the effective date. The proposed rule also authorizes the Committee to include a liquidated damages clause in a mitigation agreement under part 802 and notes the applicability of section 1001 of title 18, United States Code, regarding criminal liability for false statements, to any information provided to the Committee under section 721.

Section 802.902—Effect of lack of compliance. The proposed rule includes a provision authorizing the Committee to negotiate a remediation plan for lack of compliance with a mitigation agreement or condition entered into or imposed under section 721(l), require filings for future covered transactions for five years, or seek injunctive relief, in addition to other available remedies.

III. Rulemaking Requirements

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information

and Regulatory Affairs in the Office of Management and Budget, because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or via email to *OIRA_Submission@omb.eop.gov,* with copies to Thomas Feddo, Deputy Assistant Secretary for Investment Security, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Comments on the collection of information should be received by November 25, 2019.

In accordance with 5 CFR 1320.8(d)(1), the Department of the Treasury is soliciting comments from members of the public concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

The burden of the information collections in this proposed rule is estimated as follows:

For Notices

Estimated total annual reporting and/or recordkeeping burden: 17,400 hours.

Estimated average annual burden per respondent: 116 hours.

Estimated number of respondents: 150 per year.

Estimated annual frequency of responses: Not applicable.

For Declarations

Estimated total annual reporting and/or recordkeeping burden: 3,000 hours.

Estimated average annual burden per respondent: 15 hours.

Estimated number of respondents: 200 per year.

Estimated annual frequency of responses: Not applicable.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis, unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The RFA applies whenever an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553), or any other law. As set forth below, because regulations issued pursuant to the DPA, such as these regulations, are not subject to the APA, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

The proposed rule implements section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit certain real estate transactions involving foreign persons if such a transaction would threaten to impair the national security of the United States, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

Notwithstanding the inapplicability of the RFA, the Committee has undertaken an analysis of the proposed rule's potential impact on small businesses in the United States. As discussed above, the proposed rule expands the jurisdiction of the Committee to review the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. Accordingly, the proposed rule may impact any U.S. business, including a small U.S. business, that engages in a covered real estate transaction.

The Department of the Treasury does not have a source for information on the number of small U.S. businesses that would be involved in some way in the purchase, lease, or concession of real estate to a foreign person that could be covered under this proposed rule. While the Committee believes that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 605(b)), the Committee does not have complete data at this time to make this determination. Accordingly, the Department of the Treasury invites the public to provide information and comments on the types and number of small entities potentially impacted by the proposed rule. If necessary, the Department of the Treasury will undertake a final regulatory flexibility analysis in the final rule.

List of Subjects in 31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investments, Investment companies, Land sales, National defense, Public lands, Real property acquisition, Reporting and Recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of the Treasury proposes to add part 802 to title 31 of the Code of Federal Regulations, to read as follows:

PART 802—REGULATIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

Subpart A—General

Subpart B—Definitions

Subpart C—Coverage

Subpart D—Declarations

Subpart E—Notices

Subpart F—Committee Procedures

Subpart G—Finality of Action

Subpart H—Provision and Handling of Information

Subpart I—Penalties and Damages

Subpart J—Foreign National Security Investment Review Regimes

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart A—General

§ 802.101 Scope.

(a) Section 721 of title VII of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended, authorizes the President to suspend or prohibit transactions involving real estate that meet specified criteria, which are referred to in this part as ''covered real estate transactions,'' when, in the President's judgment, there is credible evidence that leads the President to believe that the foreign person engaging in a covered real estate transaction might take action that threatens to impair the national security of the United States, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President. Section 721 also authorizes the Committee to review covered real estate transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions.

(b) This part implements regulations pertaining to covered real estate transactions as defined in § 802.212 of this part. Regulations pertaining to covered transactions are addressed in part 800 of this title.

§ 802.102 Risk-based analysis.

Any determination of the Committee with respect to a covered real estate transaction, to suspend, refer to the President, or to negotiate, enter into or impose, or enforce any agreement or condition under section 721 shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered real estate transaction. Any such risk-based analysis shall include credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. For purposes of this part, any such analysis of risk shall include and be informed by consideration of the following elements:

(a) The *threat,* which is a function of the intent and capability of a foreign person to take action to impair the national security of the United States;

(b) The *vulnerabilities,* which are the extent to which the nature of the covered real estate presents susceptibility to impairment of national security; and

(c) The *consequences to national security,* which are the potential effects on national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.

§ 802.103 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including without limitation the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 802.104 Applicability rule.

(a) Except as provided in paragraph (b) of this section and otherwise in this part, the regulations in this part apply from the effective date.

(b) The regulations in this part do not apply to any transaction for which:

(1) The completion date is prior to the effective date; or

(2) The parties to the transaction have executed, prior to the effective date, a

binding written agreement or other binding document establishing the material terms of the transaction.

Subpart B—Definitions

§ 802.201 Airport.

The term *airport* means:

(a) The following, in each case based on the most recent annual data reported by the Federal Aviation Administration from the Air Carrier Activity Information System:

(1) Any ''large hub airport,'' as that term is defined in 49 U.S.C. 40102; or

(2) Any airport with annual aggregate all-cargo landed weight greater than 1.24 billion pounds; or

(b) Any ''joint use airport,'' as that term is defined in 49 U.S.C. 47175.

§ 802.202 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, DC area are closed to the public. For purposes of calculating any deadline imposed by this part triggered by the submission of a party to a transaction under § 802.501(i), any submissions received after 5 p.m. Eastern Time are deemed to be submitted on the next business day.

Note 1 to § 802.202: See § 802.604 regarding the tolling of deadlines during a lapse in appropriations.

§ 802.203 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party filing a notice, declaration, or information, certifying under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notice, declaration, or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction, and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice, declaration, or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking partners, officers, or directors, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer or director of a corporation; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (4) of this section, such designee must possess actual authority to make the certification on behalf of the party filing a notice, declaration, or information.

Note 1 to § 802.203: A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

Note 2 to § 802.203: See § 802.402(f) and § 802.502(l) regarding filing procedures in transactions in which a U.S. public entity is a party to the transaction.

§ 802.204 Close proximity.

The term *close proximity* means, with respect to a military installation or another facility or property of the U.S. Government, the area that extends outward one mile from the boundary of such military installation, facility, or property.

§ 802.205 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 802.206 Completion date.

The term *completion date* means, with respect to a covered real estate transaction, the earliest date upon which the purchase, lease, or concession is made legally effective, or a change in rights that could result in a covered real estate transaction occurs.

Note 1 to § 802.206: See § 802.304 regarding the timing rule for a contingent equity interest.

§ 802.207 Concession.

The term *concession* means an arrangement, other than a purchase or lease, whereby a U.S. public entity grants a right to use real estate for the purpose of developing or operating infrastructure for an airport or maritime port. This term includes assignment of a concession by the party who is not the U.S. public entity.

§ 802.208 Contingent equity interest.

The term *contingent equity interest* means a financial instrument that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event.

§ 802.209 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers or in the case of a partnership, the general partner;

(9) The appointment or dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or

other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(5) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such shares; and

(6) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (5) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

Note 1 to § 802.209: This definition is included herein for the purpose of determining whether a foreign person has control of a U.S. business that may be involved in a covered real estate transaction. For additional information, see the examples provided at § 800.208, as relevant.

§ 802.210 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of a particular financial instrument to exchange any such instrument for an equity interest.

§ 802.211 Covered real estate.

The term *covered real estate* means real estate that:

(a) Is, is located within, or will function as part of, an airport or maritime port; or

(b) Is located within:

(1) Close proximity of any military installation described in § 802.228(b) to (o), or another facility or property of the U.S. Government, in each case as identified in the list at part 1 or part 2 of Appendix A to this part;

(2) The extended range of any military installation described in § 802.228(h), (k), or (m), as identified in the list at part 2 of Appendix A to this part;

(3) Any county or other geographic area identified in connection with any military installation described in § 802.228(a), as identified in the list at part 3 of Appendix A to this part; or

(4) Any part of a military installation described in § 802.228(p), as identified in the list at part 4 of Appendix A to this part, that is located within 12 nautical miles seaward of the coastline of the United States.

§ 802.212 Covered real estate transaction.

The term *covered real estate transaction* means:

(a) Other than an excepted real estate transaction, any purchase or lease by, or concession to, a foreign person of covered real estate, that affords the foreign person at least three of the property rights listed in § 802.233;

(b) Other than an excepted real estate transaction, a change in the rights that a foreign person has with respect to covered real estate in which the foreign person has an ownership or leasehold interest or concession arrangement if that change could result in the foreign person having at least three of the property rights listed in § 802.233; or

(c) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721 as it relates to real estate.

Note 1 to § 802.212: Any transaction described in (a) through (c) of this section that arises pursuant to a bankruptcy proceeding or other form of default on debt is a covered real estate transaction. See also § 802.303 for the treatment of certain lending transactions.

§ 802.213 Effective date.

The term *effective date* means [EFFECTIVE DATE OF FINAL RULE].

§ 802.214 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the U.S. Government, a subnational government within the United States, and any of their respective departments, agencies, or instrumentalities).

§ 802.215 Excepted real estate foreign state.

The term *excepted real estate foreign state* means each foreign state from time to time identified by the Chairperson of the Committee, with the agreement of two-thirds of the voting members of the Committee, and, beginning on [TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE], with respect to which the Chairperson of the Committee has made a determination pursuant to § 802.1001(a).

Note 1 to § 802.215: The name of each foreign state identified by the Chairperson of the Committee as an excepted real estate foreign state will be published in a notice in the **Federal Register** and incorporated into the Committee's list of excepted real estate foreign states.

§ 802.216 Excepted real estate investor.

(a) The term *excepted real estate investor* means a foreign person who is, as of the completion date and subject to paragraphs (c) and (d) of this section:

(1) A foreign national who is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(2) A foreign government of an excepted real estate foreign state; or

(3) A foreign entity that meets each of the following conditions with respect to itself and each of its parents (if any):

(i) Such entity is organized under the laws of an excepted real estate foreign state or in the United States;

(ii) Such entity has its principal place of business in an excepted real estate foreign state or the United States;

(iii) Each member or observer of the board of directors or similar body of such entity is a U.S. national or, if a foreign national, is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(iv) Any foreign person that individually holds, or each foreign person that is part of a group of foreign persons that, in the aggregate, holds, five percent or more of the outstanding voting interest of such entity; holds the right to five percent or more of the profits of such entity; holds the right in the event of dissolution to five percent or more of the assets of such entity; or could exercise control over such entity, is:

(A) A foreign national who is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(B) A foreign government of an excepted real estate foreign state; or

(C) A foreign entity that is organized under the laws of an excepted real estate foreign state and has its principal place of business in an excepted real estate foreign state or in the United States; and

(v) The minimum excepted ownership of such entity is held, individually or in the aggregate, by one or more persons each of whom is:

(A) Not a foreign person;

(B) A foreign national who is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(C) A foreign government of an excepted real estate foreign state; or

(D) A foreign entity that is organized under the laws of an excepted real estate foreign state and has its principal place of business in an excepted real estate foreign state or in the United States.

(b) When more than one person holds an ownership interest in an entity, in determining whether the ownership interests of such persons should be aggregated for purposes of paragraph (a)(3)(iv) of this section, consideration will be given to factors such as whether the persons holding the ownership interests are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another foreign person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) Notwithstanding paragraph (a) of this section, a foreign person is not an excepted real estate investor with respect to a transaction if:

(1) In the five years prior to the completion date of the transaction the foreign person or any of its parents or subsidiaries:

(i) Has received written notice from the Committee that it has submitted a material misstatement or omission in a notice or declaration or made a false certification under this part or parts 800 or 801 of this title;

(ii) Has received written notice from the Committee that it has violated a material provision of a mitigation agreement entered into with, material condition imposed by, or an order issued by, the Committee or a lead agency under section 721(l);

(iii) Has been subject to action by the President under section 721(d);

(iv) Has:

(A) Received a written Finding of Violation or Penalty Notice imposing a civil monetary penalty from the Department of the Treasury Office of Foreign Assets Control (OFAC); or

(B) Entered into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including without limitation the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act, each as amended, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(v) Has received a written notice of debarment from the Department of State Directorate of Defense Trade Controls, as described in 22 CFR parts 127 and 128;

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including without limitation the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232, 132 Stat. 2208, 50 U.S.C. 4801, *et seq.*), the Export Administration Regulations (15 CFR parts 730–774), or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(vii) Has received a final decision from the Department of Energy National Nuclear Security Administration imposing a civil penalty with respect to a violation of section 57 b. of the Atomic Energy Act of 1954, as implemented under 10 CFR part 810; or

(viii) Has been convicted of a crime under, or has entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to a violation of, any felony crime in any jurisdiction within the United States; or

(2) The foreign person or any of its parents or subsidiaries is, on the date on which the parties to the transaction first execute a binding written agreement, or other binding document, establishing the material terms of the transaction, listed on either the BIS Unverified List or Entity List in 15 CFR part 744.

(d) Irrespective of whether the foreign person satisfies the criteria in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date the foreign person no longer meets all the criteria set forth in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section, the foreign person is not an excepted real estate investor with respect to the transaction from the completion date onward. This paragraph does not apply when an excepted real estate investor no longer meets any of the criteria solely due to a rescission of a determination under § 802.1001(b) or if a particular foreign state otherwise ceases to be an excepted real estate foreign state.

(e) A foreign person may waive its status as an excepted real estate investor with respect to a transaction at any time by submitting a declaration pursuant to § 802.401 or filing a notice pursuant to § 802.501 regarding the transaction in which it explicitly waives such status. In such case, the foreign person will be deemed not to be an excepted real estate investor and the provisions of Subpart D or E, as applicable, will apply.

Note 1 to § 802.216: See § 802.501(c)(2) regarding an agency notice where a foreign person is not an excepted real estate investor solely due to § 802.216(d).

§ 802.217 Excepted real estate transaction.

The term *excepted real estate transaction* means the following:

(a) A purchase or lease by, or concession to, an excepted real estate investor of covered real estate, or a change in rights of an excepted real estate investor with respect to covered real estate.

(b) A covered transaction as defined by part 800 of this title that includes the purchase, lease, or concession of covered real estate.

(c) The purchase, lease, or concession of covered real estate that is within an urbanized area or urban cluster, except for real estate that is subject to paragraph (a) or (b)(1) of § 802.211.

(d) The purchase, lease, or concession of covered real estate that is a single housing unit, including fixtures and adjacent land as long as the land is incidental to the use of the real estate as a single housing unit.

(e) The lease by or a concession to a foreign person of covered real estate pursuant to paragraph (a) of § 802.211

that, according to the terms of the concession or lease, may be used only as a retail trade, accommodation, or food service sector establishment, as described in the North American Industry Classification System Manual Sector 44–45 and 72.

(f) The purchase or lease by, or concession to, a foreign person of commercial office space within a multi-unit commercial office building, if, upon the completion of the transaction,

(1) The foreign person and its affiliates do not, in the aggregate, hold, lease, or have a concession with respect to commercial office space in such building that exceeds 10 percent of the total square footage of the commercial office space of such building and

(2) The foreign person and its affiliates (each counted separately) do not represent more than 10 percent of the total number of tenants in the building.

(g) The purchase, lease, or concession of land either:

(1) Owned by an Alaska Native village, Native group, or Native Corporation as those terms are defined in the Alaska Native Claims Settlement Act at 43 U.S.C. 1602; or

(2) Held in trust by the United States for American Indians, Indian tribes, Alaska Natives, or any of the entities set forth in paragraph (g)(1) of this section.

(h) Examples:

(1) *Example 1.* Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, which is a U.S. business. Corporation X is in the business of owning and leasing real estate including real estate that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. As the sole owner, Corporation A will have control over Corporation X. The proposed transaction is not a covered real estate transaction but is a covered transaction under part 800 of this title.

(2) *Example 2.* Same facts as Example 1 of this section, except that Corporation X, after the transaction with Corporation A is completed, leases a tract of land from another person that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. Assuming no other relevant facts, the proposed transaction is a covered real estate transaction but only with respect to the new lease.

(3) *Example 3.* Corporation A, a foreign person, seeks to purchase from Corporation X, a U.S. business, an empty warehouse located in the United States that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and the purchase of the covered real estate is not a covered transaction subject to part 800 of this title.

(4) *Example 4.* Same facts as Example 3 of this section, except that, in addition to the proposed purchase of Corporation X's empty warehouse, Corporation A would acquire the personnel, customer list, equipment, and inventory management software used to operate the warehouse. Under these facts, Corporation A is acquiring a U.S. business, and the proposed transaction is a covered transaction subject to part 800 of this title and therefore not a covered real estate transaction.

(5) *Example 5.* Corporation A, a foreign person, purchases covered real estate that is undeveloped. Corporation A, through a newly incorporated U.S. subsidiary, intends to use the covered real estate to set up a manufacturing facility. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and the purchase of the covered real estate is not a covered transaction subject to part 800 of this title. Corporation A's purchase of the covered real estate is, however, a covered real estate transaction.

(6) *Example 6.* A foreign person purchases real estate. The nearest military installation is one that is identified in part 2 of Appendix A to this part and is 40 miles away (*i.e.,* in the extended range) from the real estate. The real estate is located in a statistical geographic area with a population of 125,000 individuals. Assuming no other relevant facts, the real estate purchase is not a covered real estate transaction because the real estate is located in an urbanized area.

(7) *Example 7.* Same facts as Example 6 of this section, except that the covered real estate is not located in an urbanized area or an urban cluster. Assuming no other relevant facts, the real estate transaction is a covered real estate transaction.

(8) *Example 8.* A foreign person purchases real estate that is 0.25 miles from a military installation identified in part 1 of Appendix A to this part. The real estate is located in an urbanized area. Assuming no other relevant facts, the real estate transaction is a covered real estate transaction because it is in close proximity to a military installation listed in part 1 of Appendix A to this part.

(9) *Example 9.* A foreign person purchases a single housing unit including the one acre of land surrounding it, within 0.5 miles from a military installation. Each home in the neighborhood sits on a separate lot, each of which is approximately one acre in size. The acre of land surrounding the housing unit is incidental to use of the land as a single housing unit, and the real estate transaction therefore is not a covered real estate transaction.

(10) *Example 10.* Same facts as Example 9 of this section, except that the foreign person also purchases an adjacent five-acre undeveloped tract of land a year later. Assuming no other relevant facts, the purchase of the adjacent tract of land is a covered real estate transaction.

Note 1 to § 802.217: With respect to paragraph (d) of this section, for purposes herein, fixtures and land shall be considered incidental if the size and nature of such is common for similar single housing units in the locality in which the unit is located.

§ 802.218 Extended range.

The term *extended range* means, with respect to any military installation identified in § 802.228(h), (k), or (m), as listed in part 2 of Appendix A to this part, the area that extends 99 miles outward from the outer boundary of close proximity to such military installation, but, where applicable, no more than 12 nautical miles seaward of the coastline of the United States.

§ 802.219 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

§ 802.220 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the U.S. Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

§ 802.221 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

§ 802.222 Foreign person.

(a) The term *foreign person* means:

(1) Any foreign national, foreign government, or foreign entity; or

(2) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

(b) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is engaged in business only outside the United States. All of its shares are held by Corporation X, which solely controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and only operating outside the United States, is not a foreign person.

(2) *Example 2.* Same facts as in the first sentence of Example 1 of this section. The

government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A because a law establishing Corporation A gives the foreign state the right to appoint Corporation A's board members. Corporation A is a foreign person.

(3) *Example 3.* Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person.

(5) *Example 5.* Corporation A is a corporation organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the voting interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement to act in concert with regard to Corporation A with any other holder of voting interest in Corporation A. Corporation A demonstrates that the remainder of the voting interest in Corporation A is held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign person.

(6) *Example 6.* Same facts as Example 5 of this section, except that one of the foreign investors controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity pursuant to § 802.219(b), but it is a foreign person because it is controlled by a foreign person.

§ 802.223 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.

§ 802.224 Housing unit.

The term *housing unit* means a single family house, townhome, mobile home or trailer, apartment, group of rooms, or single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters.

§ 802.225 Lead agency.

The term *lead agency* means the Department of the Treasury and any other agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including without limitation all or a portion of an assessment, a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

§ 802.226 Lease.

(a) The term *lease* means an arrangement conveying a possessory interest in real estate, short of ownership, to a person for a specified time and in exchange for consideration. This term includes subleases.

(b) Examples:

(1) *Example 1.* Foreign person A enters into an arrangement with a neighbor that allows the foreign person to use a private road running across the neighbor's land. The road will remain owned by the neighbor following the arrangement. The neighbor will also retain physical possession of his land despite the foreign person having permission to traverse the land while using the road. The arrangement does not convey a possessory interest in real estate. Assuming no other relevant facts, the foreign person has not entered into a lease.

(2) *Example 2.* Same facts as Example 1 of this section, except that the foreign person's arrangement with the neighbor gives the foreign person the exclusive right to occupy a portion of the neighbor's land and attach fixtures to the surface, in exchange for a fee for a specified period of time. The foreign person can unilaterally adjust, remove, and make other changes to the fixtures. The foreign person has entered into a lease.

Note 1 to § 802.226: See § 800.249(a)(5) for certain long-term leases and concessions that could be subject to part 800 of this title.

§ 802.227 Maritime port.

The term *maritime port* means any:

(a) Strategic seaport within the National Port Readiness Network, as identified by the Department of Transportation Maritime Administration; or

(b) Top 25 tonnage, container, or dry bulk port according to the most recent annual report submitted to Congress by the U.S. Department of Transportation, Bureau of Transportation Statistics pursuant to 49 U.S.C. 6314.

§ 802.228 Military installation.

The term *military installation* means any site that meets the following category descriptions, as identified in the list at Appendix A to this part:

(a) Active Air Force ballistic missile fields;

(b) Air Force bases administering active Air Force ballistic missile fields;

(c) Air Force bases and major annexes thereof containing a unit from the Air Force Air Combat Command;

(d) Air Force bases and major annexes thereof containing an Air Force research laboratory or test unit and associated sites;

(e) Air Force bases and major annexes thereof containing a unit of the North American Aerospace Defense Command and its regions;

(f) Air Force bases and Air Force stations and major annexes thereof containing satellite, telemetry, tracking or commanding systems;

(g) Army bases, ammunition plants, centers of excellence and research laboratories and major annexes thereof, excluding depots, arsenals and airfields that are not collocated with an Army installation included in this section;

(h) Army combat training centers located in the continental United States;

(i) Headquarters of the Office of the Secretary of Defense and Defense Advanced Research Projects Agency and major offices and annexes thereof;

(j) Long range radar sites and major annexes thereof in any of the following states: Alaska, North Dakota, California, or Massachusetts;

(k) Major range and test facility base activities as defined in 10 U.S.C. 196;

(l) Marine Corps bases and air stations and major annexes thereof, excluding detachments, installations, logistics battalions, recruit depots, and support facilities;

(m) Military ranges as defined in 10 U.S.C. 101(e)(1) owned by the U.S. Navy or U.S. Air Force, or joint forces training centers that are located in any of the following states: Oregon, Nevada, Idaho, Wisconsin, Mississippi, North Carolina, or Florida;

(n) Naval bases and air stations containing squadrons and supporting commands of the Submarine Force Atlantic or Submarine Force Pacific and major offices thereof;

(o) Naval surface, air, and undersea warfare centers and research laboratories and major annexes thereof; and

(p) U.S. Navy off-shore range complexes and off-shore operating areas.

§ 802.229 Minimum excepted ownership.

The term *minimum excepted ownership* means:

(a) With respect to an entity whose equity securities are primarily traded on an exchange in an excepted foreign state or the United States, a majority of its voting interest, the right to a majority of its profits, and the right in the event of dissolution to a majority of its assets; and

(b) With respect to an entity whose equity securities are not primarily traded on an exchange in an excepted foreign state or the United States, 90 percent or more of its voting interest, the right to 90 percent and more of its profits, or the right in the event of dissolution to 90 percent or more of its assets.

§ 802.230 Parent.

(a) The term *parent* means a person who or which directly or indirectly:

(1) Holds or will hold at least 50 percent of the outstanding voting interest in an entity; or

(2) Holds or will hold the right to at least 50 percent of the profits of an entity, or has or will have the right in the event of the dissolution to at least 50 percent of the assets of that entity.

(b) Any entity that meets the conditions of paragraph (a)(1) or (2) of this section with respect to another entity (*i.e.,* the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

(c) Examples:

(1) *Example 1.* Corporation P holds 50 percent of the voting interest in Corporations R and S. Corporation R holds 40 percent of the voting interest in Corporation X; Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

(2) *Example 2.* Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

§ 802.231 Party to a transaction.

(a) The term *party to a transaction* means:

(1) In the case of a purchase, the person acquiring the ownership interest, and the person from which such ownership interest is acquired, and the entity whose ownership interest is being acquired, without regard to any person providing brokerage or underwriting services for the transaction;

(2) In the case of a lease, the person acquiring the possessory interest, and the person from whom such possessory interest is acquired;

(3) In the case of a concession, the person receiving the right to use the covered real estate, and the U.S. public entity;

(4) In the case of a change in rights that a person has with respect to covered real estate obtained through a purchase, lease, or concession, the person whose rights change as a result of the transaction and the person conveying those rights; and

(5) In the case of a transfer, agreement, arrangement, or any other type of transaction, the structure of which is designed or intended to evade or circumvent the application of section 721, any person that participates in such transfer, agreement, arrangement, or other type of transaction.

(6) In all cases, each party that submitted a declaration or notice to the Committee regarding a transaction.

(b) For purposes of section 721(l), the term *party to a transaction* includes any affiliate of any party described in paragraphs (a)(1) through (6) of this section that the Committee, or a lead agency acting on behalf of the Committee, determines is relevant to mitigating a risk to the national security of the United States.

§ 802.232 Person.

The term *person* means any individual or entity.

§ 802.233 Property right.

The term *property right* means, with respect to real estate, any of the following rights or abilities, whether or not exercised, whether or not shared concurrently with any other person, and whether or not the underlying real estate is subject to an easement or other encumbrance:

(a) To physically access the real estate;

(b) To exclude others from physical access to the real estate;

(c) To improve or develop the real estate; or

(d) To attach fixed or immovable structures or objects to the real estate.

§ 802.234 Purchase.

(a) The term *purchase* means an arrangement conveying an ownership interest of real estate to a person in exchange for consideration.

(b) *Example:* Person A, a foreign person, acquires covered real estate from Person B, a U.S. national, in exchange for land and services. Person A was under no obligation to pay money to Person B in order to acquire the covered real estate. Person A has purchased the covered real estate because the arrangement was predicated on consideration in the form of land and services.

§ 802.235 Real estate.

The term *real estate* means any land, including subsurface and submerged, or structure attached to land, including any building or any part thereof, that is located in the United States.

§ 802.236 Section 721.

The term *section 721* means section 721 of title VII of the Defense Production Act of 1950, 50 U.S.C. 4565, as amended.

§ 802.237 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331(a)). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized ''in the United States.''

§ 802.238 Urban cluster.

The term *urban cluster* means a statistical geographic area as identified in the most recent U.S. Census consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 individuals but fewer than 50,000 individuals.

Note 1 to § 802.238: The Census Bureau maintains an interactive map on its website allowing the user to filter by various criteria, including urban clusters and urbanized areas according to the most recent U.S. Census.

§ 802.239 Urbanized area.

The term *urbanized area* means a statistical geographic area as identified in the most recent U.S. Census consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have a minimum population of at least 50,000 individuals.

Note 1 to § 802.239: See note to definition in § 802.238.

§ 802.240 U.S. business.

The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States.

Note 1 to § 802.240: See examples to definition in § 800.252.

§ 802.241 U.S. national.

The term *U.S. national* means an individual who is a U.S. citizen or an individual who, although not a U.S. citizen, owes permanent allegiance to the United States.

§ 802.242 U.S. public entity.

The term *U.S. public entity* means the U.S. Government, a subnational government of the United States, or any other body exercising governmental functions of the United States, including without limitation air and maritime port authorities. The term includes, but is not limited to, the respective departments, agencies, and

instrumentalities of the U.S. Government and the subnational governments of the United States.

§ 802.243 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage

§ 802.301 Transactions that are covered real estate transactions.

Transactions that are covered real estate transactions include, without limitation:

(a) A transaction that meets the criteria of § 802.212, including where a foreign person (other than an excepted real estate investor) enters into a purchase or lease of, or obtains a concession to, covered real estate either directly or indirectly. (See the example in § 802.301(h)(1).)

(b) A purchase by a foreign person of less than full ownership of covered real estate that nevertheless affords the foreign person at least three property rights with respect to the covered real estate. (See the example in § 802.301(h)(2).)

(c) A purchase or lease by, or concession to, a foreign person of real estate, a portion of which is covered real estate with respect to which the foreign person has at least three property rights. (See the example in § 802.301(h)(3).)

(d) A purchase or lease by, or concession to, a foreign person of a portion of covered real estate with respect to which the foreign person has at least three property rights. (See the example in § 802.301(h)(4).)

(e) A purchase, lease, or assignment of a concession, of covered real estate that meets the criteria of § 802.212 by one foreign person from another foreign person. (See the examples in § 802.301(h)(5) and (6).)

(f) A change in the rights that a foreign person has with respect to covered real estate obtained through a purchase, lease, or concession, if that change affords a foreign person at least three property rights with respect to the covered real estate.

(g) A transaction the structure of which is designed or intended to evade or circumvent the application of this part.

(h) Examples:

(1) *Example 1.* Corporation A, a foreign person, acquires Corporation X, a business incorporated in the United States. As a result, Corporation X is a foreign person. Subsequently, Corporation X purchases real estate that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part and obtains all of the property rights with respect to such real estate. Assuming no other relevant facts, the proposed transaction is a covered real estate transaction.

(2) *Example 2.* Corporation A, a foreign person, together with Corporation B, a U.S. business, purchases real estate that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. Neither party has full ownership; rather, the title to the real estate is held by the two parties jointly. Corporation A is afforded at least three property rights as a result of the transaction. Assuming no other relevant facts, the proposed transaction is a covered real estate transaction.

(3) *Example 3.* Corporation A, a U.S. business, purchases real estate. Half of such real estate is covered real estate that is located in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. The other half of the real estate purchased by Corporation A is not located in close proximity to any such military installation. Assuming no other relevant facts, Corporation A's purchase is a covered real estate transaction.

(4) *Example 4.* Corporation A, a U.S. business, purchases covered real estate that is entirely located in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. Corporation B, a foreign person, leases from Corporation A, a part of that real estate. Corporation B is entitled to at least three property rights with respect to the real estate as a result of the transaction. Assuming no other relevant facts, Corporation B's lease is a covered real estate transaction.

(5) *Example 5.* Corporation A, a foreign person, purchases covered real estate and is afforded three property rights with respect to the covered real estate. In a subsequent transaction, Corporation B, another foreign person, leases the covered real estate from Corporation A, and is also afforded three property rights. Assuming no other relevant facts, the transaction is a covered real estate transaction.

(6) *Example 6.* Corporation A, a foreign person, purchases covered real estate that is undeveloped. Corporation A's only asset in the United States is the covered real estate, and Corporation A is not a U.S. business. In a subsequent transaction, Corporation B, also a foreign person, purchases 100 percent of the shares of Corporation A. Assuming no other relevant facts, the transaction is a covered real estate transaction.

§ 802.302 Transactions that are not covered real estate transactions.

Transactions that are not covered real estate transactions include, without limitation:

(a) A transaction that meets the definition of excepted real estate transaction in § 802.217;

(b) A transaction that is not a covered transaction under part 800 of this title where a foreign person acquires an interest in an entity that holds covered real estate, and the foreign person does not have three or more of the property rights with respect to the covered real estate. (See the example in § 802.302(g).)

(c) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(d) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

(e) A purchase or lease by, or concession to, a foreign person of covered real estate that does not afford the foreign person at least three of the property rights with respect to the covered real estate.

(f) A change in the rights that a foreign person has with respect to covered real estate, if that change could not result in the foreign person being afforded at least three of the property rights with respect to the covered real estate.

(g) *Example:* Corporation A, a U.S. business, purchases covered real estate. In a subsequent transaction, Corporation B, a foreign person, purchases 10 percent of the shares of Corporation A, which affords Corporation B the right to access the covered real estate, but none of the other property rights specified in § 802.233. The transaction is not a covered real estate transaction because Corporation B has not been afforded at least three of the property rights with respect to the covered real estate.

§ 802.303 Lending transactions.

(a) The extension of a mortgage, loan, or similar financing arrangement by a foreign person to another person for the purpose of the purchase, lease, or concession of covered real estate shall not, by itself, constitute a covered real estate transaction.

(1) The Committee will accept notices or declarations concerning a mortgage, loan, or similar financing arrangement that does not, by itself, constitute a covered real estate transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may purchase or lease, or be granted a concession to, the real estate as a result of the default or other condition in a manner that would constitute a covered real estate transaction.

(2) Where the Committee accepts a notice or declarations concerning a mortgage, loan, or similar financing

arrangement pursuant to paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes mortgages or loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer the ownership and property rights over the covered real estate to U.S. persons for purposes of determining whether such mortgage, loan, or financing arrangement constitutes a covered real estate transaction.

(b) Notwithstanding paragraph (a) of this section, a mortgage, loan, or similar financing arrangement through which a foreign person acquires property rights over covered real estate may constitute a covered real estate transaction to the extent that the arrangement would constitute a purchase, lease, or concession under this part.

(c) *Example:* Corporation A, a foreign bank, makes a secured loan to Corporation B in order for Corporation B to purchase a building that constitutes covered real estate. The collateral for the loan is the building that Corporation B is purchasing. Corporation B defaults on the loan. Assuming no other relevant facts, the Committee would accept a notice or declaration of the imminent default or default transferring ownership of the building to Corporation A, which would constitute a covered real estate transaction.

§ 802.304 Timing rule for a contingent equity interest.

(a) For purposes of determining whether to include the rights that a holder of contingent equity interest will acquire upon conversion of, or exercise of a right provided by, those interests in the Committee's analysis of whether a notified transaction is a covered real estate transaction, the Committee will consider factors that include:

(1) The imminence of conversion or satisfaction of contingent conditions;

(2) Whether conversion or satisfaction of contingent conditions depends on factors within the control of the acquiring party; and

(3) Whether the amount of interest and the rights that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion or satisfaction of contingent condition will not be included in the Committee's analysis of whether a notified transaction is a covered real estate transaction, the Committee will disregard the contingent equity interest for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

Subpart D—Declarations

§ 802.401 Procedures for declarations.

(a) A party or parties may submit a voluntary declaration of a covered real estate transaction by submitting electronically the information set out in § 802.402, including the certifications required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(b) No communications other than those described in paragraph (a) of this section shall constitute the submission of a declaration for purposes of section 721.

(c) Information and other documentary material submitted to the Committee pursuant to this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 802.802.

(d) Persons filing a declaration shall, during the time that the matter is pending before the Committee, promptly advise the Staff Chairperson of any material changes in plans, facts, or circumstances addressed in the declaration, and any material change in information provided or required to be provided to the Committee under § 802.402. Unless the Committee rejects the declaration on the basis of such material changes in accordance with § 802.404(a)(2)(i), such changes shall become part of the declaration filed by such persons under § 802.401, and the certification required under § 802.403(d) shall apply to such changes.

(e) Parties to a covered real estate transaction that have filed with the Committee a written notice regarding a transaction pursuant to § 802.501 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the written approval of the Staff Chairperson.

§ 802.402 Contents of declarations.

(a) The party or parties submitting a voluntary declaration of a covered real estate transaction pursuant to § 802.401 shall provide the information set out in this section, which must be accurate and complete with respect to the party or parties filing the voluntary declaration and to the transaction. (See also paragraphs (d), (e), and (f) of this section regarding U.S. public entities.)

(b) If fewer than all the parties to a transaction submit a declaration, the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 802.501, if the Staff Chairperson determines that the information provided by the submitting party or parties in the declaration is insufficient for the Committee to assess the transaction.

(c) Subject to paragraph (e) of this section, a declaration submitted pursuant to § 802.401 shall describe or provide, as applicable:

(1) The name of the foreign person(s) and the current holder(s) of interest in the real estate that are parties to, or, in applicable cases, the subject of the transaction, as well as the name, telephone number, and email address of the primary point of contact for each party.

(2) The following information regarding the transaction in question, including:

(i) A brief description of the rationale for and nature of the transaction, including its structure (*e.g.,* purchase, lease, or concession);

(ii) The total transaction value in U.S. dollars;

(iii) The actual or expected completion date of the transaction;

(iv) All sources of financing for the transaction and any real estate agents/brokers involved; and

(v) A copy of the definitive documentation of the transaction, or if none exists, the document establishing the material terms of the transaction.

(3) The following information regarding the real estate that is the subject of the transaction:

(i) The location, by address and geographic coordinates in decimal degrees to the 4th digit, of the real estate that is the subject of the transaction;

(ii) The name(s) of the relevant airport, maritime port, military installation, or any other facility or property of the U.S. Government as identified in this part, based on the location of the real estate that is the subject of the transaction.

(iii) A description of the real estate that is the subject of the transaction including the approximate size (in acres, feet or other appropriate measurement); nature of the real estate (*e.g.,* zoning type and the major topographical or other features of the real estate); current use of the real estate; plans with respect to the real estate; and structures that are or will be on the real estate; and

(iv) A description of any licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate.

(4) A statement as to whether the foreign person will have any of the following rights or abilities with respect to the real estate as a result of the transaction:

(i) To physically access to the real estate;

(ii) To exclude others from physical access to the real estate;

(iii) To improve or develop the real estate; or

(iv) To attach fixed or immovable structures or objects to the real estate.

(5) The name of the ultimate parent of the foreign person.

(6) The principal place of business and address of the foreign person, ultimate parent and ultimate owner of such parent.

(7) A complete pre-transaction organizational chart (and post-transaction, if different) including, without limitation, information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), and nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent.

(8) Information regarding all foreign government ownership in the foreign person's ownership structure, including nationality and percentage of ownership, as well as any rights that a foreign government holds, directly or indirectly, with respect to the foreign person.

(9) With respect to the foreign person that is party to the transaction and any of its parents, as applicable, a brief summary of their respective business activities.

(10) A statement as to whether a party to the transaction is stipulating that the transaction is a covered real estate transaction and a description of the basis for the stipulation.

(11) A statement as to whether any party to the transaction has been party to another transaction previously notified or submitted to the Committee, and the case number assigned by the Committee regarding such transaction(s).

(12) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the holder of the real estate, the foreign person, or any parent or subsidiary of the foreign person has been convicted in the last ten years of a crime in any jurisdiction.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 802.203. A sample certification may be found on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(e) A party that offers a stipulation pursuant to paragraph (c)(10) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered real estate transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered real estate transaction.

(f) In the case of a transaction where a U.S. public entity is a party to the transaction, the other party or parties to the transaction shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to the U.S. public entity.

§ 802.403 Beginning of 30-day assessment period.

(a) Upon receipt of a declaration submitted pursuant to § 802.401, the Staff Chairperson shall promptly inspect the declaration and shall promptly notify in writing all parties to a transaction that have submitted a declaration that:

(1) The Staff Chairperson has accepted the declaration and circulated the declaration to the Committee, and the date on which the assessment described in paragraph (b) of this section begins; or

(2) The Staff Chairperson has determined not to accept the declaration and circulate the declaration to the Committee because the declaration is incomplete, and an explanation of the material respects in which the declaration is incomplete.

(b) A 30-day period for assessment of a covered real estate transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) During the 30-day assessment period, the Staff Chairperson may invite the parties to a covered real estate transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction.

(d) If the Committee notifies the parties to a transaction that have submitted a declaration pursuant to § 802.401 that the Committee intends to conclude all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 802.203. A sample certification may be found on the Committee's section of the Department of the Treasury website at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(e) If a party fails to provide the certification required under paragraph (d) of this section, the Committee may, at its discretion, take any of the actions under § 802.405.

§ 802.404 Rejection, disposition, or withdrawal of declarations.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any declaration that does not comply with § 802.402 and so inform the parties promptly in writing;

(2) Reject any declaration at any time, and so inform the parties promptly in writing, if, after the declaration has been submitted and before the Committee has taken one of the actions specified in § 802.405:

(i) There is a material change in the covered real estate transaction as to which a declaration has been submitted; or

(ii) Information comes to light that contradicts material information provided in the declaration by the party (or parties); or

(3) Reject any declaration at any time after the declaration has been submitted, and so inform the parties promptly in writing, if the party (or parties) that submitted the declaration does not provide follow-up information requested by the Staff Chairperson within two business days of the request, or within a longer time frame if the

party (or parties) so request in writing and the Staff Chairperson grants that request in writing.

(b) The Staff Chairperson shall notify the parties that submitted a declaration when the Committee has found that the transaction that is the subject of a declaration is not a covered real estate transaction.

(c) Parties to a transaction that have submitted a declaration pursuant to § 802.401 may request in writing, at any time prior to the Committee taking action under § 802.405 that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the declaration is being fully and permanently abandoned. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(d) The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a covered real estate transaction to correct material errors or omissions, or describe material changes to the transaction, in the declaration submitted with respect to that covered real estate transaction.

(e) A party (or parties) may not submit more than one declaration for the same or a substantially similar transaction without approval from the Staff Chairperson.

Note 1 to § 802.404: See § 802.401(e) regarding the prohibition on submitting a declaration regarding the same transaction or a substantially similar transaction for which a written notice has been filed without the approval of the Staff Chairperson.

§ 802.405 Committee actions.

(a) Upon receiving a declaration submitted pursuant to § 802.401 with respect to a covered real estate transaction, the Committee may, at the discretion of the Committee:

(1) Request that the parties to the transaction file a written notice pursuant to subpart E;

(2) Inform the parties to the transaction that the Committee is not able to conclude action under section 721 with respect to the transaction on the basis of the declaration and that the parties may file a written notice pursuant to subpart E of this part to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction;

(3) Initiate a unilateral review of the transaction under § 802.501(c); or

(4) Notify the parties in writing that the Committee has concluded all action under section 721 with respect to the transaction.

(b) The Committee shall take action under paragraph (a) of this section within the time period set forth in § 802.403(b).

Subpart E—Notices

§ 802.501 Procedures for notices.

(a) A party or parties to a proposed or completed real estate transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 802.502, including the certification required under paragraph (h) of that section. For electronic submission instructions, see the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(b) If the Committee determines that a covered real estate transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered real estate transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered real estate transaction, and if the Committee determines that the transaction is a covered real estate transaction, to file a notice under paragraph (a) of such covered real estate transaction.

(c) With respect to any covered real estate transaction:

(1) Subject to paragraph (c)(2) of this section, any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding a transaction if:

(i) That member has reason to believe that the transaction is a covered real estate transaction and may raise national security considerations and:

(A) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(B) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; or

(ii) The transaction is a covered real estate transaction and:

(A) The Committee has informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction, or the President has announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; and

(B) Either:

(1) A party to such transaction submitted false or misleading material information to the Committee in connection with the Committee's consideration of such transaction or omitted material information, including material documents, from information submitted to the Committee; or

(2) A party to such transaction or the entity resulting from consummation of such transaction materially breaches a mitigation agreement or condition described in section 721(l)(3)(A), such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach, and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(2)(i) That is an investment where a foreign person is not an excepted real estate investor due to the application of § 802.216(d), any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding such investment if:

(A) That member has reason to believe that the transaction is a covered real estate transaction and may raise national security considerations;

(B) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(C) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction.

(ii) No notice filed pursuant to this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 802.216(a)(1), (2), or (3)(i) through (iii) the transaction may threaten to impair the national security of the United States, and in no event

shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

(d) Notices filed under paragraph (c) of this section are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under paragraph (c)(1) of this section shall be made with respect to a real estate transaction more than three years after the completion date of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, files such an agency notice.

(e) No communications other than those described in paragraphs (a) and (c) of this section shall constitute the filing or submitting of a notice for purposes of section 721.

(f) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 802.502(h), the Staff Chairperson shall promptly inspect such notice for completeness.

(g) Parties to a real estate transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee pursuant to this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 802.802.

(h) Information and other documentary material provided by any party to the Committee after the filing of a voluntary notice under this section shall be part of the notice, and shall be subject to the certification requirements of § 802.502(m).

(i) For any voluntarily submitted draft or formal written notice that includes a stipulation pursuant to section § 802.502(j) that a transaction is a covered real estate transaction, the Committee shall provide comments on a draft or formal written notice or accept a formal written notice of a covered transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(j) No party to a transaction may file a notice pursuant to paragraph (a) of this section if the transaction has been subject to a declaration submitted pursuant to subpart D and the Committee has not yet taken action with respect to the transaction pursuant to § 802.405.

§ 802.502 Contents of voluntary notices.

(a) If a party or the parties to a covered real estate transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to the party or parties filing the voluntary notice and to the transaction. (See also paragraph (l) of this section regarding U.S. public entities and paragraph (h) of this section and § 802.203 regarding certification requirements.)

(b) A voluntary notice filed pursuant to § 802.501 shall describe or provide, as applicable:

(1) The transaction in question, including:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside of the United States, as applicable;

(ii) The nature of the transaction, including whether the transaction involves a purchase, lease, or concession of real estate;

(iii) The name, United States address (if any), website address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the current holder of interest in the real estate that is the subject of the transaction;

(v) In the case that a U.S. public entity is a party to the covered real estate transaction, provide the name, telephone number, and email address of the primary point of contact within the U.S. public entity;

(vi) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent;

(vii) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of the foreign person or foreign persons that will be afforded property rights with respect to the real estate that is the subject of the covered real estate transaction;

(viii) The expected date for completion date of the transaction, or the date it was completed;

(ix) A good faith approximation of the fair market value of the interest acquired in the covered real estate in U.S. dollars, as of the date of the notice;

(x) The name of any and all financial institutions and real estate agents/brokers involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction;

(xi) A copy of the purchase, lease, or concession agreement relating to the transaction; and

(xii) Whether the foreign person will have any of the following rights or abilities with respect to the real estate as a result of the transaction and any additional information regarding such property rights:

(A) To physically access the real estate;

(B) To exclude others from physical access to the real estate;

(C) To improve or develop the real estate; or

(D) To attach fixed or immovable structures or objects to the real estate.

(2) A detailed description of real estate that is the subject of the transaction, including as applicable:

(i) The location, by address and geographic coordinates in decimal degrees to the 4th digit, of the real estate that is the subject of the covered real estate transaction;

(ii) A description of the real estate that is the subject of the covered real estate transaction including the approximate size (in acres, feet or other appropriate measurement); nature of the real estate (*e.g.,* zoning type and the major topographical or other features of the real estate); current use of the real estate; and structures that are or will be on the real estate;

(iii) A description of any licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate as well as any feasibility studies conducted with respect to the real estate; and

(iv) The name(s) of the relevant airport, maritime port, military installation, or any other facility or property of the U.S. Government as identified in this part, based on the

location of the real estate that is the subject of the transaction.

(3) With respect to the foreign person engaged in the transaction and its parents:

(i) A description of the business or businesses of the foreign person and each parent, including any interests in the United States, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the real estate with respect to:

(A) Use and development of the real estate;

(B) Changing the nature of the real estate including building new structures or removing or altering current structures, including the anticipated dimensions; and

(C) Assigning, modifying or terminating any licenses, permits, easements, encumbrances, or other grants or approvals referred to in paragraph (b)(2)(iii) of this section;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including without limitation as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls property rights in the covered real estate or has or controls ownership interests, including contingent equity interest, of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and amount of any such interests, and with regard to contingent equity interest, the terms and timing of conversion;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors (including other persons who perform duties usually associated with such titles) of the foreign person that is a party to the transaction or any parent of that foreign person;

(C) Holds any other (contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers with respect to control over the foreign party engaged in the transaction, and if there are any such rights or powers, their source (for example, a ''golden share,'' shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) Any formal or informal arrangements among foreign persons that hold an ownership interest in the foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the real estate that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements;

(vi) For each member of the board of directors or similar body (including external directors and other persons who perform duties usually associated with such titles) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the acquiring foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information:

(A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and

(B) The following ''personal identifier information,'' which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice:

(1) Full name (last, first, middle name);

(2) All other names and aliases used;

(3) Business address;

(4) Country and city of residence;

(5) Date of birth, in the format MM/DD/YYYY;

(6) Place of birth;

(7) U.S. Social Security number (where applicable);

(8) National identity number, including nationality, date and place of issuance, and expiration date (where applicable);

(9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and

(10) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country; and

(vii) The following ''business identifier information'' for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, website address, and email address; and

(D) Employer identification number or other domestic tax or corporate identification number.

(c) The voluntary notice shall list any filings with, or reports to, agencies of the U.S. Government that have been or will be made with respect to the transaction prior to its completion, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

(d) In the case of the establishment of a joint venture in which one or more of the parties is contributing covered real estate, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made a purchase or lease, or been granted a concession to, the covered real estate that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(e) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under this section, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 802.501, and the certifications required under paragraphs (h) and (m) of this section shall apply to such amendments.

(f) Persons filing a voluntary notice shall include:

(1) A complete pre-transaction organizational chart (and post-transaction, if different) including, without limitation, information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), and nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic

interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent.

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government; and

(iii) The transaction has resulted or could result in a foreign person being afforded property rights with respect to covered real estate, and the reasons for its view.

(g) Persons filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the U.S. Government signatories; and

(2) Any party to the transaction (including such party's parents, subsidiaries, or entities under common control with the party) has been a party to a transaction previously notified to the Committee.

(h) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 802.203. A sample certification may be found on the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

(i) Persons filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

(j) A person filing a voluntary notice may stipulate that the transaction is a covered real estate transaction. A stipulation offered by any party pursuant to this section must be accompanied by a detailed description of the basis for the stipulation. A party that offers such a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered real estate transaction for purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered real estate transaction.

(k) For any voluntarily submitted draft or formal written notice that includes a stipulation that the transaction is a covered real estate transaction, the Committee shall provide comments on a draft or formal written notice or accept a formal written notice of a covered real estate transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(l) In the case of a transaction where a U.S. public entity is a party to the transaction, the notifying party or parties may be the non-U.S. public entity. Each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to the U.S. public entity.

(m) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 802.203.) A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

§ 802.503 Beginning of 45-day review period.

(a) The Staff Chairperson of the Committee shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 802.502; and

(2) Disseminated the notice to all members of the Committee.

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the Committee, or the Chairperson of the Committee has requested a notice pursuant to § 802.501(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(c) The Staff Chairperson shall promptly advise in writing all parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after receipt of an agency notice by the Staff Chairperson, the Staff Chairperson shall send written advice of such notice to the parties to the transaction that is subject to the notice. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any complete notice, and any subsequent information filed by the parties.

§ 802.504 Deferral, rejection, or disposition of certain voluntary notices.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 802.501 or § 802.502 and so inform the parties promptly in writing;

(2) Reject any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not submitted the final certification required by § 802.502(m).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the review period specified by § 802.503, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the

transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or parties that notice has been filed with respect to a proposed transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered real estate transaction.

(d) *Example:* The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is selling covered real estate. The joint notice does not contain any information described under § 802.502 concerning the nature of the real estate. The Staff Chairperson may reject the notice or defer the start of the review period until the parties have supplied the omitted information.

§ 802.505 Determination of whether to undertake an investigation.

(a) After a review of a notified transaction under § 802.503, the Committee shall undertake an investigation of any transaction that it has determined to be a covered real estate transaction if:

(1) A member of the Committee (other than a member designated as ex officio under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered real estate transaction under § 802.503, an investigation to determine the effects on national security of any covered real estate transaction that would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered real estate transaction will not impair the national security of the United States.

§ 802.506 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 802.503, not to undertake an investigation of a notified covered real estate transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly inform the parties to a covered real estate transaction in writing of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 802.507 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the review period described in § 802.503.

(b) An official of the Department of the Treasury shall promptly inform the parties to a covered real estate transaction in writing of the commencement of an investigation.

§ 802.508 Completion or termination of investigation and report to the President.

(a) Subject to paragraph (e) of this section, the Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered real estate transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered real estate transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation pursuant to this paragraph with respect to a covered real estate transaction, the Committee shall promptly notify the parties to the transaction of the extension.

(f) For purposes of paragraph (e) of this section, ''extraordinary circumstances'' means circumstances for which extending an investigation is necessary and the appropriate course of action due to a force majeure event or to protect the national security of the United States.

§ 802.509 Withdrawal of notices.

(a) A party (or parties) to a transaction that has filed notice under § 802.501(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered real estate transaction before notice is refiled under § 802.501; and

(ii) Interim protections to address specific national security concerns with the transaction identified during the review or investigation of the transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted pursuant to paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 802.701.

Subpart F—Committee Procedures

§ 802.601 General.

(a) In any assessment, review, or investigation of a covered real estate transaction, the Committee should consider the factors specified in section 721(f), as applicable, and, as appropriate, require parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered real estate transaction or subject to part 800 of this title;

(2) There is credible evidence to support a belief that any foreign person party to a covered real estate transaction might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During an assessment, review, or investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

(e) The parties' description of a transaction in a declaration or notice does not limit the ability of the Committee to, as appropriate, assess, review, or investigate, or exercise any other authorities available under section 721 with respect to any covered real estate transaction that the Committee identifies as having been notified to the Committee based upon the facts set forth in the declaration or notice, any additional information provided to the Committee subsequent to the original declaration or notice, or any other information available to the Committee.

§ 802.602 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 802.603 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

§ 802.604 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under subparts D or E imposed on the Committee shall be tolled during a lapse in appropriations.

Subpart G—Finality of Action

§ 802.701 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including without limitation divestment authority, shall remain available at the discretion of the President with respect to any covered real estate transaction. Subject to § 802.501(c)(1)(ii), such authority shall not be exercised if:

(1) The Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which a voluntary notice or a declaration has been filed is not a covered real estate transaction;

(2) The parties to the transaction have been advised in writing pursuant to § 802.405(a)(4), § 802.506 or § 802.508(d) that the Committee has concluded all action under section 721 with respect to the covered real estate transaction; or

(3) The President has previously announced, pursuant to section 721(d), his decision not to exercise his authority under section 721 with respect to the covered real estate transaction.

Subpart H—Provision and Handling of Information

§ 802.801 Obligation of parties to provide information.

(a) Parties to a transaction that is notified or declared under subparts D or E, or a transaction for which no notice or declaration has been submitted and for which the Staff Chairperson has requested information to assess whether the transaction is a covered real estate transaction, shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairperson of any material changes in plans or information pursuant to § 802.401(d) or § 802.502(e). If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, pursuant to the Defense Production Act Reauthorization of 2003, as amended, Public Law 108–195 (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language, shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required pursuant to section 721(l)(3)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(1)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 802.203. A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

§ 802.802 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material submitted or filed

with the Committee pursuant to this part, including information or documentary material filed pursuant to § 802.501(f), shall be exempt from disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552, *et seq.*), and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties;

(c) This section shall continue to apply with respect to information and documentary material submitted or filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw a notice or a declaration is granted under § 802.509 or § 802.404(c), respectively, or where a notice or a declaration has been rejected under § 802.504(a) or § 802.404(a), respectively;

(3) The Committee determines that a notified or declared transaction is not a covered real estate transaction; or

(4) Such information or documentary material was filed pursuant to subpart D and the parties do not subsequently file a notice pursuant to subpart E.

(d) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has submitted or filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

(e) The provisions of the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(d)) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart I—Penalties and Damages

§ 802.901 Penalties and damages.

(a) Any person who submits a material misstatement or omission in a declaration or notice or makes a false certification under § 802.402, § 802.403, or § 802.502 may be liable to the United States for a civil penalty not to exceed $250,000 per violation. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(b) Any person who violates a material provision of a mitigation agreement entered into on or after the effective date with, a material condition imposed on or after the effective date by, or an order issued on or after the effective date by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(c) A mitigation agreement entered into or amended under section 721(l) after the effective date may include a provision providing for liquidated or actual damages for breaches of the agreement. The Committee shall set the amount of any liquidated damages as a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee will consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the agreement.

(d) A determination to impose penalties under paragraph (a) or (b) of this section must be made by the Committee. Notice of the penalty, including a written explanation of the penalized conduct and the amount of the penalty, shall be sent to the penalized party electronically and by U.S. mail.

(e) Upon receiving notice of the imposition of a penalty under paragraph (a) or (b) of this section, the penalized party may, within 15 days of receipt of the notice of the penalty, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the penalized conduct. The Committee will review the petition and issue a final decision within 15 days of receipt of the petition.

(f) The penalties and damages authorized in paragraphs (a) through (c) of this section may be recovered in a civil action brought by the United States in federal district court.

(g) Section 2 of the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), shall apply to all information provided to the Committee under section 721, including by any party to a covered real estate transaction.

(h) The penalties and damages available under this section are without prejudice to other penalties, civil or criminal, available under law.

(i) The imposition of a civil monetary penalty or damages pursuant to these regulations creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty or damages assessed if not paid within the time prescribed by the Committee and notified to the applicable party or parties. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty or damages.

§ 802.902 Effect of lack of compliance.

(a) If, at any time after a mitigation agreement or condition is entered into or imposed under section 721(l), the Committee or a lead agency in coordination with the Staff Chairperson, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or a lead agency in coordination with the Staff Chairperson may, in addition to the authority of the Committee to impose penalties pursuant to section 721(h) and to unilaterally initiate a review of any covered transaction pursuant to section 721(b)(1)(D)(iii):

(1) Negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition;

(2) Require that the party or parties submit a written notice or declaration under clause (i) of section 721(b)(1)(C) with respect to a covered real estate transaction initiated after the date of the determination of noncompliance and before the date that is five years after the date of the determination to the Committee to initiate a review of the transaction under section 721(b); or

(3) Seek injunctive relief.

Subpart J—Foreign National Security Investment Review Regimes

§ 802.1001 Determinations.

(a) The Chairperson of the Committee, with the agreement of two-thirds of the voting members of the Committee, may determine at any time that a foreign state has made significant progress toward establishing and effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

(b) The Chairperson of the Committee may rescind a determination under paragraph (a) of this section if the Chairperson of the Committee determines, with the agreement of two-thirds of the voting members of the Committee, that such a rescission is appropriate.

(c) The Chairperson of the Committee shall publish a notice of any determination or rescission of a determination under paragraph (a) or (b) of this section, respectively, in the **Federal Register**.

§ 802.1002 Effect of determinations.

(a) A determination under § 802.1001(a) shall take effect immediately upon publication of a notice of such determination under § 802.1001(c) and remain in effect unless rescinded pursuant to paragraph (b) of this section.

(b) A rescission of a determination under § 802.1001(b) shall take effect on the date specified in the notice published under § 802.1001(c).

(c) A determination under § 802.1001(a) does not apply to any transaction for which a declaration or notice has been accepted by the Staff Chairperson pursuant to § 802.403(a)(1) or § 802.503(a), respectively.

(d) A rescission of a determination under § 802.1001(b) does not apply to any transaction for which:

(1) The completion date is prior to the date upon which the rescission of a determination under paragraph (b) of this section becomes effective; or

(2) Before publication of the rescission of determination under § 802.1001(c), the parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction that is ultimately consummated.

Appendix A to Part 802—List of Military Installations

Site name	Location
Part 1	
Adelphi Laboratory Center	Adelphi, MD.
Air Force Maui Optical and Supercomputing Site.	Maui, HI.
Air Force Office of Scientific Research	Arlington, VA.
Andersen Air Force Base	Yigo, Guam.
Army Futures Command	Austin, TX.
Army Research Lab—Orlando Simulations and Training Technology Center.	Orlando, FL.
Army Research Lab—Raleigh Durham	Raleigh Durham, NC.
Arnold Air Force Base	Coffee County and Franklin County, TN.
Beale Air Force Base	Yuba City, CA.
Biometric Technology Center (Biometrics Identity Management Activity).	Clarksburg, WV.
Buckley Air Force Base	Aurora, CO.
Camp MacKall	Pinebluff, NC.
Cape Cod Air Force Station	Sandwich, MA.
Cape Newenham Long Range Radar Site	Cape Newenham, AK.
Cavalier Air Force Station	Cavalier, ND.
Cheyenne Mountain Air Force Station	Colorado Springs, CO.
Clear Air Force Station	Anderson, AK.
Creech Air Force Base	Indian Springs, NV.
Davis-Monthan Air Force Base	Tucson, AZ.
Defense Advanced Research Projects Agency	Arlington, VA.
Eareckson Air Force Station	Shemya, AK.
Eielson Air Force Base	Fairbanks, AK.
Ellington Field Joint Reserve Base	Houston, TX.
Fairchild Air Force Base	Spokane, WA.
Fort Benning	Columbus, GA.
Fort Belvoir	Fairfax County, VA.
Fort Bliss	El Paso, TX.
Fort Campbell	Hopkinsville, KY.
Fort Carson	Colorado Springs, CO.
Fort Detrick	Frederick, MD.
Fort Drum	Watertown, NY.
Fort Gordon	Augusta, GA.
Fort Hood	Killeen, TX.
Fort Knox	Fort Knox, KY.
Fort Leavenworth	Leavenworth, KS.
Fort Lee	Petersburg, VA.
Fort Leonard Wood	Pulaski County, MO.
Fort Meade	Anne Arundel County, MD.
Fort Riley	Junction City, KS.
Fort Shafter	Honolulu, HI.
Fort Sill	Lawton, OK.
Fort Stewart	Hinesville, GA.
Fort Yukon Long Range Radar Site	Fort Yukon, AK.

Site name	Location
Francis E. Warren Air Force Base	Cheyenne, WY.
Guam Tracking Station	Inarajan, Guam.
Hanscom Air Force Base	Lexington, MA.
Holloman Air Force Base	Alamogordo, NM.
Holston Army Ammunition Plant	Kingsport, TN.
Joint Base Anacostia-Bolling	Washington, DC.
Joint Base Andrews	Camp Springs, MD.
Joint Base Elmendorf-Richardson	Anchorage, AK.
Joint Base Langley-Eustis	Hampton, VA and Newport News, VA.
Joint Base Lewis-McChord	Tacoma, WA.
Joint Base McGuire-Dix-Lakehurst	Lakehurst, NJ.
Joint Base Pearl Harbor-Hickam	Honolulu, HI.
Joint Base San Antonio	San Antonio, TX.
Joint Expeditionary Base Little Creek-Fort Story	Virginia Beach, VA.
Kaena Point Satellite Tracking Station	Waianae, HI.
King Salmon Air Force Station	King Salmon, AK.
Kirtland Air Force Base	Albuquerque, NM.
Kodiak Tracking Stations	Kodiak Island, AK.
Los Angeles Air Force Base	El Segundo, CA.
MacDill Air Force Base	Tampa, FL.
Malmstrom Air Force Base	Great Falls, MT.
Marine Corps Air Ground Combat Center Twentynine Palms.	Twentynine Palms, CA.
Marine Corps Air Station Beaufort	Beaufort, SC.
Marine Corps Air Station Cherry Point	Cherry Point, NC.
Marine Corps Air Station Miramar	San Diego, CA.
Marine Corps Air Station New River	Jacksonville, NC.
Marine Corps Air Station Yuma	Yuma, AZ.
Marine Corps Base Camp Lejeune	Jacksonville, NC.
Marine Corps Base Camp Pendleton	Oceanside, CA.
Marine Corps Base Hawaii	Kaneohe Bay, HI.
Marine Corps Base Hawaii, Camp H.M. Smith	Halawa, HI.
Marine Corps Base Quantico	Quantico, VA.
Mark Center	Alexandria, VA.
Minot Air Force Base	Minot, ND.
Moody Air Force Base	Valdosta, GA.
National Capital Region Coordination Center	Herndon, VA.
Naval Air Station Joint Reserve Base New Orleans.	Belle Chasse, LA.
Naval Air Station Oceana	Virginia Beach, VA.
Naval Air Station Oceana Dam Neck Annex	Virginia Beach, VA.
Naval Air Station Whidbey Island	Oak Harbor, WA.
Naval Base Guam	Apra Harbor, Guam.
Naval Base Kitsap Bangor	Silverdale, WA.
Naval Base Point Loma	San Diego, CA.
Naval Base San Diego	San Diego, CA.
Naval Base Ventura County—Port Hueneme Operating Facility.	Port Hueneme, CA.
Naval Research Laboratory	Washington, DC.
Naval Research Laboratory—Blossom Point	Welcome, MD.
Naval Research Laboratory—Stennis Space Center.	Hancock County, MS.
Naval Research Laboratory—Tilghman	Tilghman, MD.
Naval Station Newport	Newport, RI.
Naval Station Norfolk	Norfolk, VA.
Naval Submarine Base Kings Bay	Kings Bay, GA.
Naval Submarine Base New London	Groton, CT.
Naval Surface Warfare Center Carderock Division—Acoustic Research Detachment.	Bayview, ID.
Naval Support Activity Crane	Crane, IN.
Naval Support Activity Orlando	Orlando, FL.
Naval Support Activity Panama City	Panama City, FL.
Naval Support Activity Philadelphia	Philadelphia, PA.
Naval Support Facility Carderock	Bethesda, MD.
Naval Support Facility Dahlgren	Dahlgren, VA.
Naval Support Facility Indian Head	Indian Head, MD.
Naval Weapons Station Seal Beach Detachment Norco.	Norco, CA.
New Boston Air Station	New Boston, NH.
Offutt Air Force Base	Bellevue, NE.
Oliktok Long Range Radar Site	Oliktok, AK.
Orchard Combat Training Center	Boise, ID.
Peason Ridge Training Area	Leesville, LA.
Pentagon	Arlington, VA.

Site name	Location
Peterson Air Force Base	Colorado Springs, CO.
Picatinny Arsenal	Morris County, NJ.
Piñon Canyon Maneuver Site	Tyrone, CO.
Pohakuloa Training Area	Hilo, HI.
Point Barrow Long Range Radar Site	Point Barrow, AK.
Portsmouth Naval Shipyard	Kittery, ME.
Radford Army Ammunition Plant	Radford, VA.
Redstone Arsenal	Huntsville, AL.
Rock Island Arsenal	Rock Island, IL.
Rome Research Laboratory	Rome, NY.
Schriever Air Force Base	Colorado Springs, CO.
Seymour Johnson Air Force Base	Goldsboro, NC.
Shaw Air Force Base	Sumter, SC.
Southeast Alaska Acoustic Measurement Facility.	Ketchikan, AK.
Tin City Long Range Radar Site	Tin City, AK.
Tinker Air Force Base	Midwest City, OK.
Travis Air Force Base	Fairfield, CA.
Tyndall Air Force Base	Bay County, FL.
U.S. Army Natick Soldier Systems Center	Natick, MA.
Watervliet Arsenal	Watervliet, NY.
Wright-Patterson Air Force Base	Dayton, OH.

Part 2

Aberdeen Proving Ground	Aberdeen, MD.
Camp Shelby	Hattiesburg, MS.
Cape Canaveral Air Force Station	Cape Canaveral, FL.
Dare County Range	Manns Harbor, NC.
Edwards Air Force Base	Edwards, CA.
Eglin Air Force Base	Valparaiso, FL.
Fallon Range Complex	Fallon, NV.
Fort Bragg	Fayetteville, NC.
Fort Greely	Delta Junction, AK.
Fort Huachuca	Sierra Vista, AZ.
Fort Irwin	San Bernardino County, CA.
Fort Polk	Leesville, LA.
Fort Wainwright	Fairbanks, AK.
Hardwood Range	Necehuenemedah, WI.
Hill Air Force Base	Ogden, UT.
Mountain Home Air Force Base	Mountain Home, ID.
Naval Air Station Meridian	Meridian, MS.
Naval Air Station Patuxent River	Lexington Park, MD.
Naval Air Weapons Station China Lake	Ridgecrest, CA.
Naval Base Kitsap—Keyport	Keyport, WA.
Naval Base Ventura County—Point Mugu Operating Facility.	Point Mugu, CA.
Naval Weapons Systems Training Facility Boardman.	Boardman, OR.
Nellis Air Force Base	Las Vegas, NV.
Nevada Test and Training Range	Tonopah, NV.
Pacific Missile Range Facility	Kekaha, HI.
Patrick Air Force Base	Cocoa Beach, FL.
Tropic Regions Test Center	Wahiawa, HI.
Utah Test and Training Range	Barro, UT.
Vandenberg Air Force Base	Lompoc, CA.
West Desert Test Center	Dugway, UT.
White Sands Missile Range	White Sands Missile Range, NM.
Yuma Proving Ground	Yuma, AZ.

Site name	County	Township/range
Part 3		
90th Missile Wing Francis E. Warren Air Force Base Missile Field (Colorado, Nebraska, and Wyoming).	Chase County, NE	All.
	Dundy County, NE	All.
	Goshen County, WY	All.
	Hitchcock County, NE	All.
	Laramie County, WY	All.
	Logan County, CO	All.
	Platte County, WY	All.
	Weld County, CO	All.

Site name	County	Township/range
341st Missile Wing Malmstrom Air Force Base Missile Field (Montana).	Cascade County, MT	All.
	Chouteau County, MT	All, except lands located north of Township 22 North and east of Range 7 East based on the Bureau of Land Management's Public Lands Survey System.
	Fergus County, MT	All.
	Judith Basin County, MT	All.
	Lewis and Clark County, MT.	All, except lands located south of Township 14 North and west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System.
	Pondera County, MT	All, except lands located west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System.
	Teton County, MT	All, except lands located west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System.
	Toole County, MT	All.
	Wheatland County, MT	All.
91st Missile Wing Minot Air Force Base Missile Field (North Dakota).	Bottineau County, ND	All.
	Burke County, ND	All.
	McHenry County, ND	All.
	McLean County, ND	All.
	Mountrail County, ND	All.
	Renville County, ND	All.
	Ward County, ND	All.

Site name	Location
Part 4	
Boston Range Complex	Offshore Massachusetts, New Hampshire, Maine.
Boston Operating Area	Offshore Massachusetts, New Hampshire, Maine.
Charleston Operating Area	Offshore North Carolina, South Carolina.
Cherry Point Operating Area	Offshore North Carolina, South Carolina.
Corpus Christi Operating Area	Offshore Texas.
Eglin Gulf Test and Training Range	Offshore Florida.
Gulf of Mexico Range Complex	Offshore Mississippi, Alabama, Florida.
Hawaii Range Complex	Offshore Hawaii.
Jacksonville Operating Area	Offshore Florida, Georgia.
Jacksonville Range Complex	Offshore Florida.
Key West Operating Area	Offshore Florida.
Key West Range Complex	Offshore Florida.
Narragansett Bay Range Complex	Offshore Connecticut, Massachusetts, New York, Rhode Island.
Narragansett Bay Operating Area	Offshore Connecticut, Massachusetts, New York, Rhode Island.
New Orleans Operating Area	Offshore Louisiana.
Northern California Range Complex	Offshore California.
Northwest Training Range Complex	Offshore Oregon, Washington.
Panama City Operating Area	Offshore Florida.
Pensacola Operating Area	Offshore Alabama, Florida.
Point Mugu Sea Range	Offshore California.
Southern California Range Complex	Offshore California.
Virginia Capes Operating Area	Offshore Delaware, Maryland, North Carolina, Virginia.
Virginia Capes Range Complex	Offshore Delaware, Maryland, North Carolina, Virginia.

Dated: September 11, 2019.

Thomas Feddo,

Deputy Assistant Secretary for Investment Security.

[FR Doc. 2019–20100 Filed 9–17–19; 4:15 pm]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 185 September 24, 2019

Part VI

Environmental Protection Agency

40 CFR Part 60

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review; Proposed rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2017–0757; FRL–9999–50–OAR]

RIN 2060–AT90

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes reconsideration amendments to the new source performance standards (NSPS). These amendments, if finalized, would remove sources in the transmission and storage segment from the source category, rescind the NSPS (including both the volatile organic compounds (VOC) and methane requirements) applicable to those sources, and rescind the methane-specific requirements (the ''methane requirements'') of the NSPS applicable to sources in the production and processing segments. The U.S. Environmental Protection Agency (EPA) is also proposing, as an alternative, to rescind the methane requirements of the NSPS applicable to all oil and natural gas sources, without removing any sources from the source category. Furthermore, the EPA is taking comment on alternative interpretations of its statutory authority to regulate pollutants under the Clean Air Act (CAA), and associated record and policy questions.

DATES: *Comments.* Comments must be received on or before November 25, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before October 24, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2017–0757, at *https://www.regulations.gov/,* 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–2017–0757 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2017–0757.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0757, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation 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 **SUPPLEMENTAL INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Amy Hambrick, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0964; fax number: (919) 541–0516; and email address: *hambrick.amy@epa.gov.* For information about the applicability of the NSPS to a particular entity, contact Ms. Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–7042; and email address: *mia.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. The EPA will hold a public hearing on the proposal. Details will be announced in a separate **Federal Register** document.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0757. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0757. The 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 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. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or

viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0757.

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

AEO Annual Energy Outlook
BLM Bureau of Land Management
BSER best system of emission reduction
CAA Clean Air Act
CAIT Climate Analysis Indicators Tool
CBI Confidential Business Information
CCAC Climate and Clean Air Coalition
CFR Code of Federal Regulations
CH_4 methane
CO carbon monoxide
CO_2 carbon dioxide
CO_2 Eq. carbon dioxide equivalent
CVS closed vent system
EAV equivalent annualized value
EGU Electricity Generating Units
EIA Energy Information Administration
EPA Environmental Protection Agency
ESRL Earth System Research Laboratory
GAO Government Accountability Office
GHG greenhouse gases
GHGI greenhouse gas inventory
GHGRP Greenhouse Gas Reporting Program
HAP hazardous air pollutant(s)
H_2S hydrogen sulfide
ICR Information Collection Request
IR infrared
kt kilotons
MMT Million Metric Tons
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NEI National Emissions Inventory
NEMS National Energy Modeling System
NGL natural gas liquids
NOAA National Oceanic and Atmospheric Administration
NODA Notice of Data Availability
NO_X nitrogen oxides
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OGI optical gas imaging
OMB Office of Management and Budget
PE professional engineer
PHMSA Pipeline and Hazardous Materials Safety Administration
PM particulate matter
$PM_{2.5}$ PM with a diameter of 2.5 micrometers or less
PM_{10} PM with a diameter of 10 micrometers or less
PRA Paperwork Reduction Act
PV present value
REC reduced emissions completion
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
$SC–CH_4$ social cost of methane
SCF significant contribution finding
SIP state implementation plan
SO_2 sulfur dioxide
tpy tons per year
TSD technical support document
UMRA Unfunded Mandates Reform Act
UNFCCC United Nations Framework Convention on Climate Change
U.S. United States
VOC volatile organic compounds
WRI World Resources Institute

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

I. Executive Summary

A. Purpose and Summary of the Regulatory Action

Since the inception of the CAA, with its aim to promote the ''public health

and welfare and the productive capacity'' of the nation's population, the EPA has focused on air emissions from the oil and natural gas industry.[1] [2] For nearly 40 years, the EPA has issued regulations under CAA section 111 to limit emissions from the oil and natural gas industry, while accounting for costs and other factors as instructed by Congress in the statute.[3] In this action, the EPA is recognizing its responsibilities under that section, performed in accordance with the statute and with national policy objectives. As such, the EPA here is proposing to amend its 2012 and 2016 rules affecting the industry, titled, respectively, ''Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Final Rule'' (''2012 NSPS OOOO'')[4] and ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule'' (''2016 NSPS OOOOa'').[5] Those rules established NSPS for VOC emissions from the oil and natural gas industry, and the 2016 rule also established NSPS for greenhouse gases (GHGs), in the form of limitations on methane, for that industry.[6] The amendments that the EPA is proposing are intended to continue existing protections from emission sources within the regulated source category, while removing regulatory duplication.

As directed by the President in March 2017, the EPA has reviewed the 2012 NSPS OOOO and 2016 NSPS OOOOa with attention to whether the rules ''unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest,'' and if so, appropriately ''suspend, revise, or rescind'' regulatory requirements.[7] [8] From this review, the EPA is now proposing to determine that some of the requirements under those rules are inappropriate because they affect sources that are not appropriately identified as part of the regulated source category, and some of the requirements under the 2016 NSPS OOOOa are unnecessary insofar as they impose redundant requirements. Accordingly, the EPA is acting to rescind those requirements while maintaining health and environmental protections from appropriately identified emission sources within the regulated source category.[9]

Specifically, the EPA is co-proposing two potential actions: a primary proposal and an alternative proposal. The primary proposal contains two steps. In the first step, the EPA is proposing to revisit its 2012 and 2016 interpretations of, and its 2016 revision to, the regulated source category to cover sources in the transmission and storage segment, and to rescind the NSPS requirements applicable to those sources. Having reexamined the transmission and storage segment, the EPA has determined that the purported revision in 2016 of the pre-existing source category (which the EPA now proposes to conclude was originally intended to include only the production and processing segments) was not appropriate. Because the transmission and storage segment constitutes a separate source category from the production and processing segments, the EPA could have listed it for regulation under CAA section 111(b) only by making a significant contribution and endangerment finding as required by the statue, which the EPA never did. Accordingly, under the first step of the primary proposal, the EPA proposes to rescind the standards applicable to sources in the transmission and storage segment of the oil and gas industry.

As the second step, the EPA is proposing to rescind the methane requirements of the NSPS applicable to sources in the production and processing segments. The EPA proposed to conclude that those methane requirements are entirely redundant with the existing NSPS for VOC and, thus, establish no additional health protections. Indeed, due to the identical emission source control technologies for methane and VOC, the EPA, when establishing the 2016 NSPS OOOOa, found no need for any changes to the existing NSPS requirements for VOC when that rule explicitly examined regulation of methane emissions. Rescinding the applicability to methane emissions of the 2016 NSPS OOOOa requirements, while leaving the applicability to VOC emissions in place, will not affect the amount of methane emission reductions that those requirements will achieve.

Under the alternative proposal, the EPA is proposing to rescind the methane requirements of the NSPS applicable to all oil and natural gas sources in the source category as it is currently constituted, without undoing the 2012 and 2016 interpretations or expansion of the source category to include sources in the transmission and storage segment. The rationale for rescinding the methane requirements under this alternative proposal is the same as noted immediately above, that is, that they are entirely redundant with the existing NSPS for VOC.

Both the primary and alternative proposal rely on the EPA's previous interpretation of the requirement in CAA section 111(b)(1)(A) under which the EPA needs to make a finding that a source category ''causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare'' when it lists the source category, but that thereafter, when it regulates pollutants emitted from the source category, it needs only a rational basis to do so. The EPA proposes to retain that interpretation of this statutory provision. However, in section VI.A of this preamble, the EPA takes comment on an alternative interpretation, under which the Agency is required to make the significant-contribution finding each time that it regulates a pollutant from the source category. In section VI.B of this preamble, the EPA takes comment on whether, under this alternative interpretation, it made a valid finding in the 2016 NSPS OOOOa that methane emissions from the Crude Oil and Natural Gas Production source category met this statutory standard. In section VI.C of this preamble, the EPA takes comment on its proposed identification of certain factors which would inform its judgment, should it make a new determination whether methane emissions from the source category meet this statutory standard.

The EPA solicits public comment on all aspects of this proposal.

B. Costs and Benefits

The EPA has projected the cost savings, emissions increases, and forgone benefits that may result from rescinding requirements from sources in the transmission and storage segment (*i.e.,* the primary proposal). The projected cost savings and forgone

[1] 42 U.S.C. 7401(b)(1).

[2] 44 FR 49222 (August 21, 1979) (listing ''Crude Oil and Natural Gas Production'' under CAA section 111 as a source category subject to standards of performance).

[3] 50 FR 26122 (June 24, 1985) (promulgating NSPS that address certain VOC emissions); 50 FR 40158 (October 1, 1985) (promulgating NSPS that address certain sulfur dioxide (SO_2) emissions).

[4] 77 FR 49490 (August 16, 2012).

[5] 81 FR 35824 (June 3, 2016).

[6] Docket ID No. EPA–HQ–OAR–2010–0505.

[7] Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' section 1(c) (March 28, 2017).

[8] 82 FR 16331 (April 4, 2017) (notice of review of 2016 NSPS OOOOa pursuant to Executive Order 13783, signed by the EPA Administrator).

[9] We note that the EPA is addressing certain specific reconsideration issues—fugitive emissions requirements at well sites and compressor stations, well site pneumatic pump standards, and the requirements for certification of closed vent systems (CVS) by a professional engineer (PE)—in a separate proposal. *See* Docket ID Item No. EPA–HQ–OAR–2010–0505–7730 and 82 FR 25730.

benefits are presented in the regulatory impact analysis (RIA) supporting this proposal. The primary proposal action also rescinds methane requirements from sources in the production and processing segments and leaves the VOC regulations in place. As the methane control options are redundant with VOC control options, there are no expected cost or emissions effects from removing the methane requirements in the production and processing segments with respect to these sources. Similarly, there are no expected cost or emissions impacts under the alternative proposed option of rescinding the methane requirements for all affected sources for the same reason: Methane control options on all sources are redundant with VOC control options. The RIA estimates impacts for the analysis years 2019 through 2025. All monetized impacts of these amendments are presented in 2016 dollars. All sources in the transmission and storage segment that are affected by the 2016 NSPS OOOOa, starting at the promulgation of the 2016 NSPS OOOOa, are sources that are affected by this action.

II. General Information

A. Does this action apply to me?

Categories and entities potentially affected by this action include:

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Category	NAICS code [1]	Examples of regulated entities
Industry	211120	Crude Petroleum Extraction.
	211130	Natural Gas Extraction.
	221210	Natural Gas Distribution.
	486110	Pipeline Distribution of Crude Oil.
	486210	Pipeline Transportation of Natural Gas.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected by this action. To determine whether your entity is affected by this action, you should carefully examine the applicability criteria found in the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section, your air permitting authority, or your EPA Regional representative listed in 40 CFR 60.4 (General Provisions).

B. What should I consider as I prepare my comments to the EPA?

This action proposes to revise certain aspects of the 2012 NSPS OOOO and 2016 NSPS OOOOa rule. In this proposed action, we seek comment on only the specific proposals or comment solicitations in this proposed action. We do not seek comment on and we are not opening for reconsideration and review any other aspects of the NSPS in 40 CFR part 60, subparts OOOO and OOOOa and related rulemakings at this time.

C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of the proposed action is available on the internet. Following signature by the Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0757).

III. Background

A. Oil and Natural Gas Industry and Its Emissions

This section generally describes the structure of the oil and natural gas industry, the production, processing, as well as transmission and storage segments, and types of sources in each segment and the industry's emissions. This information is part of the basis of the regulatory approach that the EPA proposes here, which more accurately reflects the industry's differing segments and eliminates redundant and unnecessary regulatory burden, while maintaining protection for human health and the environment.

1. Oil and Natural Gas Industry—Structure

For purposes of developing 40 CFR part 60, subparts OOOO and OOOOa, the EPA characterized the oil and natural gas industry operations as being generally composed of four so-called segments: (1) Extraction and production of crude oil and natural gas (''oil and natural gas production''), (2) natural gas processing, (3) natural gas transmission and storage, and (4) natural gas distribution.[10] [11] It should be noted that the EPA regulates oil refineries as a separate source category; accordingly, for purposes of this proposed rulemaking, for crude oil, the EPA's focus is on operations from the well to the point of custody transfer at a petroleum refinery, while for natural gas, the focus is on all operations from the well to the customer.

The oil and natural gas production segment include the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil and/or natural gas (including condensate). There are two basic types of wells, both of which are located on well ''pads'': Oil wells and natural gas wells. Oil wells comprise two types, oil wells that produce crude oil only and oil wells that produce both crude oil and natural gas (commonly referred to as ''associated'' gas). Production components located on the well pad may include, but are not limited to, wells and related casing heads; tubing heads; and ''Christmas tree'' piping, pumps, compressors,

[10] The EPA previously described an overview of the sector in section 2.0 of the 2011 Background Technical Support Document to 40 CFR part 60, subpart OOOO, located at Docket ID Item No. EPA–HQ–OAR–2010–0505–0045, and section 2.0 of the 2016 Background Technical Support Document to 40 CFR part 60, subpart OOOOa, located at Docket ID Item No. EPA–HQ–OAR–2010–0505–7631.

[11] While generally oil and natural gas production includes both onshore and offshore operations, 40 CFR part 60, subpart OOOOa addresses onshore operations.

heater treaters, separators, storage vessels, pneumatic devices, and dehydrators. Production operations include well drilling, completion, and recompletion processes, including all the portable non-self-propelled apparatuses associated with those operations.[12]

Other sites that are part of the production segment include ''centralized tank batteries,'' stand-alone sites where oil, condensate, produced water, and natural gas from several wells may be separated, stored, or treated. The production segment also includes the low pressure, small diameter, gathering pipelines and related components that collect and transport the oil, natural gas, and other materials and wastes from the wells to the refineries or natural gas processing plants.

Of these products, crude oil and natural gas undergo successive, separate processing. Crude oil is separated from water and other impurities and transported to a refinery via truck, railcar, or pipeline. As noted above, the EPA treats oil refineries as a separate source category, accordingly, for present purposes, the oil component of the production segment ends at the point of custody transfer at the refinery.[13]

The separated, unprocessed natural gas is commonly referred to as field gas and is composed of methane, natural gas liquids (NGL), and other impurities, such as water vapor, hydrogen sulfide (H_2S), carbon dioxide (CO_2), helium, and nitrogen. Ethane, propane, butane, isobutane, and pentane are all considered NGL and often are sold separately for a variety of different uses. Natural gas with high methane content is referred to as ''dry gas,'' while natural gas with significant amounts of ethane, propane, or butane is referred to as ''wet gas.'' Natural gas typically is sent to gas processing plants to separate NGLs for use as feedstock for petrochemical plants, burned for space heating and cooking, or blended into vehicle fuel. The composition of field gas varies across basins in the U.S.[14] For example, the Appalachian region is predominately dry gas and northern mid-continent (North Dakota) region is primarily wet gas.

The natural gas processing segment consists of separating certain hydrocarbons (HC) and fluids from the natural gas to produce ''pipeline quality'' dry natural gas. The degree and location of processing is dependent on factors such as the type of natural gas (*e.g.,* wet or dry gas), market conditions, and company contract specifications. Typically, processing of natural gas begins in the field and continues as the gas is moved from the field through gathering and boosting stations to natural gas processing plants, where the complete processing of natural gas takes place. Natural gas processing operations separate and recover NGL or other non-methane gases and liquids from field gas through one or more of the following processes: Oil and condensate separation, water removal, separation of NGL, sulfur and CO_2 removal, fractionation of NGL, and other processes, such as the capture of CO_2 separated from natural gas streams for delivery outside the facility. In some ''dry gas'' areas, the field gas, with naturally higher methane content, may go from the well site directly into the transmission and storage segment without processing in a gas processing plant. However, there is still the need to remove liquids that naturally condense as the gas moves through the pipeline. Also, depending on the economics of NGLs as a product, there may be some amount of separation or extraction that occurs in transmission and storage using a ''dew point skid'' or what is commonly referred to as a ''straddle plant'' to meet specifications for the receiving pipeline. The EPA solicits comment on how commonly this type of processing occurs in the transmission and storage segment and whether we should—and how we might—differentiate a facility in which this type of processing occurs from a ''natural gas processing plant,'' as that term is currently defined in NSPS OOOOa. For example, the rule defines a ''natural gas processing plant'' to include a facility that extracts NGLs from field gas, where field gas is feedstock gas entering the natural gas processing plant. 40 CFR 60.5430a. If the field gas moves directly from the production segment into transmission and storage facilities, without passing through a natural gas processing plant, it would continue to be considered ''field gas,'' and if extraction of NGLs from such gas subsequently occurs in a transmission or storage facility, that facility would be considered a ''natural gas processing plant.''

Once natural gas processing is complete, which the EPA understands generally to occur at natural gas processing plants, the resulting product is the pipeline quality natural gas that is ready for end use. The pipeline quality natural gas, which is comprised of 95 to 98 percent methane,[15] does not undergo any more phase changes after processing is complete; instead, this final product leaves processing operations and is transmitted to storage and/or distribution to the end user.

Pipelines in the natural gas transmission and storage segment can be interstate pipelines, which carry natural gas across state boundaries or intrastate pipelines, which transport the gas within a single state. Basic components of the two types of pipelines are the same, though interstate pipelines may be of a larger diameter and operated at a higher pressure. To ensure that the natural gas continues to flow through the pipeline, the natural gas must periodically be compressed, by increasing its pressure. Compressor stations perform this function and are usually placed at 40- to 100-mile intervals along the pipeline. At a compressor station, the natural gas enters the station, where it is compressed by reciprocating or centrifugal compressors.

Another part of the transmission and storage segment are aboveground and underground natural gas storage facilities. Storage facilities hold natural gas for use during peak seasons. The main difference between underground and aboveground storage sites is that storage takes place in storage vessels constructed of non-earthen materials in aboveground storage. Underground storage of natural gas typically occurs in depleted natural gas or oil reservoirs and salt dome caverns. One purpose of this storage is for load balancing (equalizing the receipt and delivery of natural gas). At an underground storage site, typically other processes occur, including compression, dehydration, and flow measurement.

The distribution segment is the final step in delivering natural gas to customers.[16] The natural gas enters the distribution segment from delivery points located on interstate and intrastate transmission pipelines to business and household customers. The delivery point where the natural gas leaves the transmission and storage

[12] The 2016 NSPS OOOOa rule defines reduced emissions completion (REC) to be a well completion following fracturing or refracturing where gas flowback that is otherwise vented is captured, cleaned, and routed to the gas flow line or collection system, re-injected into the well or another well, used as an on-site fuel source, or used for other useful purpose that a purchased fuel or raw material would serve, with no direct release to the atmosphere.

[13] *See* 40 CFR part 60, subparts J and Ja and 40 CFR part 63, subparts CC and UUU.

[14] Memorandum to U.S. EPA from Eastern Research Group. ''Natural Gas Composition.'' November 13, 2018. Docket ID No. EPA–HQ–OAR–2017–0757.

[15] *https://www.epa.gov/natural-gas-star-program/overview-oil-and-natural-gas-industry.*

[16] The distribution segment is not regulated under 40 CFR part 60, subpart OOOOa.

segment and enters the distribution segment is a local distribution company's custody transfer station, commonly referred to as the ''citygate.'' Natural gas distribution systems consist of thousands of miles of piping, including mains and service pipelines to the customers. If the distribution network is large, compressor stations may be necessary to maintain flow; however, these stations are typically smaller than transmission compressor stations. Distribution systems include metering stations, which allow distribution companies to monitor the natural gas as it flows through the system.

2. Oil & Natural Gas Industry—Emissions

The oil and natural gas industry emit, in varying concentrations and amounts, a wide range of pollutants, including VOC, SO_2, nitrogen oxides (NO_X), H_2S, carbon disulfide, and carbonyl sulfide. The oil and natural gas industry also emit GHG, such as methane and CO_2. Emissions can occur in all segments of the natural gas industry. As natural gas moves through the system, emissions primarily result from intentional venting through normal operations, routine maintenance, unintentional fugitive emissions, and system upsets. Venting can occur through equipment design or operational practices, such as the continuous bleed of gas from pneumatic controllers (that control gas flows, levels, temperatures, and pressures in the equipment) or venting from well completions during production. In addition to vented emissions, emissions can occur from leaking equipment (also referred to as fugitive emissions) in all parts of the infrastructure, including major production and processing equipment (*e.g.,* separators or storage vessels) and individual components (*e.g.,* valves or connectors). Emissions from the crude oil portion of the industry result primarily from field production operations, such as venting of associated gas from oil wells, oil storage vessels, and production-related equipment such as gas dehydrators, pig traps, and pneumatic devices.

Emissions of both methane and VOC occur through the same emission points and processes. The technologies available to capture and/or control both pollutants from these emission sources are the same, and in their function, those technologies do not select between VOC and methane emissions. The industry has profit incentives to capture and sell emissions of natural gas (and methane), and multiple states have programs in place to control assorted emissions from the industry.

The next section provides estimated emissions of methane, VOC, and SO_2 from oil and natural gas industry operation sources.

a. Methane emissions in the U.S. and from the oil and natural gas industry. Official U.S. estimates of national level GHG emissions and sinks are developed by the EPA for the U.S. GHG Inventory (GHGI) to comply with commitments under the United Nations Framework Convention on Climate Change. The U.S. GHGI, which includes recent trends, is organized by industrial sectors. The oil and natural gas production, and natural gas processing and transmission sectors emit 29 percent of U.S. anthropogenic methane. Table 2 below presents total U.S. anthropogenic methane emissions for the years 1990, 2008, and 2017.

TABLE 2—U.S. METHANE EMISSIONS BY SECTOR

[Million metric ton carbon dioxide equivalent (MMT CO_2 Eq.)]

Sector	1990	2008	2017
Oil and Natural Gas Production, and Natural Gas Processing and Transmission and Storage	191	195	190
Oil and Natural Gas Production, and Natural Gas Processing	134	163	158
Oil and Natural Gas Transmission and Storage	57	32	32
Landfills	180	125	108
Enteric Fermentation	164	174	175
Coal Mining	96	76	56
Manure Management	37	58	62
Other Oil and Gas Sources	44	18	13
Wastewater Treatment	15	15	14
Other Methane Sources [17]	57	52	47
Total Methane Emissions	785	712	665

Emissions from the Inventory of United States Greenhouse Gas Emissions and Sinks: 1990–2017 (published April 11, 2019), calculated using global warming potential (GWP) of 25.

Note: Totals may not sum due to rounding.

Table 3 below presents total methane emissions from natural gas production through transmission and storage and petroleum production, for years 1990, 2008, and 2017, in MMT CO_2 Eq. (or million metric tonnes carbon dioxide equivalent) of methane.

TABLE 3—U.S. METHANE EMISSIONS FROM NATURAL GAS AND PETROLEUM SYSTEMS

[MMMT CO_2 Eq.]

Sector	1990	2008	2017
Oil and Natural Gas Production and Natural Gas Processing and Transmission (Total)	191	195	190
Natural Gas Production	71	114	110
Natural Gas Processing	21	11	12
Natural Gas Transmission and Storage	57	32	32

[17] Other sources include rice cultivation, forest land, stationary combustion, abandoned oil and gas wells, abandoned coal mines, mobile combustion, composting, and several sources emitting less than 1 MMT CO_2 Eq. in 2017.

TABLE 3—U.S. METHANE EMISSIONS FROM NATURAL GAS AND PETROLEUM SYSTEMS—Continued

[MMMT CO_2 Eq.]

Sector	1990	2008	2017
Petroleum Production	41	38	37

Emissions from the Inventory of United States Greenhouse Gas Emissions and Sinks: 1990–2017 (published April 11, 2019), calculated using GWP of 25.

Note: Totals may not sum due to rounding.

b. VOC and SO_2 emissions in the U.S. and from the oil and natural gas industry. Official U.S. estimates of national level VOC and SO_2 emissions are developed by the EPA for the National Emissions Inventory (NEI), for which states are required to submit information under 40 CFR part 51, subpart A. Data in the NEI may be organized by various data points, including sector, NAICS code, and Source Classification Code. The oil and natural gas sources emit 5.7 and 1.8 percent of U.S. VOC and SO_2, respectively. Tables 4 and 5 below present total U.S. VOC and SO_2 emissions by sector, respectively, for the year 2014, in kilotons (kt) (or thousand metric tons).

TABLE 4—U.S. VOC EMISSIONS BY SECTOR

[kt]

Sector	2014
Biogenics—Vegetation and Soil	38,672
Oil and Natural Gas Production, and Natural Gas Processing and Transmission	3,172
Fires—Wildfires	2,466
Fires—Prescribed Fires	1,980
Mobile—On-Road non-Diesel Light Duty Vehicles	1,965
Solvent—Consumer & Commercial Solvent Use	1,621
Mobile—Non-Road Equipment—Gasoline	1,536
Other VOC Sources[18]	4,238
Total VOC Emissions	55,651

Emissions from the 2014 NEI, Version 2 (released February 2018).

Note: Totals may not sum due to rounding.

TABLE 5—U.S. SO_2 EMISSIONS BY SECTOR

[kt]

Sector	2014
Fuel Comb—Electric Generation—Coal	3,155
Fuel Comb—Industrial Boilers, Internal Combustion Engines—Coal	335
Mobile—Commercial Marine Vessels	175
Industrial Processes—Not Elsewhere Classified	137
Industrial Processes—Chemical Manufacturing	133
Oil and Natural Gas Production, and Natural Gas Processing and Transmission	84
Other SO_2 Sources[19]	787
Total SO_2 Emissions	4,805

Emissions from the 2014 NEI, Version 2 (released February 2018).

Note: Totals may not sum due to rounding.

Table 6 below presents total VOC and SO_2 emissions from oil and natural gas production through transmission and storage, for the year 2014, in kt (or thousand metric tons).

TABLE 6—U.S. VOC AND SO_2 EMISSIONS FROM NATURAL GAS AND PETROLEUM SYSTEMS

[kt]

Sector	VOC	SO_2
Oil and Natural Gas Production and Natural Gas Processing and Transmission (Total)	3,172	84
Oil and Natural Gas Production	3,143	48
Natural Gas Processing	14	36

[18] Other sources include remaining sources emitting less than 1,000 kt VOC in 2014.

[19] Other sources include remaining sources emitting less than 100 kt SO_2 in 2014.

TABLE 6—U.S. VOC AND SO_2 EMISSIONS FROM NATURAL GAS AND PETROLEUM SYSTEMS—Continued

[kt]

Sector	VOC	SO_2
Natural Gas Transmission and Storage	16	1

Emissions from the 2014 NEI, Version 2 (published February 2018), in kt (or thousand metric tons).
Note: Totals may not sum due to rounding.

B. Statutory Background

CAA section 111 authorizes and directs the EPA to prescribe NSPS applicable to certain new stationary sources (which are defined by the statue to include newly constructed sources) and also existing sources that undergo ''modification'' within the meaning of CAA section 111(a)(4)).[20] As the first step to regulation, the CAA initially directed the EPA to publish by March 31, 1971, and ''from time to time thereafter [to] revise,'' a list of categories of stationary sources and to include on that list each category of stationary sources for which the Administrator has made a ''judgment'' that the emission of air pollutants from sources within such category ''causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' [21] The EPA has listed and regulated more than 60 stationary source categories under CAA section 111.[22] The EPA listed the source category at issue here, ''Crude Oil and Natural Gas Production'' in 1979.[23]

Once the EPA has listed a source category, the EPA proposes and then promulgates ''standards of performance'' for new sources in the category, which includes sources that have yet to be constructed and those existing sources that undergo ''modification.'' [24] In addition, the EPA's regulations provide that new sources also include an existing source that undertakes a reconstruction.

Under CAA section 111(b), the EPA must promulgate a ''standard of performance'' that new, modified, and reconstructed sources are to meet. CAA section 111(a)(1) defines a ''standard of performance'' as ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction (BSER) which (taking into account [cost and other factors]) the Administrator determines has been adequately demonstrated.'' This definition makes clear that the standard of performance must be based on ''the best system of emission reduction . . . adequately demonstrated'' (BSER).

The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has had occasion over the years to speak to the definition of ''standard of performance'' and its component terms.[25] By its terms, the definition of ''standard of performance'' under CAA section 111(a)(1) provides that the emission limits that the EPA promulgates must be ''achievable'' by application of a ''system of emission reduction'' that the EPA determines to be the ''best'' that is ''adequately demonstrated,'' ''taking into account . . . cost . . . nonair quality health and environmental impact and energy requirements.''

With respect to the cost factor, the D.C. Circuit has stated that the EPA may not adopt a standard the cost of which would be ''unreasonable.'' [26] The D.C. Circuit has indicated that the EPA has substantial discretion in its consideration of cost under CAA section 111(a). Moreover, CAA section 111(a) does not provide specific direction regarding what metric or metrics to use in considering costs, again affording the EPA considerable discretion in choosing a means of cost consideration.[27]

C. What is the regulatory history and litigation background regarding performance standards for the oil and natural gas industry?

1. 1979 Listing of Source Category

Subsequent to the enactment of the CAA of 1970, the EPA took action to develop standards of performance for new stationary sources as directed by Congress in CAA section 111. By 1977, the EPA had promulgated NSPS for a total of 27 source categories, while NSPS for an additional 25 source categories were then under development.[28] However, in amending the CAA that year, Congress expressed dissatisfaction that the EPA's pace was too slow. Accordingly, the 1977 CAA Amendments included a new subsection (f) in section 111, which specified a schedule for the EPA to list additional source categories under CAA section 111(b)(1)(A) and prioritize them for regulation under CAA section 111(b)(1)(B).

In 1979, as required by CAA section 111(f), the EPA published a list of source categories, which included ''Crude Oil and Natural Gas Production,'' for which the EPA would promulgate standards of performance under CAA section 111(b). *See* Priority List and Additions to the List of Categories of Stationary Sources, 44 FR 49222 (August 21, 1979) (''1979 Priority List''). That list included, in the order of priority for promulgating standards, source categories that the EPA Administrator had determined, pursuant to CAA section 111(b)(1)(A), contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. *See* 44 FR 49223 (August 21, 1979); *see also* 49 FR 2636–37 (January 20, 1984).

2. 1985 NSPS for VOC and SO_2 Emissions From Natural Gas Processing Units

On June 24, 1985 (50 FR 26122), the EPA promulgated NSPS for the source category that addressed VOC emissions from equipment leaks at onshore natural gas processing plants (40 CFR part 60, subpart KKK). On October 1, 1985 (50 FR 40158), the EPA promulgated NSPS

[20] CAA section 111(b)(1)(A).

[21] *Id.*

[22] *See* generally, 40 CFR part 60, subparts D–MMMM.

[23] 44 FR 49222 (August 21, 1979).

[24] CAA section 111(b)(1)(B).

[25] *See* 80 FR 64537 (discussing legislative history); *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973); *Essex Chemical Corp.* v. *Ruckelshaus,* 486 F.2d 427, (D.C. Cir. 1973); *Portland Cement Ass'n* v. *EPA,* 665 F.3d 177 (D.C. Cir. 2011). *See* also *Delaware* v. *EPA,* 785 F.3d 1 (D.C. Cir. 2015).

[26] *Sierra Club* v. *Costle,* 657 F.2d 298, 343 (D.C. Cir. 1981). See ''Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program,'' Proposed Rule, 83 FR 44746, 44758 (August 31, 2018) (discussing D.C. Circuit caselaw).

[27] *See, e.g., Husqvarna AB* v. *EPA,* 254 F.3d 195, 200 (D.C. Cir. 2001) (where CAA section 213 does not mandate a specific method of cost analysis, the EPA may make a reasoned choice as to how to analyze costs).

[28] *See* 44 FR 49222 (August 21, 1979).

for the source category to regulate SO_2 emissions from onshore natural gas processing plants (40 CFR part 60, subpart LLL).

3. 2012 NSPS OOOO Rule and Related NSPS Rules

a. Regulatory action. In 2012, pursuant to its duty under CAA section 111(b)(1)(B) to review and, if appropriate, revise NSPS, the EPA published the final rule, ''Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution,'' 77 FR 49490 (August 16, 2012) (40 CFR part 60, subpart OOOO) (''2012 NSPS OOOO''). This rule updated the SO_2 standards for sweetening units and VOC standards for equipment leaks at onshore natural gas processing plants. In addition, it established VOC standards for several oil and natural gas-related operations emission sources not covered by 40 CFR part 60, subparts KKK and LLL, including natural gas well completions, centrifugal and reciprocating compressors, natural gas operated pneumatic controllers, and storage vessels. Using information available at the time, the EPA also evaluated methane emissions and reductions during the 2012 NSPS OOOO rulemaking as a potential co-benefit of regulating VOC emissions.

In 2013, 2014, and 2015 the EPA amended the 2012 NSPS OOOO rule in order to address implementation of the standards. ''Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards,'' 78 FR 58416 (September 23, 2013) (2013 NSPS OOOO) (concerning storage vessel implementation); ''Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards,'' 79 FR 79018 (December 31, 2014) (''2014 NSPS OOOO'') (concerning well completion); ''Oil and Natural Gas Sector: Definitions of Low Pressure Gas Well and Storage Vessel,'' 80 FR 48262 (August 12, 2015) (''2015 NSPS OOOO'') (concerning low pressure gas wells and storage vessels).

The EPA received petitions for both judicial review and administrative reconsiderations for the 2012, 2013, and 2014 NSPS OOOO rules. The EPA denied reconsideration for some issues, *see* ''Reconsideration of the Oil and Natural Gas Sector: New Source Performance Standards; Final Action,'' 81 FR 52778 (August 10, 2016), and, as noted below, granted reconsideration for other issues. All related litigation is currently stayed pending the reconsideration process.

4. 2016 NSPS OOOOa Rule and Related Amendments

a. Regulatory action. On June 3, 2016, the EPA published a final rule titled ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule,'' at 81 FR 35824 (40 CFR part 60, subpart OOOOa) (''2016 NSPS OOOOa'').[29] [30] The 2016 NSPS OOOOa rule established NSPS for sources of GHG and VOC emissions for certain equipment, processes, and operations across the oil and natural gas industry. The 2016 NSPS OOOOa addresses the following emission sources:

- Sources that were unregulated under the 2012 NSPS OOOO (hydraulically fractured oil well completions, pneumatic pumps, and fugitive emissions from well sites and compressor stations);
- Sources that were regulated under the 2012 NSPS OOOO for VOC emissions, but not for GHG emissions (hydraulically fractured gas well completions and equipment leaks at natural gas processing plants); and
- Certain equipment that is used across the source category, for which the 2012 NSPS OOOO regulates emissions of VOC from only a subset (pneumatic controllers, centrifugal compressors, and reciprocating compressors), with the exception of compressors located at well sites.

On March 12, 2018, the EPA finalized amendments of certain aspects of the 2016 NSPS OOOOa requirements for the collection of fugitive emission components at well sites and compressor stations, specifically (1) the requirement that components on a delay of repair must conduct repairs during unscheduled or emergency vent blowdowns, and (2) the monitoring survey requirements for well sites located on the Alaska North Slope.

For further information on the 2016 NSPS OOOOa rule, *see* 81 FR 35824 (June 3, 2016) and for further information on the 2018 NSPS OOOOa amendments, *see* 83 FR 10628 (March 12, 2018). The associated public docket for both actions is Docket ID No. EPA–HQ–OAR–2010–0505.

b. Petitions to reconsider. Following promulgation of the 2016 NSPS OOOOa rule, the Administrator received five petitions for reconsideration of several provisions. Copies of the petitions are provided in Docket ID No. EPA–HQ–OAR–2010–0505.[31] As noted below, the EPA has granted reconsideration of several issues in the 2016 NSPS OOOOa rule, proposed revisions to the final rule based on the reconsideration and addressed broad implementation issues that stakeholders had brought to the EPA's attention.

c. Litigation. Several states and industry associations challenged the 2016 NSPS OOOOa rule in the D.C. Circuit, alleging, among other things, that the EPA acted arbitrarily and capriciously and in excess of statutory authority. *See, e.g., West Virginia* v. *EPA,* 16–1264, State Petitioners' Nonbinding Statement of the Issues to be Raised. These cases were consolidated. In addition, on January 4, 2017, the challenges to the 2016 NSPS OOOOa rule were consolidated with the challenges to the 2012 NSPS OOOO rule (as amended by the 2013 NSPS OOOO and 2014 NSPS OOOO rules), under *American Petroleum Institute* v. *EPA,* case No. 13–1108 (D.C. Cir.). ECF Dkt #1654072. On May 18, 2017, the D.C. Circuit issued an order granting a motion by the EPA to hold in abeyance the consolidated litigation over the 2012 NSPS OOOO rule (as amended by the 2013 NSPS OOOO and 2014 NSPS OOOO rules) and the 2016 NSPS OOOOa rule, and requiring the EPA to file status reports every 60 days informing the Court and parties regarding what action it has or will be taking regarding those rules. *Id.,* ECF Dkt. #1675813.

D. Other Notable Events

On March 28, 2017, newly elected President Donald Trump issued Executive Order 13783 titled ''Promoting Energy Independence and Economic Growth'' (hereinafter ''Executive Order''). The purpose of the Executive Order is to facilitate the development of domestic energy resources—including oil and gas—and to reduce unnecessary regulatory burdens associated with the development of those resources. Specifically, the Executive Order establishes the policy of the U.S. that executive departments and agencies ''immediately review existing regulations that potentially burden the

[29] While the June 3, 2016, rulemaking also included final amendments to 40 CFR part 60, subpart OOOO, we are not proposing at this time to amend 40 CFR part 60, subpart OOOO.

[30] The 2016 NSPS OOOOa rule resulted from a series of directives from then President Obama targeted at reducing GHG, including methane: The President's *Climate Action Plan* (June 2013); the President's *Climate Action Plan: Strategy to Reduce Methane Emissions* (''Methane Strategy'') (March 2014); and the President's directive to address, and if appropriate, propose and set standards for methane and ozone-forming emissions from new and modified sources in the sector (January 2015).

[31] *See* Docket ID Item Nos.: EPA–HQ–OAR–2010–0505–7682, EPA–HQ–OAR–2010–0505–7683, EPA–HQ–OAR–2010–0505–7684, EPA–HQ–OAR–2010–0505–7685, EPA–HQ–OAR–2010–0505–7686.

development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.'' *Id.,* Section 1(c). The Executive Order specifically instructs the EPA, among other things, to ''review'' the 2016 NSPS OOOOa rule as well as ''any rules and guidance issued pursuant to it, for consistency with th[is] policy . . . .'' *Id.,* Section 7. The Executive Order further provides that ''if appropriate, [the Agency] shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules.'' *Id.*

In accordance with the Executive Order, also on March 28, 2017, the EPA Administrator signed a **Federal Register** document announcing that the Agency is ''reviewing the 2016 Oil and Gas New Source Performance Standards (Rule), 81 FR 35824 (June 3, 2016), and, if appropriate, will initiate proceedings to suspend, revise, or rescind it.'' The EPA further explained that: ''If the EPA's review concludes that suspension, revision, or rescission of this Rule may be appropriate, the EPA's review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law.'' *Id.,* page 3. This notice was published in 82 FR 16331 (April 4, 2017).

On April 18, 2017, the EPA issued a letter granting reconsideration of the fugitive emissions requirements at well sites and compressor stations. On June 5, 2017, the EPA issued a notice granting reconsideration of additional issues, specifically the well site pneumatic pumps standards and the requirements for certification by a PE. *See* ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay,'' 82 FR 25730 (June 5, 2017).

In addition, in the same June 5, 2017, document of action in which it granted reconsideration of additional issues, the EPA also issued, under CAA section 307(d)(7)(B), a 90-day partial stay of the 2016 NSPS OOOOa rule, pending the reconsiderations. Specifically, the EPA stayed the provisions for fugitive emissions requirements, well site pneumatic pump standards, and certification of CVS by a PE (40 CFR sections 60.5393a(b) through (c), 60.5397a, 60.5410a(e)(2) through (5) and (j), 60.5411a(d), 60.5415a(h), 60.5420a(b)(7), (8), and (12), and (c)(15) through (17)). 82 FR 25730. Environmental groups challenged this stay, and on July 3, 2017, the D.C. Circuit vacated the stay on grounds that it did not meet the CAA section 307(d)(7)(B) criteria. *See Clean Air Council* v. *EPA,* 862 F.3d 1 (D.C. Cir. 2017).

On June 16, 2017, the EPA published a proposed stay of the same three requirements of the 2016 NSPS OOOOa rule for 2 years. ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements,'' 82 FR 27645 (June 16, 2017).

On November 8, 2017, the EPA issued a Notice of Data Availability (NODA) for the proposed 2-year stay of the 2016 NSPS OOOOa rule. In this NODA, the EPA provided, among other things, additional information on several topics raised by stakeholders and solicited comment on the information presented, including the legal authority to issue a stay and the technological, resource, and economic challenges with implementing the fugitive emissions requirements, well site pneumatic pump standards, and the requirements for certification of CVS by a PE. ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements,'' 82 FR 51788 (November 8, 2017). The EPA also solicited comment on other avenues to address these issues other than issuing a stay.

As previously discussed, on March 12, 2018, the EPA finalized amendments of certain aspects of the requirements for the collection of fugitive emission components at well sites and compressor stations, specifically (1) the requirement that components on a delay of repair must conduct repairs during unscheduled or emergency vent blowdowns and (2) the monitoring survey requirements for well sites located on the Alaska North Slope. 83 FR 10628. These narrow amendments to the 2016 NSPS OOOOa rule were in response to comments the EPA received on the proposed stays and NODA and address significant and immediate compliance concerns.

On October 15, 2018, the EPA granted reconsideration of additional issues in the 2016 NSPS OOOOa rule, proposed revisions to that rule based on the reconsideration, and addressed broad implementation issues that stakeholders had brought to the EPA's attention. 83 FR 52056.

E. Related State and Federal Regulatory Actions

Several states and federal agencies currently regulate the oil and natural gas industry. The scope of state requirements ranges from general reporting requirements to quantitative emissions limits and restrictions on venting and flaring. For example, Colorado requires that dehydrators, liquids unloading operations, and pneumatic controllers achieve specific emission reductions, in addition to regular monitoring of storage vessels and fugitive emissions. In Texas, well site requirements vary based on specific site-wide VOC emissions, but standard requirements exist for storage vessels, pneumatic controllers, and fugitive emissions. North Dakota has restrictions on venting and flaring. Ohio has general permit programs for well sites and compressor stations; the state also regulates dehydrators, engines, flares, fugitive emissions, and storage vessels at both well sites and compressor stations, in addition to requirements for compressors, truck loading, and pigging operations. Pennsylvania has a general permit program for compressor stations and a permit exemption program for well sites. The compressor station permit includes requirements for engines, compressors, storage vessels, fugitive emissions, and dehydrators. The permit exemption program includes requirements for well completions, engines, fugitive emissions, storage vessels, and flares. The EPA describes state fugitive emissions program requirements in the memorandum titled ''Equivalency of State Fugitive Emissions Programs for Well Sites and Compressor Stations to Proposed Standards at 40 CFR part 60, subpart OOOOa,'' located at Docket ID No. EPA–HQ–OAR–2017–0483. Additional information can be found in a memorandum [32] written by the Bureau of Land Management (BLM) in support of the ''Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements,'' *see* 83 FR 7924.

In addition to states, certain federal agencies regulate the oil and natural gas industry. For example, on November 18, 2016, the BLM promulgated new regulations to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production on onshore federal and Indian (other than Osage Tribe) leases.[33] On September 28, 2018, the BLM finalized amendments to their 2016 rule in order to reduce

[32] *See* Docket ID Item No. BLM–2018–0001–0004.

[33] 81 FR 83008 (November 18, 2016).

compliance burden and maintain consistency with BLM's existing statutory authorities.[34] The BLM's revised 2018 rule discourages excessive venting and flaring by placing volume and time limits on royalty-free venting and flaring during production testing, emergencies, and downhole well maintenance and liquids unloading. Additionally, BLM's rule incentivizes the beneficial use of gas by making gas used for operations and production purposes royalty free. More detailed information can be found at BLM's website: *https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/methane-and-waste-prevention-rule*.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for regulating and ensuring the safe and secure movement of materials to industry and consumers by all modes of transportation, including pipelines. While PHMSA's regulations are focused on safety, there is likely a corresponding environmental co-benefit from their rules. For example, the PHMSA's Office of Pipeline Safety ensures safety in the design, construction, operation, maintenance, and incident response of the U.S.' approximately 2.6 million miles of natural gas and hazardous liquid transportation pipelines. When pipelines are maintained, the likelihood of environmental releases like leaks are reduced.[35] More detailed information can be found at the PHMSA's website: *https://www.phmsa.dot.gov/*.

IV. Summary and Rationale of Proposed Actions

As directed by the President, the EPA has reviewed the 2012 NSPS OOOO and 2016 NSPS OOOOa with attention to whether the rules ''unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest'' and, if so, whether it is appropriate to ''suspend, revise, or rescind'' regulatory requirements.[36] [37] This proposal follows that review, and the EPA is proposing revisions to those requirements while maintaining health and environmental protections for emission sources within the regulated source category.[38]

Specifically, the EPA is proposing to revise the source category to remove the transmission and storage segment entirely and rescind the NSPS requirements applicable to sources within the transmission and storage segment. This proposed action is based on the EPA's proposed determination that its 2012 and 2016 rulemakings that interpreted or expanded the source category to includes sources in the transmission and storage segment were improper in that regard. Further, the EPA is proposing to rescind the methane requirements of the NSPS applicable to sources within the production and processing segments because they are entirely redundant of the existing NSPS for VOC.[39] Those requirements, thus, provide no additional health protections and are unnecessary. Indeed, due to the identical emissions profiles and source control technologies for methane and VOC, the EPA, when establishing the 2016 NSPS OOOOa to regulate methane, found no need for any changes to the existing NSPS requirements for VOC. Rescinding the requirements of the 2016 NSPS OOOOa applicable to methane emissions, while leaving in place the requirements applicable to VOC emissions, will not affect the amount of methane reductions that are achieved in the production and processing segments, but it will provide for greater clarity by simplifying the rule. Rescission of the requirements applicable to methane emissions will also obviate the need for the development of emission guidelines under CAA section 111(d) and 40 CFR part 60, subpart B to address methane emissions from existing sources within the crude oil and natural gas production industry.

As an alternative to this first set of proposed actions, the EPA is proposing to rescind the methane requirements of the 2016 NSPS OOOOa applicable to all oil and natural gas sources without removing any sources from the source category.

A. Revision of the Source Category To Remove Transmission and Storage Segment

Under CAA section 111(b)(1)(A), the EPA must ''publish . . . a list of categories of stationary sources, emissions from which, in the judgment of the Administrator, cause[ ], or contribute[ ] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' Further, CAA section 111(b)(1)(A) directs that ''from time to time thereafter'' the EPA ''shall revise'' this ''list'' of categories of stationary sources. Following the ''inclusion of a category of stationary sources in a list,'' the EPA then proposes and promulgates ''standards of performance for new sources within such category.'' CAA section 111(b)(1)(A). Thereafter, the EPA ''shall . . . review and, if appropriate, revise such standards.'' CAA section 111(a)(1)(B).

CAA section 111(b)(1)(A) does not include any specific criteria for determining the reasonable scope of a given ''category'' of ''stationary sources'' beyond the requirement that the Administrator make a finding that, in his or her ''judgment,'' emissions from the ''category of sources . . . cause[ ], or contribute[ ]significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' Accordingly, the EPA is afforded some measure of discretion in determining at the outset the scope of a source category.

In 1978, the EPA published ''Priorities for New Source Performance Standards Under the Clean Air Act Amendments of 1977.'' [40] The purpose of this document was to implement the requirements of CAA section 111(f) to develop and apply a methodology for identifying, establishing, and prioritizing the source categories that should be considered first for in-depth analysis prior to NSPS promulgation under CAA section 111. For purposes of the 1978 analysis, the EPA aggregated emissions from ''oil and gas production fields'' and ''natural gas processing'' as part of the ''Crude Oil and Natural Gas Production Plant'' source category. The EPA identified this aggregated source category as a source of HC and SO_2 emissions. When the EPA finalized the priority list in 1979, it slightly revised the name of the source category as ''Crude Oil and Natural Gas Production.'' 49 FR 49222 (August 21, 1979).

[34] 83 FR 49184.

[35] *See* Final Report on Leak Detection Study to PHMSA. December 10, 2012. *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/technical-resources/pipeline/16691/leak-detection-study.pdf*.

[36] Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' section 1(c) (March 28, 2017).

[37] 82 FR 16331 (April 4, 2017) (Notice of review of 2016 NSPS OOOOa pursuant to Executive Order 13783, signed by the EPA Administrator).

[38] We note that the EPA is addressing certain specific reconsideration issues—fugitive emissions requirements at well sites and compressor stations, well site pneumatic pump standards, and the requirements for certification of CVS by a PE—in a separate proposal. *See* Docket ID Item No. EPA–HQ–OAR–2010–0505–7730 and 82 FR 25730.

[39] Section VI of this preamble takes comment on alternative questions of statutory interpretation and associated potential record determinations which, if the EPA were to adopt them, might provide an additional or alternative basis for both the primary and the alternative proposal.

[40] Priorities for New Source Performance Standards Under the Clean Air Act Amendments of 1977. April 1978. EPA–450/3–78–019.

In 1985, the EPA promulgated two rulemakings establishing NSPS for the Crude Oil and Natural Gas Production source category. These were 40 CFR part 60, subpart KKK—Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants (50 FR 26124, June 23, 1985); and subpart LLL—Standards of Performance for SO_2 Emissions from Onshore Natural Gas Processing (50 FR 40160, October 1, 1985). When it first proposed 40 CFR part 60, subpart KKK, the EPA noted that the ''category 'Crude Oil and Natural Gas Production' ranks 29th on the list of 59 source categories,'' and that the ''crude oil and natural gas production industry encompasses the operations of exploring for crude oil and natural gas products, removing them from beneath the earth's surface, and processing these products for distribution to petroleum refineries and gas pipelines.'' [41] The EPA repeated that description of the identified source category when it first proposed 40 CFR part 60, subpart LLL, explaining that the ''crude oil and natural gas production industry encompasses not only processing of the natural gas (associated or not associated with crude oil) but operations of exploration, drilling, and subsequent removal of the gas from porous geologic formations beneath the earth's surface.'' [42]

In 2012, the EPA reviewed the VOC and SO_2 standards and at the same time established new requirements for stationary sources of VOC emissions that had not been regulated in the 1985 rulemaking (*e.g.,* well completions, pneumatic controllers, storage vessels, and compressors). 40 CFR part 60, subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015, (77 FR 49542, August 16, 2012). In the preamble of the 2011 proposal for that 2012 NSPS OOOO final rule, the EPA interpreted the 1979 listing as indicating that ''the currently listed Oil and Natural Gas source category covers all operations in this industry (*i.e.,* production, processing, transmission, storage and distribution).'' 76 FR 52738, 52745 (August 23, 2011). Further, the EPA stated that ''[t]o the extent there are oil and gas operations not covered by the currently listed Oil and Natural Gas source category. . . ., we hereby modify the category list to include all operations in the oil and natural gas sector.'' *Id.* at 52745. The stated basis for that proposed decision was that ''[s]ection 111(b) of the CAA gives the EPA the broad authority and discretion to list and establish NSPS for a category that, in the Administrator's judgment, causes or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.'' *Id.* at 52745. No additional discussion of this listing position was provided in the 2011 proposal.

In the 2012 final rulemaking, the EPA promulgated NSPS for emission sources in the production, processing, and transmission and storage segments, 77 FR 49490, 49492 (August 16, 2012), and stated that ''[t]he listed Crude Oil and Natural Gas Production source category covers, at a minimum, those operations for which we are establishing standards in this final rule.'' *Id.* at 49496. In responding to comments, the EPA took the position that it was not actually revising the source category to include emission sources in the transmission and storage segment, but rather, was interpreting the 1979 listing to be ''broad,'' and interpreting the 1985 rulemaking as ''view[ing] this source category listing very broadly,'' *Id.* at 49514, so that, in the EPA's view, the source category was already sufficiently broad to include that segment.[43]

In 2016, the EPA promulgated new NSPS (40 CFR part 60, subpart OOOOa) for the Crude Oil and Natural Gas Production source category (81 FR 35824, June 3, 2016). As the EPA did in the 2012 NSPS OOOO rule, the EPA took the position that the 1979 listing was broad enough to encompass the transmission and storage segment and that the 1985 rulemakings confirmed that broad listing. The EPA stated that the inclusion of the transmission and storage segment into the original 1979 source category was warranted because equipment and operations at production, processing, transmission and storage facilities are a sequence of functions that are interrelated and necessary for getting the recovered gas ready for distribution. Nevertheless, the EPA recognized that the scope of the prior listing may have had some ambiguity. Accordingly, ''as an alternative,'' the EPA finalized a revision of the category to broaden it, so that ''[a]s revised, the listed oil and natural gas source category includes oil and natural gas production, processing, transmission, and storage.'' (81 FR 35840).

The EPA has reviewed the original 1979 listing of the Crude Oil and Natural Gas Production source category and the associated background materials and now proposes to find that its 2012 and 2016 interpretation of the 1979 listing—*i.e.,* that the 1979 listing included natural gas transmission and storage—was erroneous. The preamble accompanying the 1979 listing, which identified the source category as ''Crude Oil and Natural Gas Production,'' gave no indication that a source category ostensibly focused on ''production'' also included those sources associated with post-production operations such as transmission and storage. As explained in greater detail below, to the extent there was ambiguity, the issue was resolved in 1984, when the EPA, in proposing the first standards of performance for sources within the Crude Oil and Natural Gas Production source category (*i.e.,* 40 CFR part 60, subpart KKK), described the category as ''encompass[ing] the operations of exploring for crude oil and natural gas products, removing them from beneath the earth's surface and processing these products for distribution to petroleum refineries and gas pipelines.'' [44] This description, by its express terms, establishes that sources in the transmission and storage segment were not included in the Crude Oil and Natural Gas Production source category as listed in 1979. Therefore, the EPA is proposing to disavow its erroneous interpretation from 2012 and 2016, and instead propose that the source category does not include natural gas transmission and storage. Following are details of our rationale for this action.

As noted above, the 1978 ''Priorities for New Source Performance Standards Under the Clean Air Act Amendments of 1977'' analysis aggregated the emissions from ''oil and gas production fields'' and ''natural gas processing'' as part of what was then labeled as the ''Crude Oil and Natural Gas Production Plants'' source category. This aggregated source category was identified as a source of HC and SO_2 emissions. The EPA listed the ''Stationary Pipeline Compressor Engines'' source category separately, which included emissions specific to engines used at compressor stations (*i.e.,* NO_X, SO_2 and carbon

[41] 49 FR 2637 (January 20, 1984).

[42] 49 FR 2658 (January 20, 1984).

[43] In the 2012 NSPS OOOO rulemaking, the EPA referred to the distribution segment of the oil and natural gas industry, which entails transporting natural gas to the end user, 76 FR 52738, 52745 (August 23, 2011) (proposed rule); 49514, 77 FR 49493 (Table 2) (August 16, 2012) (final rule). However, in the 2016 NSPS OOOOa rule, the EPA clarified that the scope of the Oil and Natural Gas Production and Processing source category includes the transmission and storage segment, but not the distribution segment. In addition, the, EPA has never treated any sources in the distribution segment as subject to the requirements of NSPS OOOO or OOOOa.

[44] 49 FR 2637; *see also* 49 FR 2658.

monoxide (CO)). EPA–450/3–78–019 (April 1978).

The revised priority list that the EPA promulgated in 1979 and its associated support document, ''Revised Prioritized List of Source Categories for Promulgation,'' [45] included the aggregated ''Crude Oil and Natural Gas Production Plants'' source category. The support document also included a separate study of ''stationary pipeline compressor engines'' emissions. The record makes clear that, at the time, the EPA was distinguishing between oil and natural gas production plants and natural gas processing on the one hand, and stationary pipeline compressor engines on the other, and that it intended to promulgate separate standards for HC and SO_2 emissions from those two source categories. EPA–450/3–79–023 (March 1979). The record for the 1979 action indicates that, at the time, the EPA clearly considered the ''Crude Oil and Natural Gas Production'' source category to include but be limited to production and processing operations. In addition, the record makes clear that the EPA also considered stationary pipeline compressor engines to be part of a separate source category.[46] Other parts of the record indicate that the EPA intended to promulgate standards separately for HC and SO_2 emissions from those two sets of sources. EPA–450/3–79–023 (March 1979). In contrast, the record does not specifically address the transmission and storage segment.

As has already been noted, in 1984–85, the EPA developed the first two NSPS for the source category (40 CFR part 60, subparts KKK and LLL) by establishing standards to address VOC and SO_2 emissions for sources in the production and processing segments alone, and in so doing, indicated that it considered the scope of the source category to be limited to those segments. Specifically, the EPA promulgated standards at 40 CFR part 60, subpart KKK for onshore natural gas processing plants in 1985, which were the first standards promulgated for the source category. In the 1984 proposal preamble, the EPA clarified the scope of the source category as follows:

> The crude oil and natural gas production industry encompasses the operations of exploring for crude oil and natural gas products, drilling for these products, removing them from beneath the earth's surface, and processing these products from oil and gas fields for distribution to petroleum refineries and gas pipelines.

49 FR 2636.

Thus, in the sentence just quoted, the EPA explicitly defined the source category as encompassing the natural gas operations up to the point of distribution to gas pipelines, that is, up to the storage and transmission segment, and in that manner, indicated that this segment was not included in the source category. (Similarly, in the same sentence, the EPA defined the scope of the source category as encompassing oil operations up to the point of distribution to petroleum refineries, which are a separate source category.) In this manner, the EPA indicated that the Crude Oil and Natural Gas Production source category includes operations from well sites (exploration, drilling, and removal) and natural gas processing plants (processing). While gathering and boosting compressor stations were not specified, it is reasonable to conclude that they are also included because they are located between two covered sites, the well site and the processing plant. However, to reiterate, subsequent operations, such as transmission, storage, and distribution were not included. Thus, the EPA is now proposing to find that its earlier view that the original listing in 1979 of the Crude Oil and Natural Gas Production source category already included the transmission and storage segment was in error, as the record of the 1979 listing action, and subsequent rulemaking actions by the EPA, described above, make clear.

As noted above, we had stated in the 2016 NSPS OOOOa rule our view that the ''1979 listing of [the Crude Oil and Natural Gas Production] source category provides sufficient authority for this action,'' but we then added that, ''to the extent that there is ambiguity in the prior listing, the EPA hereby finalizes, as an alternative, its proposed revision of the category listing to broadly include the oil and natural gas industry.'' [47] ''As revised,'' we went on to say, ''the listed oil and natural gas category includes oil and natural gas production, processing, transmission, and storage.'' [48] As discussed next, the EPA is further proposing to find that this ''alternative'' approach—*i.e.,* ''revising'' the previously-established Crude Oil and Natural Gas Production source category to include sources within the storage and transmission segment—was in error.

While CAA section 111(b)(1)(A) and (B), respectively direct the EPA to ''revise,'' where warranted, both the ''list of source categories'' and the ''standards of performance'' that the EPA has promulgated, nothing in CAA section 111 expressly authorizes or directs the EPA to ''revise'' a ''source category,'' by altering its scope, once the EPA has listed that source category. However, the EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. *See Motor Vehicle Manufacturers Association of the United States* v. *State Farm Mutual Automobile Insurance Co.,* 463 US 29, 56–57 (1983) (''an agency changing its course must supply a reasoned analysis,'' quoting *Greater Boston Television Corp.* v. *FCC,* 143 F.2d 841, 842 (D.C. Cir.)). The CAA complements the EPA's inherent authority to reconsider prior rulemakings by providing the Agency with broad authority to prescribe regulations as necessary. *See* 42 U.S.C. 7601(a). *See Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017) (''[a]gencies obviously have broad discretion to reconsider a regulation at any time''). Even so, the EPA proposes that the authority to revise the scope of a source category must be exercised only within reasonable boundaries and cannot be employed in such a way as to result in an unreasonable expansion of an existing source category, *i.e.,* one that purports to expand a source category to cover a new set of sources that are sufficiently unrelated to the sources in the pre-existing category that they constitute a separate source category for which the EPA is required to make a new contribute-significantly-and-endangerment finding as a prerequisite to regulating them. Otherwise, expanding the source category by including new sources could be used to circumvent that requirement. The EPA proposes to conclude that the 2016 expansion of the source category to include sources in the transmission and storage segment did, in fact, exceed the reasonable boundaries of its authority to revise source categories.

In the 2016 NSPS OOOOa rule, the EPA purported to ''support'' its ''revision'' of the source category by making the ''requisite finding under section 111(b)(1) that, in the Administrator's judgment, this source

[45] U.S. EPA. ''Revised Prioritized List of Source Categories for NSPS Promulgation.'' March 1979. EPA–450/3–79–023.

[46] The EPA promulgated NSPS for stationary spark ignition internal compressor engines under the ''Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines.'' (40 CFR part 60, subpart JJJJ; 73 FR 3568, 3569, January 18, 2008). These standards applied to engines located at compressor stations at natural gas transmission and storage facilities, as well as engines located in other industry sectors.

[47] 81 FR 35833.

[48] *Id.* (footnote omitted).

category, *as defined above,* contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.'' [49] The EPA is now proposing to find that this approach was erroneous.

Specifically, we are proposing that the EPA was required to make a finding that the *transmission and storage segment in and of itself* ''contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare,'' not simply that the source category, ''as defined above''—*i.e.,* defined to include ''oil and natural gas production, processing, transmission, and storage'' [50]—''contributes significantly.'' Nowhere in the course of promulgating the 2016 NSPS OOOOa rule did the EPA make a finding that sources in the transmission and storage segment, in themselves, ''contribute[ ] significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA avoided making such a finding by purporting to have ''revised'' the source category by including that transmission and storage segment and then proceeding to find that the expanded source category ''contributes significantly.'' [51]

This approach, the EPA now proposes to find, was not appropriate. Had the EPA chosen to revise the source category *list* to include the ''transmission and storage'' segment as a separate source category, it could have done so only after making a finding that emissions from sources within that source category ''cause[ ], or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.'' Thus, if transmission and storage sources are sufficiently distinct from production and processing sources such that it would not be appropriate to include them in the Crude Oil and Natural Gas source category via revising of that source category, then the EPA could promulgate NSPS for them only if it first listed them as a separate source category, a step that the EPA has not taken.[52]

The EPA proposes to determine that transmission and storage sources are, in fact, sufficiently distinct from production and processing sources that the EPA erred when, in the 2016 NSPS OOOOa rule, it purported to revise the source category to include sources in the transmission and storage segment. Specifically, the EPA proposes to determine that its determination in the 2016 NSPS OOOOa rule that equipment and operations at production, processing, and transmission and storage facilities are a sequence of functions that are interrelated and necessary for getting the recovered gas ready for distribution, was unreasonable. We now propose that the transmission and storage operations are distinct from production and processing operations because the natural gas that enters the transmission and storage segment has different composition and characteristics than the natural gas that enters the production and processing segments.

The primary operations of the production and processing segments are the exploration of crude oil and natural gas products beneath the earth's surface, drilling wells that are used to extract these products, and processing the crude oil and field gas for distribution to petroleum refineries and gas pipelines. As stated previously in this section, the EPA described this source category's operations similarly when proposing 40 CFR part 60, subpart KKK in 1984. 49 FR 2637. The primary purpose of these segments is to remove impurities from the extracted product. At a well site (production segment), crude oil and natural gas are extracted from the ground. Some processing can take place at the well site, such as the physical separation of gas, production fluids, and condensate. The separated gas (''field gas'') is then sent through gathering pipelines to the natural gas processing plant (processing segment). At the processing plant, the field gas is converted to sales gas or pipeline quality gas. This involves several steps including the extraction of natural gas liquids (*e.g.,* a mixture of propane, butane, pentane) from the field gas, the fractionation of these natural gas liquids into individual products (*e.g.,* liquid propane), or both extraction and fractionation. The final natural gas that exits the processing plant is sales gas, which is predominantly methane, as discussed above. In these segments, the field gas has physically changed such that it is a usable product.

Analysis of the composition of gas on a nationwide basis in the various industry segments confirms the different character of the segments. In 2011 and subsequently in 2018, the EPA conducted an analysis of the composition, expressed in percent volume, of natural gas based on the methane, VOC, and hazardous air pollutant (HAP) content across the various industry segments.[53] [54] For

[49] 81 FR 35833 (emphasis added).

[50] *Id.*

[51] *See* 80 FR 35837–35840 (explaining ''how GHG, VOC and SO_2 emissions'' from the source category *as revised* to include the oil and natural gas production, processing, transmission, and storage segments, and not the transmission and storage segment itself, ''are 'air pollution' that may reasonably be anticipated to endanger public health and welfare.'').

[52] In prior actions to expand a previously listed source category to include additional sources when the Agency considers the newly added sources to be logically connected to the sources already in the source category, the EPA has taken different approaches, ranging from making a significant contribution finding for the newly added sources, making such a finding for the newly expanded source category, and not making such a finding at all. *Compare* ''Standards of Performance for New Stationary Sources; Priority List—Final Rule,'' 47 FR 31875, 31876 (July 23, 1982), ''Standards of Performance for New Stationary Sources; Priority List—Proposed Amendment,'' 45 FR 76427, 26427–28 (November 18, 1980) (expanding the ''asphalt roofing source category'' to include ''asphalt blowing stills and storage tanks at asphalt processing facilities and petroleum refineries;'' explaining that ''[i]t is . . . reasonable to treat the asphalt processing and roofing manufacture industry as a single category of sources'' because the processing and refinery sources are sites for ''initial steps in the preparation of asphalt for roofing manufacture'' and ''[t]he emissions, processes, and applicable controls for blowing stills and asphalt storage tanks at oil refineries and asphalt processing plants are the same as those at asphalt roofing plants;'' determining that the added sources ''contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare'') *with* ''Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units—Final Rule,'' 51 FR 42794, 42794–95 (November 25, 1986) (expanding the source category of ''industrial fossil fuel-fired steam generators'' to ''cover all steam generators, including both fossil and nonfossil fuel-fired steam generators, as well as steam generators used in industrial, commercial, and institutional applications;'' explaining that ''fossil and nonfossil fuel-fired industrial, commercial, and institutional steam generating units should be classified together as one source category . . . [because they] emit similar pollutants, fire the same fuels, and may employ the same emission control techniques [and] [t]heir impacts on human health are similar;'' determining that the source category as expanded ''is a significant contributor and an appropriate source category for regulation;'' and adding that ''[t]here is no requirement that each subcategory of a listed category . . . also be significant contributors'') *and* ''Standards of Performance for New Stationary Sources, Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) Constructed After July 23, 1984—Proposed Rule,'' 49 FR 29698, 29700 (July 23, 1984), ''Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels)—Final Rule,'' 52 FR 11420, 11420 (April 8, 1987) (expanding the ''synthetic organic chemical manufacturing industry'' (SOCMI) source category to include ''storage vessels emitting VOC's located at plants other than SOCMI plants, such as liquid bulk storage terminals;'' explaining that those facilities ''store the same or similar liquids as those at SOCMI plants and . . . can be controlled with the same effectiveness, the same costs . . . and the same control technology as storage vessels located at SOCMI plants;'' not making any determination concerning significant contribution).

[53] Memorandum to Bruce Moore, U.S. EPA from Heather Brown, EC/R. ''Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking.'' July 2011. Docket ID Item No. EPA–HQ–OAR–2010–0505–0084.

Continued

example, in 2011, the nationwide composition for the production segment, which included wells and unprocessed natural gas, consisted of approximately 83 percent methane, 4 percent VOC, and less than 1 percent HAP. In contrast, the transmission segment, which included pipeline and sales gas (*i.e.,* post processing), consisted of approximately 93 percent methane, 1 percent VOC, and less than 0.01 percent HAP. In 2018, the EPA reviewed new studies available and found similar results. The nationwide composition for the production segment consisted of approximately 88 percent methane and 4 percent VOC. In addition, the EPA determined the data was insufficient to include HAP in the final analysis. Limited updated natural gas composition data were available for the transmission and storage segment. These differences in the gas composition demonstrate that the emissions profile is different following gas processing; however, the EPA recognizes that these numbers are nationwide and that variations can occur from basin-to-basin within each segment. The fact that the original listing was specific to VOC and SO_2 emissions and that emissions of these pollutants are lower downstream of the natural gas processing plant further support our interpretation that the 1979 listing included only the production and processing segments.

The operations of the transmission and storage segment differ from production and processing because in the former, the natural gas does not undergo changes in composition, except for some limited removal of liquids that condensed during the temperature and pressure changes as the gas moves through the pipeline. Therefore, the natural gas that enters the transmission and storage segment has approximately the same composition and characteristics as the natural gas that leaves the segment for distribution. The segment includes natural gas transmission compressor stations, whose primary operation is to move the natural gas through transmission pipelines by increasing the pressure. Dehydration, which can also occur at compressor stations, is a secondary operation used when the natural gas has collected water during transmission. At storage facilities, natural gas is injected into underground storage for use during peak seasons.[55] When demand increases, the natural gas is extracted from the underground storage, dehydrated to remove water that has entered during storage, compressed, and moved through distribution pipelines. It is the EPA's understanding that processing of field gas generally occurs within the production and processing segments. Operators within the transmission and storage segment typically do not operate within the production and processing segments and vice-versa.

These distinct differences in the operations, the physical transformation of the field gas to sales gas, and the physical movement of sales gas through pipelines establish that two separate categories are necessary. This distinction is similar to the distinction the EPA has made between other source categories with segments that handle the production and processing of a material and subsequent transport of the product. One example is the petroleum industry. In that industry, crude oil is produced through the extraction of material at well sites from beneath the earth's surface. Crude oil is then transferred to refineries where it undergoes chemical and physical changes that result in various formulations of gasoline. The refined gasoline is transmitted by pipeline, ship, barge, or rail to bulk gasoline terminals that store the product in large above ground tanks until it is loaded for transport to distribution networks. The segments of the petroleum industry are also demarcated by product composition, the physical, and in the case of the petroleum industry, chemical transformation of crude oil to refined gasoline products such as gasoline, jet aircraft fuels, diesel fuel, motor oil, kerosene, asphalt, and sulfur. Production facilities,[56] refineries,[57] and bulk gasoline terminals [58] all have operational differences, and the EPA placed them in three different source categories. Those operational differences are similar to the operational differences between the production and processing segments and the transmission and storage segment at issue in this proposal.

It should be noted that in the 2016 NSPS OOOOa rule, the EPA justified including the transmission and storage segment in the Crude Oil and Natural Gas source category partly because some similar equipment (*e.g.,* storage vessels, pneumatic pumps, compressors) is used across the industry. While that is true, the differences in the operations of, and the emission profiles of, the different segments are more significant and support our proposal to exclude the transmission and storage segment from the source category. A review of 2016 NSPS OOOOa compliance reports from sources in the EPA Regions (3, 6, 8, 9, and 10) with the greatest oil and natural gas activity indicates that there were no storage vessels emitting more than 6 tons per year (tpy) VOC reported in the transmission and storage segment.[59] This supports our understanding that VOC emissions are lower in the transmission and storage segment and supports our understanding that any gas processing that occurs in the transmission and storage segment generally is limited to removing liquids that condensed during the temperature and pressure changes as the gas moves through the pipeline.

In summary, the EPA has not identified information from the original source category listing that indicates the transmission and storage segment was included in the Crude Oil and Natural Gas Production source category. In fact, in 1985, the date of the first standards that the EPA promulgated for the source category, the EPA clearly indicated that the source category was limited (and should be limited) to the production and processing segments. Further, there are distinct differences in operations and differences in the emissions profiles between the production and processing segments and the transmission and storage segment. We are, therefore, proposing to exclude transmission and storage sources from the Crude Oil and Natural Gas Production source category.

B. Rescission of the NSPS for Sources in Transmission and Storage Segment

A prerequisite for the EPA to promulgate an NSPS applicable to new sources is that the new sources must be in a source category that the EPA has listed under CAA section 111(b)(1). For the reasons stated in section IV.A immediately above, the EPA is proposing to rescind as improper the 2012 and 2016 rules' interpretations or extension of the source category to encompass sources in the transmission and storage segment. Under the proposed rescission, transmission and storage sources would not be contained

[54] Memorandum to U.S. EPA from Eastern Research Group. ''Natural Gas Composition.'' November 13, 2018. Docket ID No. EPA–HQ–OAR–2017–0757.

[55] Storage can also take place in above ground storage vessels; however, it is our understanding that these are more commonly used after the city gate, which has not been included in the source category at any point.

[56] U.S. EPA. ''Revised Prioritized List of Source Categories for NSPS Promulgation.'' March 1979. EPA–450/3–79–023.

[57] 38 FR 15406 (May 4, 1973); 39 FR 9315 (March 8, 1974).

[58] 45 FR 83126 (December 12, 1980); 48 FR 37578 (August 18, 1983).

[59] These reports have since been made available for public viewing at *https://www.foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=EPA-HQ-2018-001886&type=request.*

within a listed source category. Accordingly, the promulgation of NSPS for transmission and storage sources was contrary to law, and as a result, the EPA is also proposing to rescind the NSPS in OOOO and OOOOa for emission sources in the transmission and storage segment. Specifically, we are proposing to rescind the requirements for compressor affected facilities located downstream of the natural gas processing plant; pneumatic controllers located downstream of the natural gas processing plant; storage vessel affected facilities located downstream of the natural gas processing plant; and the affected facility that is the collection of fugitive emission components located at a compressor station.

C. Status of Sources in Transmission and Storage Segment

If this proposal is finalized, the transmission and storage segment will revert to the status of a segment of the oil and natural gas industry not listed as a source category under CAA section 111(b)(1)(A) and, thus, will not be subject to regulation under CAA section 111(b) (for new sources) or CAA section 111(d) (for existing sources that emit certain air pollutants). The emission sources in the transmission and storage segment will be in the same position as emissions sources in other industries that the EPA has not listed as a source category under CAA section 111(b)(1)(A).

In the future, the EPA may evaluate these emissions more closely and determine whether the transmission and storage segment should be listed as a source category under CAA section 111(b)(1)(A).[60]

D. Rescission of the Applicability to Methane of the NSPS for Production and Processing Segments

As the second of the two steps of its primary proposal, the EPA also is proposing to rescind the methane requirements of the NSPS applicable to sources in the production and processing segments. The EPA is proposing to find that, in the specific circumstances presented here, the EPA lacked a rational basis to establish standards of performance for methane emissions from the production and processing segments because those requirements are entirely redundant with the existing NSPS for VOC, establish no additional health protections, and are, thus, unnecessary. Rescinding the applicability to methane emissions of the 2016 NSPS OOOOa requirements, while leaving the applicability to VOC emissions in place, will not affect the amount of methane reductions that those requirements will achieve, given the 2016 NSPS OOOOa compliance monitoring assurances, including technologies and frequency of monitoring.

It is rational for the EPA to determine that requirements that are redundant to other requirements are not necessary because they do not result in emission reductions beyond what would otherwise occur. For example, in its 1977 proposed NSPS for Lime Manufacturing Plants, the EPA proposed (and later promulgated) NSPS for particulate matter (PM) from lime plants, but not SO_2, and explained that the particulate controls would have the effect of adequately controlling SO_2. 42 FR 22506, 22507 (May 3, 1977). *See National Lime Assoc.* v. *EPA,* 627 F.2d 416, 426 n.27 (D.C. Cir. 1980) (quoting statements in the EPA's proposal). In effect, the EPA recognized that SO_2 requirements would be redundant to PM requirements, and, for that reason, declined to impose SO_2 requirements.[61]

The current NSPS requirements as applied to methane are redundant with the NSPS requirements as applied to VOC. Indeed, for each emission source in the source category subject to the NSPS, the requirements overlap completely. To understand this, it is important to recognize the emissions profile and control technology for these emission sources. Each emission source in the source category emits methane and VOC as co-pollutants through the same emission points and processes. The requirements of the NSPS, including the emission limits, required controls or changes in operations, monitoring, recordkeeping, reporting, and all other requirements, apply to each emission source's emission points and processes and, therefore, to each emission source's methane and VOC emissions, in precisely the same way. The capture and control devices that the emission sources use to meet the NSPS requirements are the same for these co-pollutants and are not selective with respect to either VOC or methane emissions (though the concentration of VOC and methane in the gas emitted from any particular source will vary across types of affected facilities and geographic basins).[62]

As a result, rescinding the applicability of the NSPS requirements to methane emissions will have no impact on the amount of methane emissions. Each affected facility in the production and processing segments will remain subject to the same NSPS requirements for VOC to which it was subject prior to the rescission, and those requirements will have the same impact in reducing the emission source's methane emissions as before the rescission of the methane requirements.

For example, the requirements for the collection of fugitive emissions components located at a well site include the periodic monitoring for fugitive emissions using an optical gas imaging (OGI) instrument. This instrument provides real-time visual images of HC gas emissions by using spectral wavelength filtering and an array of infrared (IR) detectors to visualize the IR absorption of HC and other gaseous compounds. As the gas absorbs radiant energy at the same waveband that the filter transmits to the detector, the motion of the gas is imaged. Since VOC and methane emissions can be imaged within the same waveband, the OGI instrument does not allow differentiation or speciation of the content of the emissions. Once a fugitive emission is identified with OGI, it must be repaired. Therefore, the same components are monitored and repaired, regardless of the content of the emissions from the affected facility. Thus, the proposed rescission of the applicability to methane will not change the applicability of the fugitive emissions requirements. The same is true for the other NSPS requirements.

Other examples include the requirements for pneumatic controllers, pneumatic pumps, and compressors.

[60] Methane emissions from the transmission and storage segment are 32 MMT CO_2 Eq. (1,295 kt methane) per the Inventory of United States Greenhouse Gas Emissions and Sinks: 1990–2017 (published April 11, 2019), which amounts to 5 percent of United States methane emissions and 0.5 percent of total U.S. GHG emissions on a CO_2 equivalent basis (using a GWP of 25 for methane). With respect to VOC emissions, the transmission and storage segment emitted 16,252 tons in 2014, which amounts to just 0.51 percent of national VOC emissions from that year. With respect to SO_2 emissions, there were 663 tons emitted from the transmission and storage segment in 2014, or just 0.79 percent of national SO_2 emissions. For HAP emissions, the transmission and storage segment emitted 1,143 tons in 2014, or just 0.01 percent of national HAP emissions for that year.

[61] Similarly, the EPA declined to propose NSPS for (i) nitrogen oxides because they are emitted in low concentrations or (ii) carbon dioxide because, among other things, regulation would produce little environmental benefit, 42 FR 22507. These rationales for not proposing controls for air pollutants are similar to the redundancy rationale—in all cases, the essential point is that any controls would not result in meaningful emission reductions.

[62] Similarly, the capture and control technologies used to reduce VOC and methane emissions are also effective in reducing each source's emissions of volatile HAP. Please note that while co-control is a favorable result, 40 CFR part 60, subpart OOOOa does not apply to HAP emissions from the source category.

Pneumatic controllers are automated instruments used for maintaining a process condition such as liquid level, pressure, pressure differential, and temperature. Pneumatic controllers make use of the available high-pressure natural gas to operate or control a valve. Natural gas may be released from these ''gas-driven'' pneumatic controllers with every valve movement and continuously from the valve control pilot. Continuous bleed pneumatic controllers can be classified into two types based on their emissions rates: (1) High-bleed controllers and (2) low-bleed controllers. Replacing high-bleed controllers with low-bleed controllers (or no-bleed and non-gas-driven controllers) non-selectively reduces methane and VOC emissions. Pneumatic pumps are devices that use gas pressure to drive a fluid by raising or reducing the pressure of the fluid by means of a positive displacement, a piston or a set of rotating impellers. Gas powered pneumatic pumps are generally used at oil and natural gas production sites where electricity is not readily available (Gas Research Institute/EPA, 1996) and can be a significant source of methane and VOC emissions. Routing pneumatic pump emissions to a pre-existing on-site control device, which combusts the gas, reduces methane and VOC emissions non-selectively. Emissions from compressors occur when natural gas leaks around moving parts in the compressor. In a reciprocating compressor, emissions occur when natural gas leaks around the piston rod when pressurized natural gas is in the cylinder. Over time, during operation of the compressor, the rod packing system becomes worn and will need to be replaced to prevent excessive leaking from the compression cylinder. Replacement of the compressor rod packing, replacement of the piston rod, and the refitting or realignment of the piston rod reduces methane and VOC emissions non-selectively. Emissions from centrifugal compressors depend on the type of seal used: Either ''wet,'' which uses oil circulated at high pressure, or ''dry,'' which uses a thin gap of high-pressure gas. The use of dry gas seals substantially reduces emissions. Routing emissions to the combustion device is also an option for reducing emissions from centrifugal compressors. In either case, the use of dry seals or combustion device reduces methane and VOC non-selectively. The proposed rescission of applicability to methane will not change the applicability of these requirements or that methane will be reduced as a co-reduction of VOC.

Furthermore, any fugitive detection and measurement approach currently approved or approved under the Alternative Means of Emissions Limitations that speciates emissions, would still identify fugitive emissions as defined by any visible emissions observed using OGI and require repair. That is, the NSPS requirements as applied to VOC will reduce methane in the same amounts as those requirements, as applied to methane, would as long as OGI with current levels of sensitivity to methane continue to be used. The EPA is aware that several new technologies are under development that would detect speciated fugitive emissions from oil and natural gas operations. We solicit comment on these new technologies and the need to evaluate the current fugitive emission detection technology specifications to determine that the level of control remains as protective.

As the EPA noted in the proposal for the 2016 NSPS OOOOa rule, the EPA has discretion to determine which pollutants emitted from a listed source category warrant regulation. The EPA has historically considered, among other things, the amount of the pollutant and ''ha[s] 'historically declined to propose standards for a pollutant [that] is emit[ted] in low amounts. . . .''' 80 FR 56599 (quoting 75 FR 54970, 54997 (September 9, 2010).[63] In the case of the Oil and Natural Gas source category, there are no methane emissions from the sources subject to the NSPS beyond those emissions already subject to control by the provisions to control VOC in the NSPS. Accordingly, there is no need to add NSPS requirements applicable to methane.[64] [65]

[63] This discussion assumes that the EPA will retain the statutory interpretation set forth in the 2016 NSPS OOOOa rule of its authority under CAA section 111 to add new regulations to previously-regulated source categories, and that it will not adopt the alternative statutory interpretation on which it solicits comment in section VI.A below.

[64] In the 2016 NSPS OOOOa final rule, the EPA stated: While the controls used to meet the VOC standards in the 2012 NSPS also reduce methane emissions incidentally, in light of the current and projected future GHG emissions from the oil and natural gas industry, reducing GHG emissions from this source category should not be treated simply as an incidental benefit to VOC reduction; rather, it is something that should be directly addressed through GHG standards in the form of limits on methane emissions under CAA section 111(b) based on direct evaluation of the extent and impact of GHG emissions from this source category and the emission reductions that can be achieved through the best system for their reduction. The standards detailed in this final action will achieve meaningful GHG reductions and will be an important step towards mitigating the impact of GHG emissions on climate change. 81 FR 35841.

After further consideration, the EPA proposes to come to a different conclusion about the need for methane requirements, for the reasons discussed in this section and below.

The EPA recognizes that in proposing to rescind one set of standards in part for its redundancy with another set, the EPA is choosing to rescind the applicability of those standards to methane emissions and not VOC emissions, rather than vice-versa. Rescinding the methane-specific standards is reasonable because the requirements for VOC and correspondingly, sources' compliance with those requirements, are longer established than those for methane. As described earlier, the EPA regulated VOC first, beginning in 1985 and continuing in 2012, and then added regulation of methane for some sources in 2016.

Additionally, redundancy is not uniform across affected facilities in the sector. Some sources, such as storage vessels, are subject only to VOC requirements and not methane requirements. For those sources, it cannot be said that regulation of VOC is redundant to regulation of methane because the EPA has not regulated methane from them. For these reasons, in choosing between the two requirements, the EPA considers it appropriate and less disruptive to rescind the methane standards.

V. Rationale for Alternative Proposal To Rescind the Methane Standards for All Sources in the Oil and Gas Source Category Without Revising the Source Category

A. Alternative Proposed Action To Rescind the Methane Standards

In this action, the EPA is proposing in the alternative to rescind the methane

[65] The EPA notes that removing the applicability of the NSPS to methane emissions does not alter the basis for the applicability of the NSPS to VOC emissions for affected sources in the source category, which for some affected sources have been regulated since the 2012 NSPS OOOO rule. To determine BSER, the EPA assesses a set of factors, which include the amount of emissions reduction, costs, energy requirements, non-air quality impacts, and the advancement of particular types of technology or other means of reducing emissions, and retains discretion to weight the factors differently in any case. In the 2016 NSPS OOOOa, the EPA gave primary weight to the amount of emission reductions and cost. The EPA describes this analysis in depth in the 2015 NSPS OOOOa proposal at 80 FR 56618–56620 and 80 FR 56625–56627. For the source types in the production and processing segments, the NSPS requirements, considered on a VOC-only basis, are cost effective (relatively low cost and relatively high emissions reductions). *See* memorandum titled ''Draft Control Cost and Emission Changes under the Proposed Amendments to 40 CFR part 60, subpart OOOOa Under Executive Order 13783,'' in the public docket for this action. The EPA provides this information for the benefit of the public and is not reopening the above-described determination in the 2016 NSPS OOOOa that the VOC-only requirements for sources in the production and processing segments meet the requirements of CAA section 111.''

requirements in the 2016 NSPS OOOOa without any action that would address the scope of the industry segments covered by these requirements or to alter the VOC requirements applicable to those industry segments. In contrast to the proposal discussed above in section IV, this alternative proposal does not affect the scope of the source category, including the types of sources included in the source category. Thus, this alternative proposal would not eliminate sources in the transmission and storage segment from the source category. This alternative proposal is based on the rationale described below.

B. Rationale for Rescinding the Methane Standards

Under this alternative proposal, the EPA's basis for proposing to rescind the applicability to methane of the NSPS for all sources in the source category is essentially the same as the EPA's basis for proposing the same action for sources in the production and processing segments, described in section IV above. Briefly, the EPA is proposing to rescind the methane requirements applicable to the source category because they are wholly redundant with the existing VOC requirements.[66] [67] Section VI of this preamble takes comment on alternative questions of statutory interpretation and associated potential record determinations which, if the EPA were to adopt them, might provide an additional or alternative basis for both the primary and the alternative proposal.

VI. Solicitation of Comment on Significant Contribution Finding for Methane

As noted above, the primary and alternative proposals set forth in this notice rely on the EPA's previous position, which it took in the 2016 NSPS OOOOa rule, that (1) CAA section 111 does not require the Agency to make a pollutant-specific determination that the Crude Oil and Natural Gas Production source category's emissions of methane cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare, as a prerequisite to promulgating an NSPS for methane; and (2) in the alternative, if CAA section 111 were interpreted to require such a determination for the 2016 NSPS OOOOa rule, the source category's emissions do cause or contribute significantly to air pollution that may reasonably be expected to endanger public health or welfare.[68] Although the determination that CAA section 111(b)(1)(A) requires is commonly referred to as an ''endangerment finding,'' it entails two separate elements: (1) A finding that certain air pollution may reasonably be anticipated to endanger public health or welfare, and (2) a finding that the source category's emissions of air pollutants cause or contribute significantly to that air pollution. This section focuses on the latter element, which we refer to as the ''significant contribution finding'' (SCF). It should also be noted that in prior contexts in which the EPA has made these findings with regard to GHG, including the 2016 NSPS OOOOa rule, the EPA has considered the ''air pollution'' that may reasonably be anticipated to endanger public health or welfare to be the elevated concentration in the atmosphere of six well-mixed gases (of which, CO_2 and methane are emitted in the largest quantities); and the EPA has considered the ''air pollutants'' that may cause or contribute to that air pollution to be the same six GHG. *See* 81 FR 35843. In the 2016 NSPS OOOOa rule, for convenience, the EPA sometimes referred to the ''air pollutants'' as methane, in recognition of the fact that methane is the largest quantity of GHG emitted by the Oil and Natural Gas source category. We take the same approach and use the same terminology in this rulemaking.

In this proposal, the EPA proposes to retain its current interpretation that it is not required to make a pollutant-specific SCF, for the same reasons that it noted in the 2016 NSPS OOOOa rule. 81 FR at 35841–43. However, the EPA solicits comment on whether it should revise its positions in the 2016 NSPS OOOOa rule concerning the requirement to make a pollutant-specific SCF under CAA section 111(b), as well as, in light of the statutory term ''significantly contributes to,'' the level of contribution that methane from oil and natural gas sources makes to GHG air pollution. In particular, in subsections A, B, and C of this section, the EPA solicits comment on (A) whether CAA section 111 requires the EPA to make a pollutant-specific SCF for GHG emissions (again, primarily methane) from the source category as a prerequisite to regulating those emissions; (B) if so, whether the SCF for methane emissions from the source category that the EPA made in the alternative in the 2016 NSPS OOOOa rule properly satisfied that requirement; and (C) what criteria are appropriate for the EPA to consider in making a SCF, both as a general matter and with particular reference to GHG emissions generally and to methane emissions from this source category most particularly. Further, the EPA solicits comment on whether, should we determine (1) that it was necessary as a matter of law for the EPA to have made a pollutant-specific SCF finding for GHG emissions (or, if the statute does not compel that interpretation, whether that is a reasonable interpretation); and (2) that the SCF for methane emissions

[66] As noted above, in the 2015 proposal for the 2016 NSPS OOOOa rule, we justified regulating methane emissions on grounds that ''reducing methane emissions from this source category cannot be treated simply as an incidental benefit to VOC reduction,'' 80 FR 56599, but our current view is that what is important is that the VOC requirements will assure that the methane emissions reductions occur. In addition, as noted above, the cost effectiveness of the VOC requirements for sources in the production and processing segments supports retaining those requirements for those sources, and we are not reopening our determination in the 2016 OOOOa NSPS that, on a VOC-only basis, the requirements for sources in the production and processing segments meet CAA section 111 requirements. The same is true for the sources in the transmission and storage segment under this alternative proposal. We consider VOC emissions regulation alone to qualify as NSPS based on the BSER. As we noted with respect to sources in the production and processing segments, removing the applicability of the NSPS to methane emissions does not alter the basis for the applicability of the NSPS to VOC emissions for affected sources in the source category, which for some affected sources have been regulated since the 2012 NSPS OOOO rule. To determine BSER, the EPA assesses a set of factors, which include the amount of emissions reduction, costs, energy requirements, non-air quality impacts, and the advancement of particular types of technology or other means of reducing emissions; this assessment requires the EPA to exercise discretion in weighing these factors against each other. In the 2016 NSPS OOOOa, the EPA gave primary weight to the amount of emission reductions and cost. The EPA describes this analysis in depth in the 2015 proposal at 80 FR 56616 to 56645. The EPA provides this information for the benefit of the public and is not reopening the above-described VOC-only BSER determination for the production, processing, transmission, and storage segments made in the 2016 NSPS OOOOa.

[67] 80 FR 56616 to 56645, 83 FR 52056, and memorandum titled ''Draft Control Cost and Emission Changes under the Proposed Amendments to 40 CFR part 60, subpart OOOOa Under Executive Order 13783,'' in the public docket for this action.

[68] In the 2016 NSPS OOOOa rule, the EPA stated: Some commenters have argued that the EPA is required to make a new endangerment finding before it may set limitations for methane from the oil and natural gas source category. We disagree. . . . Moreover, even if CAA section 111 required the EPA to make an endangerment finding as a prerequisite for this rulemaking, then, the information and conclusions described above . . . should be considered to constitute the requisite finding (which includes a finding of endangerment as well as a cause-or-contribute significantly finding). More specifically, . . . [t]he facts [that the EPA marshaled in support of the 2009 Endangerment Finding] have only grown stronger and the potential adverse consequences of GHG to public health and the environment more dire [since 2009]. The facts also demonstrate that the current methane emissions from oil and natural gas production sources and natural gas processing and transmission sources contribute substantially to nationwide GHG emissions. 81 FR at 35843.

from the source category that the EPA made in the alternative in the 2016 NSPS OOOOa rule did not properly satisfy that requirement, those determinations, in and of themselves, would either compel us or authorize us to repeal the 2016 NSPS OOOOa rule.

A. Requirement for Pollutant-Specific Significant Contribution Finding

As noted earlier, CAA section 111(b)(1) sets out a multi-step process for the EPA to promulgate NSPS. First, the EPA is required to list a source category if ''in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' CAA section 111(b)(1)(A). Then, the EPA is required to propose and then promulgate ''standards of performance for new sources within such category.'' CAA section 111(b)(1)(B). A ''standard of performance'' is defined as ''a standard for emissions of air pollutants'' that the EPA is required to calculate through a particular methodology. CAA section 111(a)(1). The EPA has interpreted these provisions to require that it make a SCF for the combined air pollutant emissions, taken as a whole, from the source category in order to list the source category, and then to require it to promulgate standards of performance for the emissions once it has listed the source category, but not require it to make pollutant-specific SCFs as another prerequisite to promulgating those standards of performance. 80 FR 64529–31 (Electricity Generating Units (EGU) CO_2 NSPS rule), 81 FR 35841–42 (2016 NSPS OOOOa rule).

The EPA articulated this interpretation of CAA section 111(b)(1)(A) during the course of two rulemakings to promulgate NSPS for GHG, completed in 2015–2016, but commenters called it into question. In those rulemakings, the EPA promulgated, for the first time, NSPS for GHG, primarily CO_2, from fossil-fuel fired EGUs (including steam-generating boilers and combustion turbines), ''Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units—Final Rule,'' 80 FR 64510, 64530 (October 23, 2015) (EGU CO_2 NSPS rule),[69] and methane from the Crude Oil and Natural Gas Production source category, 81 FR 35843 (the 2016 NSPS OOOOa rule). In the proposal for the EGU CO_2 NSPS rule, the EPA took the position that it was not required to make a pollutant-specific SCF for CO_2 emissions from EGUs in order to promulgate an NSPS regulating those emissions. 79 FR 1430, 1452–55 (January 8, 2014). Commenters stated that under the EPA's interpretation, the EPA would have the authority to promulgate an NSPS for a air pollutant that a source category emits in relatively small amounts (or, with respect to the endangerment finding, that is relatively benign in its effect on public health or welfare). This is because, under the EPA's interpretation, once the Agency lists a source category, it proceeds to regulate a particular air pollutant emitted from the category without being required to make a SCF for the source category's emissions of that air pollutant. *See generally* 81 FR 35843; 80 FR 64530. These concerns about the two GHG NSPS rulemakings are highlighted by the fact that when the EPA listed the source categories—EGU Steam-Generating Boilers in 1971, Combustion Turbines in 1977, and Crude Oil and Natural Gas Production in 1979—and first began to regulate them, the EPA did not mention GHG. Rather, the SCFs for the source categories did not identify the air pollutants, and the initial regulations—which were largely contemporaneous with the listing notices—concerned emissions of other air pollutants. *See* 36 FR 5931 (March 31, 1971), 36 FR 24876 (December 23, 1971) (EGU Steam-Generating Boilers; (PM, SO_2, NO_X); 42 FR 53657, 42 FR 53782 (October 3, 1977), (EGU Combustion Turbines; SO_2, NO_X); 44 FR 49222 (August 21, 1979) (Crude Oil and Natural Gas Production; HC and SO_2). Thus, there is no indication that the EPA considered GHG in listing the source categories.

In both the EGU CO_2 NSPS rule and the 2016 NSPS OOOOa rule, the EPA asserted that CAA section 111 authorizes it to regulate a source category's emissions of an air pollutant without a pollutant-specific SCF as long as the EPA has a ''rational basis'' for doing so. The EPA based this view on previous rulemakings, in which the EPA had declined to promulgate NSPS for certain air pollutants from various source categories on grounds that the amounts of emissions of those air pollutants were so small that regulating them would not be rational, and on D.C. Circuit caselaw.[70] In the EGU CO_2 NSPS rule and the 2016 NSPS OOOOa rule, the EPA went on to determine that it did have a rational basis for regulating CO_2 and methane, respectively, which consisted of assessing the amount of emissions of the GHG from the source category in the light of various metrics, coupled with the fact that the EPA had previously determined, in the 2009 Endangerment Finding, that six well-mixed gases constitute GHG air pollution that may reasonably be anticipated to endanger public health and welfare under section 202(a) of the CAA. ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act—Final rule,'' 74 FR 66496 (December 15, 2009) (2009 Endangerment Finding). It should be noted that in both the EGU CO_2 NSPS rule and the 2016 NSPS OOOOa rule, the EPA also stated that, in the alternative, if it were required to make a pollutant-specific SCF for GHG (with a focus on CO_2 and methane, respectively), it was making that finding, citing the same information that it relied on for the rational basis determinations. *See* 80 FR 64529–31 (EGU CO_2 NSPS rule), 81 FR 35841–43 (2016 NSPS OOOOa rule) (both citing the 2009 Endangerment Finding).

In this action, we solicit comment on whether the interpretation of CAA section 111(b)(1)(A) that the EPA set forth in the 2016 NSPS OOOOa rule is correct, or instead whether that provision should be interpreted to require that the EPA make a SCF on a pollutant-specific basis for a source category as a prerequisite for regulating emissions of that pollutant from the

[69] In the EGU CO_2 NSPS rule, the EPA considered the ''air pollutants'' relevant for the SCF to be GHGs, but because CO_2 was the GHG emitted in the greatest quantity by EGUs, the EPA often described that finding as referring to CO_2. 80 FR 64531 and n.110; 64537.

[70] Specifically, in the 2016 NSPS OOOOa rule, the EPA stated that in *National Lime Assoc.* v. *EPA,* 627 F.2d 416 (D.C. Cir. 1980), the Court had ''discussed, but did not review, the EPA's reasons for not promulgating standards for NO_X, SO_2, and CO from lime plants.'' *See* 81 FR 35842; *see also* 80 FR 64530. The discussion in *National Lime Assoc.* consisted of the Court's observation, in setting forth the procedural history of the rulemaking at issue, that ''[a]lthough lime plants were determined to be sources of nitrogen oxides, carbon monoxide and sulfur dioxide as well as particulates,'' standards ''were proposed and ultimately promulgated only with respect to particulate matter.'' 627 F.2d at 426. In a footnote, the Court then quoted at length from a portion of the preamble to the proposed NSPS in which the EPA had ''explained its decision not to propose standards'' for those three pollutants. *Id.* at 426 n.27. The only place the phrase ''rational basis'' appears in *National Lime Assoc.* is located in a passage in which the Court rejects industry's claim that the EPA had erred in its ''determination that lime manufacturing plants 'may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare.' '' *Id.* at 431 n.48. Said the Court: ''We think the danger of particulate emissions' *effect on health* has been sufficiently supported in the Agency's . . . previous determinations to provide a *rational basis* for the Administrator's finding in this case.'' *Id.* (emphases added). ''Moreover,'' the Court continued, ''whatever its impact on public health, we cannot say that a dust 'nuisance' has no impact on *public welfare.*'' *Id.* (emphasis added).

source category. The EPA also solicits comment on whether (1) either its current interpretation or the alternative interpretation discussed in this subsection is the only permissible interpretation of the SCF provision, or (2) that provision is ambiguous and leaves room for the exercise of policy discretion on the EPA's part as to which circumstances call for a pollutant-specific SCF as a predicate for regulating an additional pollutant emitted from an already-listed source category, and, if the latter, whether GHG emissions in general or methane emissions from the oil and natural gas sector in particular present specific circumstances making a pollutant-specific SCF appropriate or required for this source category. If the provision is ambiguous, the benefits of assuring that only pollutants for which the EPA makes a SCF become subject to NSPS, as opposed to pollutants that, for example, may be emitted in relatively minor amounts, support interpreting the provision to require a pollutant-specific SCF.

The provisions in CAA section 111(b)(1)(A) that require the Administrator to ''include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,'' when read in isolation and when compared to analogous text in other provisions of similar import elsewhere in the CAA, *e.g.,* section 202(a)(1) and other provisions noted below, does appear to contemplate that the EPA is required to make a SCF for the source category only when it is first added to the list. This was the basis for the EPA's position in the EGU CO_2 NSPS rule and the 2016 NSPS OOOOa rule that the Agency is not required to make a pollutant-specific SCF in order to regulate an additional pollutant from an already-listed source category.

However, even if the wording of the SCF does suggest that the EPA is required to make that finding only when listing a source category, the EPA is mindful that an Agency ''[may] avoid a literal interpretation at Chevron step one . . . [by] show[ing] either that, as a matter of historical fact, Congress did not mean what it appears to have said, or that, as a matter of logic and statutory structure, it almost surely could not have meant it.'' *Engine Mfrs. Ass'n* v. *EPA,* 88 F.3d 1075, 1089 (D.C. Cir. 1996).[71] We solicit comment on whether the discussion below provides either reasons that Congress ''almost surely could not have meant'' the SCF provision to mean what the EPA read it to mean in the 2016 NSPS OOOOa rule, evidence that ''as a matter of historical fact Congress did not mean'' that, or both—and, if so, whether the EPA is required to, or whether it would be reasonable for the EPA to, adopt an alternative interpretation of CAA section 111(b)(1)(A) under which the EPA is required to make a pollutant-specific SCF in order to regulate a particular pollutant emitted by a source category.

There are several reasons why this approach to interpreting CAA section 111(b)(1)(A) might be reasonable. The first is the potentially anomalous results that could occur under the EPA's current interpretation that CAA section 111(b)(1)(A) does not require a pollutant-specific SCF. For example, under the EPA's current interpretation, the EPA could list a source category on grounds that it emits numerous air pollutants that, taken together, significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, and proceed to regulate each of those pollutants, without ever finding that each (or any) of those air pollutants by itself causes or contributes significantly to—or, in terms of the text of other provisions, causes or contributes to—air pollution that may reasonably be anticipated to endanger public health or welfare. It is clear that CAA section 111(b) requires the EPA, and CAA section 111(d) requires the states, to regulate on a pollutant-by-pollutant basis—CAA section 111(b)(1)(B) and (d)(1) require the EPA and the states, respectively, to promulgate for the affected sources ''standards of performance,'' which, as noted above, are defined in relevant part as ''standard[s] for emissions of air pollutants''—as a result, it seems potentially anomalous not to require that the EPA make a SCF for those pollutants as a prerequisite for promulgating the standards of performance.

Second, although the EPA's current interpretation that only a ''rational basis'' is needed to justify regulating emissions of an additional pollutant from an already-listed source category offers some protection against arbitrary or capricious decisions by the EPA, that type of determination appears to be largely undefined. CAA section 111(b)(1)(A) does not provide or suggest any criteria to define it. In the EGU CO_2 NSPS and 2016 NSPS OOOOa rules, the EPA did not describe any criteria for applying that approach, and in instances before then in which the EPA has relied on the ''rational basis'' approach, the EPA has done so to justify not setting standards for a given pollutant, rather than to justify setting a standard for a pollutant. 80 FR 64530. The EPA solicits comment on whether it is rational to interpret the SCF provision as setting a specific finding that needs to be made only one time (at the stage of source category listing), with the standard for the subsequent regulation of some other pollutant emitted from that source category defaulting to rational basis, a standard which applies to *any* action the EPA or, in fact, any agency, takes, *see* 5 U.S.C. 706(2)(A) (under the Administrative Procedure Act, agency decisions may be set aside if they are ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law''), or whether instead Congress ''almost surely could not have meant'' that.

Third, the other sections of the CAA, cited below, under which the EPA makes an endangerment and cause or contribute finding as a prerequisite for regulating emissions, do generally contemplate that the cause or contribute finding will be made on a pollutant-specific basis. The fact that Congress saw fit to frame the cause or contribute requirement on a pollutant-specific basis for other CAA provisions might reasonably be viewed as heightening the anomaly of interpreting CAA section 111(b)(1)(A) not to impose the same requirement. The EPA solicits comment on whether its current interpretation of the CAA section 111 SCF provision, as set forth in the 2016 NSPS OOOOa rule, correctly determined that this apparent anomaly is, in fact, a deliberate and significant variation on Congress's part, or whether instead Congress ''almost surely could not have meant'' that.

In addition, the legislative history of CAA section 111(b)(1)(A) contains several items that might be read to indicate that Congress did ''as matter of historical fact'' intend to require that the EPA make a pollutant-specific SCF as a prerequisite for regulating any particular pollutant emitted by a source category.

[71] *See, e.g., Logan* v. *U.S.,* 552 U.S. 23, 36–37 (2007) (''[s]tatutory terms, we have held, may be interpreted against their literal meaning where the words 'could not conceivably have been intended to apply' to the case at hand [citation omitted]''; *U.S.* v. *Ron Pair Enterprises,* 489 U.S. 235, 242 (1989) (literal meaning of a statutory provision is not conclusive ''in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters'. . . [in which case] the intention of the drafters, rather than the strict language, controls'' [citation omitted]); *Watt* v. *Alaska,* 451 U.S. 259, 266 (1981) (''[t]he circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect'').

Congress added CAA section 111 when it amended the CAA in 1970. At that time, Congress drafted CAA section 111(b)(1) in much the same form as it appears today, explicitly requiring the endangerment finding, including the SCF, on the basis of the source category, although it phrased the finding somewhat differently: ''[The Administrator] shall include a category of sources in such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare.'' 42 U.S.C. 1857c–6(b)(1)(A) (1970). At the same time, Congress added several other provisions that contemplated that the EPA would make endangerment or cause or contribute findings, and although Congress used somewhat different phrasing in some of those provisions, in each one, Congress framed the relevant finding on a pollutant-specific basis. *See* CAA section 108(a)(1)(A)–(B), 42 U.S.C. 1857c–3(a)(1)(A)–(B) (1970) (Administrator is required to publish a list ''which includes each air pollutant which in his judgment has an adverse effect on public health or welfare'' and ''the presence of which in the ambient air results from numerous or diverse mobile or stationary sources''); [72] CAA section 115(a), 42 U.S.C. 1857d(a) (1970) (Administrator is authorized to take action to address ''pollution of the air in any State or States which endangers the health or welfare of any persons''); CAA section 202(a)(1), 42 U.S.C. 1857f–1(a)(1) (1970) (Administrator is required to regulate ''the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare''); [73] CAA section 211(c)(1), 42 U.S.C. 1857f–6(c)(1) (1970) (Administrator is authorized to regulate ''any fuel or fuel additive for use in a motor vehicle or motor vehicle engine if any emission products of such fuel or fuel additive will endanger the public health or welfare''); CAA section 231(a)(2), 42 U.S.C. 1857f–9(a)(2) (1970) (Administrator is required to regulate ''emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare'').

In the 1970 CAA Amendments, Congress did not explain why it used language in CAA section 111 that suggested a SCF for the source category under CAA section 111 while using pollutant-specific language in the other provisions, but the reason appears to be that under CAA section 111, Congress tasked the EPA with determining, among the large numbers of highly diverse stationary sources in the U.S., which ones, grouped into which source categories, should be listed and subject to regulation. It was logical for Congress to constrain the EPA's discretion by requiring that the EPA make a SCF for each source category that it sought to list. While it is true that in drafting CAA section 111(b)(1)(A), Congress did not explicitly require the EPA to make an additional, pollutant-specific SCF, it seems reasonable to think that Congress may have intended pollutant-specific SCF findings but conflated them with the required source-category SCF finding. Support for this interpretation may be found in the fact that under CAA section 111, a source category can cause or significantly contribute to air pollution only through emissions of its air pollutants, CAA section 111(b)(1)(B) requires the EPA to promulgate ''standards of performance'' for air pollutants, and CAA section 111(a)(1) defines a ''standard of performance'' as a ''standard of emissions *for air pollutants*'' (emphasis added). The EPA solicits comment on whether these provisions, read together with CAA section 111(b)(1)(A), are evidence that Congress intended the latter to require what is required in the other CAA provisions discussed here: A pollutant-specific finding. Certainly, interpreting CAA section 111(b)(1)(A) to require such a pollutant-specific finding would make it consistent with those other CAA provisions.

In the 1977 CAA Amendments, Congress rephrased the text in each of the above-noted provisions to read as they do at present, which is generally the same phrasing as in CAA section 111(b)(1)(A) in relevant part, except that for the other provisions, Congress did not require the contribution component of the findings to be based on a ''significant'' contribution and, with the possible exception of CAA section 202(a), discussed below, Congress continued to focus the cause or contribute findings on air pollutants. The legislative history generally describes Congress's purpose as providing, across all the relevant provisions, and consistent with the D.C. Circuit's decision in *Ethyl Corp.* v. *EPA,* 541 F.2d 1 (D.C. Cir.) (*en banc*), *cert. den.* 426 U.S. 941 (1976), a uniform standard of proof that allows the Administrator to regulate pollutants based on the need to prevent harm before it occurs, rather than require the Administrator to delay regulating until after actual harm has been proven to have occurred. H.R. Rep. No. 94–1175 at 32–33 (1976).

Importantly, the legislative history of the 1977 SCF provisions can also be read as evidence that Congress understood at that time that the EPA was to make a pollutant-specific SCF under CAA section 111. The SCF provisions originated in the House bill, did not have a counterpart in the Senate bill, and were adopted by the Conference Committee as they appeared in the House bill. The Conference Report summarized the House bill as follows, in relevant part:

House bill

Provides a uniform standard of proof for EPA regulation of air pollutants which applies to the setting of . . . criteria for national ambient air quality standards under Section 108; . . . new stationary source performance standards under Section 111; . . . new auto emission standards under Section 202; . . . regulations of fuels and fuel additives under Section 211; aircraft emission standards under Section 231.

In all future rulemaking in these areas, the Administrator could regulate any air pollutant from those sources, the emissions of which ''in his judgment cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.''

H.R. Rep. No. 95–564, at 183–84 (1977) (emphasis added). The emphasized language may be evidence that Congress, in fact, intended to require the EPA (or, indeed, understood that the EPA had always been required), in promulgating a pollutant-specific NSPS under CAA section 111, to make a pollutant-specific finding, as it does

[72] This provision is similar to section 3(c)(2) of the CAA of 1963, Public Law 88–206 (December 17, 1963): Whenever [the Secretary of the Department of Health, Education, and Welfare] determines that there is a particular air pollution agent (or combination of agents), present in the air in certain quantities, producing effects harmful to the health or welfare of persons, the Secretary shall compile and publish criteria reflecting accurately the latest scientific knowledge useful in indicating the kind and extent of such effects which may be expected from the presence of such air pollution agent (or combination of agents) in the air in varying quantities.

[73] This provision is similar to section 202(a) of the CAA, as adopted in the Motor Vehicle Air Pollution Control Act of 1965, Pubic Law 89–271 (October 19, 1965): The Secretary shall by regulation, giving appropriate consideration to technological feasibility and economic costs, prescribe as soon as practicable standards, applicable to the emission of any kind of substance, from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons. . . .

under the other provisions mentioned in the Conference Report.

The House Committee Report included a similar statement in describing one of its purposes for rephrasing the various endangerment finding provisions: ''To provide the same standard of proof for *regulation of any air pollutant, whether that pollutant comes from stationary or mobile sources,* or both, and to make the vehicle and fuel industries equally responsible for cleaning up vehicle exhaust emissions.'' H.R. Rep. No. 94–1175, at 33 (1976) (emphasis added). The emphasized phrase could suggest that the House Committee drafters understood the SCF provision in CAA section 111(b)(1)(A) to concern the particular air pollutant subject to regulation (*i.e.,* the NSPS), like, at least for the most part, the other analogous provisions.[74]

Other provisions Congress added into CAA section 111 during the 1977 CAA Amendments might also shed light on the meaning of the SCF provision. Congress was dissatisfied at what it perceived to be the slow pace of the EPA's regulation under CAA section 111, and as a result, added provisions (which have continued in effect) that required the EPA to include on the list required under CAA section 111(b)(1)(A) the categories of major stationary sources not already on the list, and promulgate standards of performance for those categories on a specified schedule. CAA section 111(f)(1). Congress further directed the EPA to determine priorities for promulgating standards for the listed categories by considering, among other things, ''the quantity of air pollutant emissions which each such category will emit, or will be designed to emit,'' and ''*the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare.*'' CAA section 111(f)(2)(A)–(B) (emphasis added).[75] The emphasized text could be interpreted to indicate that Congress recognized the EPA's ability to consider, under CAA section 111, the impacts of specific pollutants on public health or welfare. Further, the fact that the emphasized text is phrased in terms of ''the *extent to which* each such pollutant'' is determined by the EPA to ''endanger public health or welfare,'' rather than simply ''*whether* each such pollutant may reasonably be anticipated to endanger public health or welfare,'' might be reasonably construed as indicating that Congress presupposed that, in taking account of the ''air pollutant emissions which each such category will emit, or will be designed to emit'' for the purpose of prioritizing the establishment of standards of performance for sources within each category, the EPA would only be establishing standards of ''air pollutant emissions'' that ''may reasonably be anticipated to endanger.'' [76]

CAA section 122(a), also added in the 1977 CAA Amendments (and still in effect), could also shed light on the meaning of the SCF provision of CAA section 111(b)(1)(A). Section 122(a) of the CAA requires the Administrator ''to determine whether or not emissions of radioactive pollutants . . ., cadmium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health.'' Further, ''[i]f the Administrator makes an affirmative determination with respect to any such substance,'' the Administrator is required, depending on the substance, to include it on the list published under CAA section 108 or 112, ''*or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 111(b)(1)(A). . . .*'' CAA section 122(a) (emphasis added). Here, too, the emphasized provisions could be interpreted to indicate that Congress expected the EPA to make pollutant-specific determinations under CAA section 111(b).

In addition, the EPA's interpretation of the cause or contribute finding required under CAA section 202(a) could serve as a precedent for interpreting CAA section 111(b)(1)(A) as requiring a pollutant-specific SCF. CAA section 202(a)(1), as revised by the 1977 CAA Amendments, provides, in relevant part: ''The Administrator shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment *cause, or contribute* to, air pollution which may reasonably be anticipated to endanger public health or welfare'') (emphasis added). 42 U.S.C. 7521(a)(1) (1977). The emphasized term, ''cause, or contribute,'' is plural, which could suggest that it refers to ''any class or classes of new motor vehicles or new motor vehicle engines,'' and thereby contemplates that the cause or contribute finding would be made based on the emissions, considered all

[74] It should be noted that in the 1970 and 1977 CAA Amendments, Congress added or amended several other provisions that included findings similar to the findings in CAA sections 108(a)(1)(A), 111(b)(1)(A), 115, 202(a), 211(c)(1), and 231(a)(2)(A). These provisions include the following, (as they read after the 1977 CAA Amendments and before any changes in the 1990 CAA Amendments): (1) CAA section 112 (added in 1970 CAA Amendments and revised in 1977 CAA Amendments; ''hazardous air pollutant'' is defined as, in relevant part, ''an air pollutant . . . which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness;'' this definition was substantially revised in 1990 CAA Amendments); and (2) CAA section 211(c)(1)(A) (added in 1970 CAA Amendments and revised in 1977 CAA Amendments; the Administrator is authorized to regulate any fuel or fuel additive ''if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare''). In addition, in the 1990 CAA Amendments, Congress added several additional provisions that require findings that bear some similarity to the findings discussed above. *See* (1) CAA section 129(e) (Administrator or state is required to ''require the owner or operator of any unit to comply with emission limitations or implement any other measures, if the Administrator or the state determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment''); (2) CAA section 183(f)(1)(A) (Administrator is required to promulgate standards for VOC and any other air pollutant from loading and unloading of tank vessels ''which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare''); (3) CAA section 213(a)(1)–(3) (Administrator is required to (i) conduct a study to determine if emissions from nonroad engines and nonroad vehicles ''cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare;'' (ii) determine whether emissions of certain pollutants from new and existing nonroad engines and vehicles ''are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards (NAAQS) for ozone or carbon monoxide;'' and if so, (iii) promulgate regulations containing standards applicable to such emissions from those classes or categories of new nonroad engines and new nonroad vehicles ''which in the Administrator's judgment cause, or contribute to, such air pollution'') (CAA section 213(a)(4), which concerns different pollutants than under CAA section 213(a)(2)–(3), has requirements similar to the requirements of those provisions); (4) CAA section 615 (Administrator is required to regulate ''[i]f, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare''). For the most part, these provisions contemplate endangerment or cause or contribute findings, or similar determinations, for a pollutant, emissions, or substance, and for that reason, could support interpreting CAA section 111(b)(1)(A) to require a pollutant-specific SCF.

[75] In the 1990 CAA Amendments, Congress revised the provisions of CAA section 111(f)(1) directing the EPA to promulgate standards for listed categories and retained the provisions of CAA section 111(f)(2) for prioritizing.

[76] It is perhaps significant, too, that Congress in CAA section 111(f)(2) tied the finding of ''endangerment'' not to ''air *pollution*'' that endangers, as is the case with respect to every section of the CAA where the concept of ''cause or contribute to'' is employed but, rather, to ''each such *pollutant*.'' This particular formulation is used nowhere else in the CAA and arguably suggests that Congress had a pollutant-specific SCF in mind.

together, from the source category, not on the basis of individual pollutants. However, the EPA has interpreted this provision to instruct the Administrator to make the cause or contribute finding on a pollutant-specific basis. *See* 74 FR 66496, 66506 (2009 Endangerment Finding). The EPA's interpretation of CAA section 202(a) to contemplate a pollutant-specific finding could support the reasonableness of interpreting CAA section 111(b)(1)(A) to contemplate the same thing.

In fact, it appears to be the case that the EPA in the past did so interpret CAA section 111(b)(1)(A) to require a pollutant-specific SCF as a prerequisite for regulating that pollutant. In the first guideline document the EPA issued under CAA section 111(d) (*i.e.,* for emissions from existing phosphate fertilizer plants), the EPA summarized CAA section 111(b)(1)(A) (as it read prior to revision in the 1977 CAA Amendments) as follows:

> The Administrator first considers potential health and welfare effects of a designated pollutant in connection with the establishment of standards of performance for new sources of that pollutant under section 111(b) of the Act. *Before such standards may be established, the Administrator must find that the pollutant in question ''may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare'' [see section 111(b)(1)(A)]. Because this finding is, in effect, a prerequisite to the same pollutant being identified as a designated pollutant under section 111(d), all designated pollutants will have been found to have potential adverse effects on public health, public welfare, or both.*

''Final Guideline Document: Control of Fluoride Emissions from Existing Phosphate Fertilizer Plants,'' U.S. Environmental Protection Agency, EPA–450/2–77–005 (March 1977) at 2–1 (emphasis added). The emphasized statements reflect a straight-forward interpretation of CAA section 111(b) as requiring a pollutant-specific SCF as a pre-requisite to promulgating an NSPS for that pollutant. This very same language appears in each of the three guideline documents that the EPA subsequently issued pursuant to CAA section 111(d).[77] Although these statements from the EPA stand in contrast to later EPA statements that characterize CAA section 111(b) as requiring that the SCF be made on the basis of the source category, they suggest uncertainty as to whether CAA section 111(b)(1)(A) should not be read to require a SCF for specific pollutants.[78]

In light of the considerations described above, the EPA solicits comment on whether CAA section 111(b)(1)(A) should be interpreted to require it to make a pollutant-specific SCF as a prerequisite for promulgating an NSPS for that pollutant. CAA section 111(b)(1)(A)'s SCF provision, when read in isolation, may appear to require a SCF for the source category as a prerequisite for listing the source category. However, should the EPA instead conclude that Congress could not have intended that the EPA promulgate NSPS without a pollutant-specific SCF in light of, among other considerations, (1) the fact that Congress adopted at the same time and subsequently amended at the same time similarly phrased CAA provisions that do contemplate a pollutant-specific finding prior to regulation, (2) the inherent vagueness of the rational basis approach, and (3) the indications in the legislative history that Congress did intend that the EPA make a pollutant-specific SCF under CAA section 111?

It should be noted that requiring a pollutant-specific SCF need not result in duplicative SCFs (or duplicative associated endangerment findings), that is, the EPA would not need to make separate SCFs (and associated endangerment findings) for both the source category and each pollutant emitted by the source category that the EPA seeks to regulate. Rather, in beginning to regulate pollutants from a previously unlisted source category, the EPA could identify any pollutant it seeks to regulate and, if appropriate, make a SCF (and associated endangerment finding) for that pollutant as emitted by that source category. Such a SCF would serve as the ''cause[ ], or contribute[ ] significantly to'' finding both for listing the source category and for promulgating an NSPS for the pollutant.

The EPA recognizes it has proceeded under the implicit assumption that CAA section 111(b)(1)(A) does not require a pollutant-specific SCF through many NSPS rulemakings over a lengthy period. The EPA solicits comment on what the implications would be to the CAA section 111 program, including the current NSPS and CAA section 111(d) guideline documents and state plans, of interpreting CAA section 111(b)(1)(A) to require a pollutant-specific SCF. In this regard, the EPA notes that, for the most part, its past practice has been to list a source category and to propose NSPS for pollutants from the source category at the same time as, or shortly after the listing, and to finalize the NSPS shortly after that. It seems evident that those NSPS concerned pollutants that the EPA considered in listing the source category. The EPA solicits comment on whether, under those circumstances, the EPA could be considered to have made SCFs and endangerment findings for those pollutants, so that it would not be necessary to make those findings now. However, in some cases, the EPA promulgated NSPS for air pollutants that the EPA did not address in listing the source category or in the initial set of regulations promulgated at the same time, or shortly after, the EPA listed the source category. For example, the EGU CO_2 NSPS and the 2016 NSPS OOOOa rules addressed GHG pollutants that the EPA had not identified in the initial SCF it made for those source categories or in the rulemakings promulgating the initial NSPS for those source categories. The EPA solicits comment specifically on whether the considerations noted above indicate that CAA section 111(b)(1)(A) should be interpreted to require a pollutant-specific SCF as a prerequisite for promulgating an NSPS for a pollutant that the EPA did not identify when it made the initial source-category SCF or promulgated the initial regulations for the source category. In addition, the EPA solicits comment on whether, if CAA section 111(b)(1)(A) is interpreted to be ambiguous as to

---

[77] *See* ''Final Guideline Document: Control of Sulfuric Acid Mist from Existing Sulfuric Acid Production Units,'' U.S. Environmental Protection Agency, EPA–450/2–77–0019 (September 1977) at 5–1; ''Control of TRS Emissions from Existing Mills,'' U.S. EPA, EPA–450/2–78–003b (March 1979) at 2–1; ''Primary Aluminum: Guidelines for Control of Flouride Emissions from Existing Primary Aluminum Plants,'' U.S. EPA, EPA–450/2–78–049b (December 1979) at 2–1. Similarly, in its rulemaking establishing the regulatory process for emissions from existing sources under CAA section 111(d), which preceded the development of these guideline documents, the EPA had stated: [S]ection 111(d) requires control of existing sources of a pollutant if a standard of performance is established for new sources under section 111(b) and the pollutant is not controlled under sections 108–110 or 112. In general, this means that control under section 111(d) is appropriate when the pollutant may cause or contribute to endangerment of public health or welfare but is not known to be ''hazardous'' within the meaning of section 112 and is not controlled under sections 108–110. . . .

''State Plans for the Control of Certain Pollutants from Existing Facilities,'' 40 FR 53340 (November 17, 1975) (emphasis added).

[78] In another EPA document issued some 18 months after promulgation of the first set of standards of performance (for five source categories) in December 1971, the EPA provided a summary of the second group of standards (for a further seven source categories) for which rulemaking had then been initiated. In providing at the outset of that document what it called a ''synopsis'' of CAA section 111, the EPA stated that the ''Section provides that, for purposes of establishing such standards, the Administrator may distinguish between types, sizes, and classes of sources; and that standards can be established *for any pollutant that contributes to the endangerment of health and welfare.*'' *See* Group II New Source Performance Standards, EPA Doc. 450S7001 (January 1973) (emphasis added).

whether it requires a pollutant-specific SCF, the EPA could decide that it needs to make the SCF and associated endangerment findings for pollutants that, like GHG, it did not address when it listed the source category or shortly thereafter, but that it does not need to make those findings for pollutants that it did address at that time. Furthermore, the EPA solicits comment on whether, in light of the fact that CAA section 111(b)(1)(A) explicitly phrases the requisite finding in terms of ''causes, or contributes *significantly* to, air pollution [that meets the endangerment criteria]'' (emphasis added), there is any basis for interpreting the provision to require the EPA to make only a ''cause or contribute'' finding, of the type required under, for example, CAA section 202(a).

B. Significant Contribution Finding in 2016 NSPS OOOOa Rule

The EPA also solicits comment on whether, assuming it is required to make a SCF for methane emissions from the Oil and Natural Gas source category as a prerequisite to promulgating an NSPS for methane, the SCF it made in the 2016 NSPS OOOOa rule was an appropriate methane-specific finding.[79] At the outset, it should be noted that that SCF concerned emissions from the production, processing, transmission, and storage segments of the oil and natural gas industry. 81 FR 35841–43. In this proposed rulemaking, the EPA proposes to eliminate the transmission and storage segment from the source category. Accordingly, the appropriate SCF for methane from this source category would be limited to methane emissions from production and processing sources. The EPA solicits comment on whether the SCF in the 2016 NSPS OOOOa rule can be considered appropriate in light of the fact that it was based on a greater amount of emissions than are in the source category as proposed in this rulemaking.

In addition, we solicit comment on the question whether the SCF in the 2016 NSPS OOOOa rule can be considered appropriate given that nowhere in the course of developing and promulgating that rule did the EPA set forth the standard by which the ''significance'' of the contribution of the methane emissions from the source category (as revised) was to be assessed.[80] Specifically, we ask for comment on whether, as a matter of law, under CAA section 111, the EPA is obligated to identify the standard by which it determines whether a source category's emissions ''contribute significantly,'' and whether, if not so obligated, the EPA nevertheless fails to engaged in reasoned decision-making by not identifying that standard. *Cf. Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.,* 463 U. S. 29, 43 (1983) (''Normally, an agency rule would be arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem.'').

C. Criteria for Making a Significant Contribution Finding Under CAA Section 111

The EPA also solicits comments on the appropriate criteria for it to use when determining whether a pollutant emitted from a source category significantly contributes to air pollution which may reasonably be anticipated to endanger in the context of CAA section 111. The EPA does not intend for these comments to inform the finalization of this rule, but rather to inform the EPA's actions in future rules. Furthermore, the EPA is not asking for comment on the factors the Agency should consider in determining whether air pollution may reasonably be anticipated to endanger public health or welfare, but rather the factors that should be considered when determining under CAA section 111 whether a pollutant from a source category significantly contributes to that air pollution.

In subsection 1 of this section, the EPA discusses other contexts under the CAA in which it has interpreted and applied similar language to that governing the SCF determinations under CAA section 111(b)(1)(A). In subsection 2, the EPA identifies and solicits comment on specific elements of criteria that might govern SCF determinations. In subsection 3 of this section, the EPA provides background information concerning methane and GHG emissions that may be relevant for application of those criteria to those particular pollutants.

1. Legal Background for Selection of Criteria for Significant Contribution Finding

The phrase ''contributes significantly'' and the included terms ''contributes'' and ''significantly'' are not defined in any provision of the CAA or in EPA regulations. Accordingly, the EPA has substantial discretion in interpreting these terms and should receive deference for a reasonable interpretation of the provision. The U.S. Supreme Court, in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014), recognized that a similar provision in CAA section 110(a)(2)(D)(i), often termed the ''good neighbor'' provision, is ambiguous and approved the EPA's interpretation.[81]

The good neighbor provision requires states to prohibit emissions ''in amounts which will contribute significantly to nonattainment'' of the NAAQS in any other state. For regional pollutants like ozone and fine PM, where downwind air quality problems are caused by the collective contribution of numerous upwind sources across multiple states, the EPA has considered a variety of factors when determining whether sources in a particular state will ''contribute significantly'' under this statutory provision. The EPA has typically first used an air quality threshold to identify upwind states that contribute to and are, therefore, ''linked'' to a downwind air quality problem. *See, e.g.,* Cross-State Air Pollution Rule (CSAPR), 76 FR 48208, 48236 (August 8, 2011) (upwind states with impacts in a downwind area that meet or exceed 1 percent of the 1997 ozone, 1997 p.m. with a diameter of 2.5 micrometers or less ($PM_{2.5}$), and 2006 $PM_{2.5}$ NAAQS are considered linked to downwind air quality problems); CSAPR Update, 81 FR 74504, 74518 (October 26, 2016) (applying threshold equivalent to 1 percent of the 2008 ozone NAAQS). The EPA has then used a multi-factor test considering both cost and air-quality factors to determine what portion of a linked state's contribution to an air quality problem,

[79] As noted in section VI.A. above, in the 2016 NSPS OOOOa rule, the air pollutant for which the EPA made the SCF was GHG, but because methane constitutes most of the GHG emitted from the Oil and Natural Gas source category, the EPA generally refers to methane as the subject of the SCF.

[80] In the 2016 NSPS OOOOa rule, the EPA averred that the ''collective GHG emissions from the oil and natural gas source category are significant, whether the comparison is domestic . . . global . . . , or when both the domestic and global GHG emissions comparisons are viewed in combination,'' basing its position on data showing that the source category accounts for 32 percent of United States methane emissions, 3.4 percent of total United States GHG emissions, and 0.5 percent of all global GHG emissions.'' *See* 81 FR 35840.

[81] In an earlier case concerning the good neighbor provision, the D.C. Circuit noted that the term ''significant'' is ambiguous and may be subject to different meanings in different contexts. *Michigan* v. *EPA,* 213 F.3d 663, 677 (D.C. Cir. 2000). The D.C. Circuit has also observed that the term ''contribute'' is ambiguous. *Catawba County, N.C.* v. *EPA,* 571 F3d 20, 38–39 (D.C. Cir. 2009). There, the Court interpreted the requirement under CAA section 107(d) that the EPA designate an area nonattainment if it does not meet the NAAQS or ''contributes to ambient air quality in a nearby area that does not meet'' the NAAQS. The Court concluded that the EPA has discretion in devising criteria or factors in determining the amount of emissions that it considers ''contribute.''

if any, is considered ''significant'' and, thus should be prohibited under the good neighbor provision. *See* CSAPR, 76 FR 48248–249; CSAPR Update, 81 FR 74519. In *EME Homer City Generation,* the Supreme Court affirmed the EPA's approach of apportioning emission reduction responsibility based on which states can eliminate emissions most cost-effectively. 572 U.S. at 519 (explaining that ''[e]liminating those amounts that can cost-effectively be reduced is an efficient and equitable solution to the allocation problem the Good Neighbor Provision compels the Agency to address.'').[82]

The EPA has also considered the meaning of ''contributes significantly'' as it appears in CAA section 189(e). This provision requires that the control requirements applicable to major stationary sources of PM with a diameter of 10 micrometers or less (PM_{10}) also apply to major stationary sources of PM_{10} precursors, ''except where the Administrator determines that such sources [of precursors] do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' Consistent with the D.C. Circuit's decision in *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), this provision also applies to the regulation of sources of $PM_{2.5}$ precursors in designated $PM_{2.5}$ nonattainment areas.

The EPA has interpreted and applied CAA section 189(e) in its recent $PM_{2.5}$-state implementation plan (SIP) regulations, ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements; Final Rule,'' 81 FR 58010 (August 24, 2016) ($PM_{2.5}$ SIP Requirements Rule); and provided additional information in a recent draft guidance document. U.S. EPA, Office of Air Quality Planning and Standards, ''$PM_{2.5}$ Precursor Demonstration Guidance,'' EPA–454/R–19–004 (May 2019) ($PM_{2.5}$ Precursor Guidance). The EPA noted that, although the phrase ''contribute significantly'' and its included terms, ''contribute'' and ''significantly,'' are ambiguous, Congress has provided some direction regarding the degree of contribution required by modifying the term ''contribute'' with the term ''significantly.'' This indicates that Congress intended that, in order to be subject to regulation, the emissions must have a greater impact than a simple contribution not characterized as ''significant[ ].'' However, Congress did not quantify how much greater. Therefore, the EPA developed criteria for identifying whether the impact of a particular precursor would ''contribute significantly'' to a NAAQS exceedance. *Id.* at 10–13. First, the EPA identified concentration values, based on the amount of observed variability of ambient air quality levels, which would be used to determine whether a precursor ''contributes'' in a state's analysis. The EPA specified numerical thresholds for the annual $PM_{2.5}$ NAAQS (0.2 microgram per cubic meter ($\mu g/m^3$)) and 24-hour $PM_{2.5}$ NAAQS (1.5 $\mu g/m^3$), so that any impact less than those amounts is considered insignificant. *Id.* at 17.

However, the EPA added that if the estimated air quality impact of precursor emissions exceeds the applicable threshold, that does not necessarily mean that the precursors' contribution to those levels is ''significant[ ].'' Rather, ''the significance of a precursor's contribution is to be determined 'based on the facts and circumstances of the area.''' *Id.* at 18, (quotation is found in 40 CFR 51.1006(a) (various provisions) (the $PM_{2.5}$ SIP Requirements Rule). The guidance goes on to list factors that may be relevant, including among others, the amount by which a precursor's impact exceeds the recommended contribution threshold, the sources of $PM_{2.5,}$ trends in precursor emissions, and the extent of the $PM_{2.5}$ air pollution problem in a particular area. $PM_{2.5}$ Precursor Guidance at 18.

In addition, we note that the EPA has previously made significance determinations in the context of section 213 of the CAA, related to certain stages of decisions regarding regulation of new nonroad engines and vehicles. CAA section 213 is the only provision of the CAA, apart from CAA section 111(b)(1), where Congress employed the modifier ''significantly'' in connection with language directing the Administrator to determine if air pollutant emissions from new *and existing* (in the case of emissions of CO, $NO_{X,}$ and VOCs) nonroad engines and vehicles in the aggregate ''contribute'' to ''air pollution which may reasonably be anticipated to endanger public health or welfare,'' in CAA sections 213(a)(1), (2) and (4), before then directing and authorizing the EPA to promulgate standards applicable to classes and categories of just *new* nonroad engines and vehicles that emit pollutants contributing (without employing a ''significance'' modifier) to such air pollution under CAA sections 213(a)(3) and (4). When the EPA first undertook rulemaking as directed by CAA section 213, it noted that ''[s]ection 213(a) . . . provides no guidance as to what constitutes a 'significant' contribution.'' *See* 58 FR 28811 (May 17, 1993). Thus, the EPA looked to ''the legislative history and the scope of the [1990 CAA Amendments], the emission contribution of nonroad engines and vehicles, and a comparison of nonroad emissions to emissions from other regulated sources'' in proposing to find that emissions from nonroad sources were indeed ''significant.'' *Id.*

In taking final action to promulgate the initial set of new nonroad engine and vehicle standards, the EPA responded to commenters who had ''argued that EPA cannot make a significance determination without first defining a standard upon which to base that determination.'' *See* 59 FR 31308 (June 17, 1994). The EPA did not disavow the need to justify a finding that contributions were significant, but it did object to the commenters' apparent assertion that a ''*specific numerical standard* for significance must be determined prior to considering whether nonroad emissions are significant.'' *Id.* (emphasis added). The EPA noted that Congress in CAA section 213 ''gave EPA wide discretion to determine whether the emissions of $NO_{X,}$ VOC, and CO from nonroad engines and vehicles are significant contributors to ozone or CO concentrations,'' and then pointed to the qualitative assessment the EPA had made based on the criteria it had identified in the proposed rule. *Id.*

Based on the reasoning of the caselaw described above and consistent with the EPA's approach for similar CAA provisions, the EPA believes that ''contributes significantly'' under CAA section 111(b)(1)(A) is ambiguous, but that Congress has made clear that in order to be subject to regulation, the emissions must have a greater impact than a simple contribution. It is within the Agency's discretion to identify additional qualitative or quantitative criteria or factors—ones that are related to the nature of the air pollutant, the source category, and the air pollution problem at issue—to determine whether a contribution is ''significant,'' as long as the Agency provides a reasoned basis to justify using such additional criteria or factors.[83] The EPA solicits comment on whether the examples discussed above, in which the EPA has construed

[82] The good neighbor provision also instructs states to prohibit emissions which will ''interfere with maintenance'' of the NAAQS in downwind states, and the Supreme Court affirmed that this provision ''entails a delegation of administrative authority of the same character as'' the ''contribute significantly'' clause. *EME Homer City Generation,* 572 U.S. at 515 n.18. The EPA has, therefore, used the same two-step approach to identifying and apportioning emission reduction responsibility among upwind states linked to downwind areas that struggle to maintain the NAAQS.

[83] *See* $PM_{2.5}$ Precursor Guidance at 12.

and applied statutory language similar to the term ''contributes significantly'' in CAA section 111(b)(1)(A), [84] suggest factors that it may be appropriate for the EPA to consider when construing and applying that term in the context of CAA section 111, including, but not limited to, whether the consideration of cost-effectiveness in the interstate transport context may suggest that the EPA should or has discretion to consider whether CAA section 111(b) provides a cost-effective basis to assess a source category's contribution to a particular air-pollution problem as part of the EPA's determination whether that source category significantly contributes to that air pollution problem.

2. Elements of Criteria for Significant Contribution Finding Under CAA Section 111

First, the EPA solicits comment on what information the Agency should consider when quantifying the emissions of the pollutant in question from the source category. In section VI.C.3, we detail the historical, current, and projected methane emissions from various source categories. To what extent should the SCF rely primarily on the most recent emission inventories, and to what extent should historical trends and future projections inform the Administrator's finding? For example, consider the case of minimal current day emissions, but projections of rapid emission growth; or, conversely, substantial current emissions, but projections of a rapid decline in emissions even in the absence of new rulemakings. In turn, should the SCF evaluate the significant contribution of new sources potentially subject to regulation under CAA section 111(b) as well as existing sources potentially subject to subsequent regulation under CAA section 111(d)? [85] Similarly, for a source category in which new sources are not expected in the future, should the Administrator independently evaluate significant contribution from existing sources? Finally, in the case of the 2016 NSPS OOOOa rule, should the EPA consider only methane emissions or also account for CO_2 emissions and any other GHG that may be emitted from the source category?

Second, the EPA is soliciting comment on the total universe of emissions to which the emission of the pollutant in question from the source category in question should be compared. If the source category emits primarily a single gas (*e.g.,* methane), should the emissions from that source category be compared against methane emissions (*see* Table 7, column 3 of this preamble) or against all GHG emissions (*see* Table 7, column 4 of this preamble)? How should natural emissions be considered in this comparison (*see* VI.C.3.a.i of this preamble)? Should the comparison be to domestic emissions (*see* Table 7 of this preamble) or to global emissions (*see* Table 8 of this preamble)? Or should multiple comparisons be made, as in VI.C.3 of this preamble? In making a SCF, should the Administrator evaluate the efficacy of regulation for new and/or existing sources? The EPA also welcomes comment on appropriate and well-vetted sources to use for domestic, global, and natural emissions.

Third, the EPA is soliciting comment on whether the Administrator should determine a threshold for significant contribution under CAA section 111(b)(1)(A) (above which, the emissions of the pollutant from the source category would be determined to significantly contribute, and below which, they would not), and which factors the Administrator should consider in determining that threshold. Is there a simple percentage criterion that holds across pollutants and source categories (*i.e.,* a source category responsible for X percent of any pollutant is deemed to ''significantly contribute'' to the air pollution caused by that pollutant), or would it depend on, for example, the number of source categories that emit that pollutant (and the relative emissions from the source category whose emissions are the subject of the SCF determination in question, as compared to emissions from those other source categories); the nature of the pollutant; and/or the nature of the air pollution to which that pollutant may contribute (*i.e.,* should the EPA address the question whether emissions of criteria and other traditional air pollutants, which cause air pollution primarily due to direct exposure, ambient regional concentration, and/or intermediate-range transport, ''significantly contribute'' to air pollution in a different manner than it should address the question whether emissions of GHG ''significantly contribute'' to climate change)?

Finally, the EPA is soliciting comment on the implications of the fact that methane in the atmosphere serves as a precursor to tropospheric ozone, as noted in previous EPA rules (*see* 81 FR 35837). Are there legal implications resulting from this contribution of methane to a criteria pollutant? For example, as discussed above, the EPA is proposing that the regulation of VOC from new sources under CAA section 111(a) does not trigger the application of CAA section 111(d) to existing sources in the same source category because VOC are a precursor to tropospheric ozone.[86] Does the fact that methane is also a precursor to ozone indicate that regulation of methane from new sources under CAA section 111(b) would not trigger the application of CAA section 111(d) to existing sources in the same source category for the same reason? If EPA is precluded from regulating existing sources of a pollutant under CAA section 111(d), should that factor be evaluated in a SCF? What considerations are relevant for pollutants that contribute to multiple different kinds of pollution (methane as both a GHG and an ozone precursor, CO_2 as both a GHG and a contributor to ocean acidification, NO_X as a precursor to both $PM_{2.5}$ and ozone)? In this regard, the EPA notes that the definition of ''air pollutant'' at CAA section 302(g) provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.''

The Agency welcomes comments on any and all aspects of these questions.

3. Background Concerning Methane and GHG Emissions

a. Methane Emissions

i. Natural and anthropogenic emissions of methane. Methane is emitted from a variety of natural and anthropogenic sources and activities. Globally, it is estimated that around 60 percent of methane emissions are from anthropogenic activities, and 40 percent are from natural activities (Saunois et al., 2016). Anthropogenic sources include natural gas and petroleum systems, enteric fermentation, solid waste disposal, coal mining, and other sources. Natural sources include wetlands, natural biomass burning, geologic seepage, termites, oceans, and permafrost.

In a 2018 report, the National Academy of Sciences noted a number of complex factors related to methane that

[84] In this solicitation of comment, the EPA is not soliciting comment on, or re-opening, any aspect of the rulemakings that contained those examples.

[85] To date, the EPA has evaluated the emissions from the source category, which includes existing sources, in making the SCF determination, and the D.C. Circuit has upheld that industry-wide approach. *See Nat'l Lime Ass'n* v. *EPA,* 627 F.2d 416, 433 n.48 (D.C. Cir. 1980); *Nat'l Asphalt Pavement Ass'n* v. *Train,* 539 F.2d 775, 779–82 (D.C. Cir. 1976).

[86] It is worth noting that while EPA has excluded methane and some related pollutants from the definition of VOC, methane is chemically a VOC.

may be relevant to a pollutant-specific SCF for domestic oil and natural gas production, processing, transmission, or storage:

Methane comes from numerous anthropogenic activities and natural processes (Figure 1.3), and notably, there is no single dominant source, but rather many significant sources. This configuration of sources forces a broader view of emissions for this gas, as opposed to many other significant GHGs whose anthropogenic sources tend to be dominated by a single source type such as from the combustion of fossil fuel.

The U.S. methane budget (emissions and removal processes) cannot be considered in isolation from the global methane budget because U.S. emissions account for only about one-tenth of global emissions. Consequently, atmospheric methane abundance over the United States is significantly influenced by sources located outside of the United States, even though there may be large responses due to strong local emissions. The atmospheric residence time for methane is about a decade; hence emitted methane is redistributed globally, and methane emissions from the United States influence global concentrations.

About 60 percent of total global methane emissions are thought to be from anthropogenic sources and about 40 percent from natural sources (Saunois et al., 2016). Anthropogenic sources encompass a wide range of human activities, including food and energy production and waste disposal. Livestock (through fermentation processes in their digestive system that generate methane and manure management), rice cultivation, landfills, and sewage account for 55–57 percent of global anthropogenic emissions. Emissions from production of fossil fuels, including petroleum, natural gas, and coal, are estimated to account for 32–34 percent (Saunois et al., 2016), with the remainder from biomass, biofuel burning, and minor industrial processes.[87]

Global atmospheric methane concentrations have increased by about 164 percent since 1750, from a pre-industrial value of about 700 parts per billion (ppb) to 1,849 ppb in 2017 (National Oceanic and Atmospheric Administration (NOAA)/Earth System Research Laboratory (ESRL), 2018).

In section III.A.2.a, Table 2 presents total U.S. anthropogenic methane emissions for the years 1990, 2008, and 2017. In the U.S., the largest anthropogenic sources of methane are natural gas and petroleum systems, enteric fermentation, and landfills. Methane emissions are 10 percent of total U.S. GHG emissions in CO_2 equivelent. Methane emissions have decreased by 15 percent since 1990, and by 7 percent since 2008. Table 3 above presents total methane emissions from natural gas and petroleum systems, and the associated segments of the sector, for years 1990, 2008, and 2017, in MMT CO_2 Eq.

ii. Trends. As seen in Figure 1, methane emissions from the oil and natural gas production, natural gas processing, and natural gas transmission and storage segments together decreased by 2 percent between 2008 and 2017. Methane emissions from the production and processing segments together decreased by 3 percent over the same time period, while methane emissions from transmission and storage increased by 1 percent. These trends also took place during periods of substantial increases in oil and natural gas production.

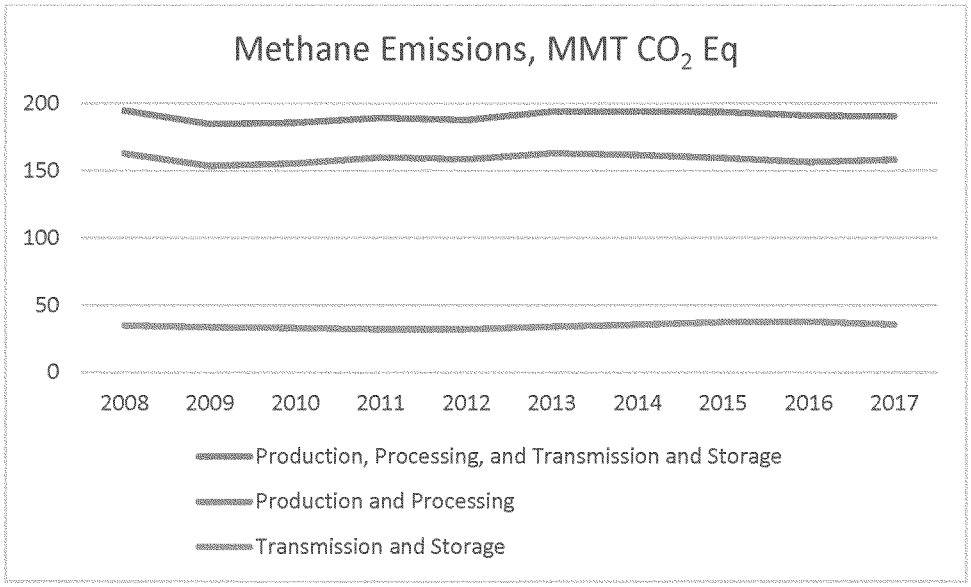


FIGURE 1. METHANE EMISSIONS FROM THE INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 2008-2017 (PUBLISHED APRIL 11, 2019)

Oil and natural gas production segment trends are impacted by decreases in oil and natural gas exploration emissions (91 percent from 2008 to 2017), primarily due to decreases in hydraulically fractured well completions without RECs and a decrease in the number of well completions. Production emissions outside of the exploration subcategory increased by 8 percent over the time frame, primarily due to increased emissions from gathering and boosting stations. In the processing segment, emissions increased by 9 percent over

[87] Improving Characterization of Anthropogenic Methane Emissions in the United States (2018), *https://www.nap.edu/read/24987/chapter/3#26*.

the time period, due primarily to an increase in emissions from compressor engine exhaust, caused by an increase in engine capacity per plant. Over the same time frame, oil production increased 35 percent and natural gas production increased 87 percent.

The increase in methane emissions in the transmission and storage segment from 2008–2017 was driven by an increase in emissions from compressor engine exhaust and station venting. Over the same time frame, natural gas consumption increased by 16 percent.

iii. Projections. According to the latest Energy Information Administration (EIA) Annual Energy Outlook report,[88] from 2017 to 2050, dry natural gas and crude oil and lease condensate production (which impact the production and processing segments emissions) are projected to increase by 60 percent and 26 percent, respectively, while natural gas consumption (which impacts transmission and storage emissions) is projected to grow by 29 percent.

b. U.S. oil and natural gas production and natural gas processing and transmission and storage GHG emissions relative to total U.S. GHG emissions.[89] Relying on data from the U.S. GHGI, we compared U.S.: (1) Oil and natural gas production and natural gas processing and transmission GHG emissions, (2) oil and natural gas processing GHG emissions; and (3) transmission and storage GHG emissions to total U.S. GHG emissions as an indication of the role these segments play in the total domestic contribution to the air pollution that is causing climate change. In 2017, total U.S. GHG emissions from all sources were 6,472 MMT CO_2 Eq.

TABLE 7—COMPARISONS OF U.S. OIL AND NATURAL GAS EMISSIONS TO TOTAL UNITED STATES GHG EMISSIONS

	2017 CH_4 emissions (MMT CO_2 eq)	Share of total U.S. CH_4 (%)	Share of total U.S. GHG (%)
U.S. Oil & Gas Production and Natural Gas Processing & Transmission and Storage	190	29	3
U.S. Oil & Gas Production and Natural Gas Processing	158	24	2
U.S. Gas Transmission and Storage	32	5	1

Emissions from the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2017 (published April 11, 2019), calculated using methane (CH_4) GWP of 25.

c. U.S. oil and natural gas production and natural gas processing and transmission and storage GHG emissions relative to total global GHG emissions. For additional background information and context, we used 2014 emissions data from the World Resources Institute (WRI) to make comparisons between U.S. oil and natural gas production and natural gas processing and transmission and storage (and subsets thereof) emissions and the emissions inventories of entire countries and regions.

TABLE 8—COMPARISONS OF UNITED STATES OIL AND NATURAL GAS EMISSIONS TO TOTAL GLOBAL GHG EMISSIONS

	2014 CH_4 emissions (MMT CO_2 eq)	Share of global CH_4 (%)	Share of global GHG (%)
U.S. Oil & Gas Production and Natural Gas Processing & Transmission and Storage	194	2.1	0.4
U.S. Oil & Gas Production and Natural Gas Processing	162	1.8	0.3
U.S. Gas Transmission and Storage	32	0.4	0.1

Emissions from the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2017 (published April 11, 2019), calculated using CH_4GWP of 25.

Note: Totals may not sum due to rounding.

Recent trends in global GHG emissions suggest that the proportion of U.S. methane emissions, including emissions from oil and natural gas production, processing, transmission, and storage, is likely to represent a smaller share in the future.

VII. Implications for Regulation of Existing Sources

The EPA recognizes that by rescinding the applicability of the NSPS, issued under CAA section 111(b), to methane emissions for the sources in the Crude Oil and Natural Gas Production source category that are currently covered by the NSPS, existing sources of the same type in the source category will not be subject to regulation under CAA section 111(d). The EPA discusses the implications of this and other relevant issues below. In subsection A below, we explain our legal interpretation of CAA section 111(d)(1) and propose that promulgating an NSPS for VOC emissions from new sources in the Crude Oil and Natural Gas Production source category under CAA section 111(b) does not trigger the application of CAA section 111(d) existing sources in the source category. In subsection B below, we explain why the lack of regulation of existing sources under CAA section 111(d) will not mean a substantial amount of lost emission reductions. That is because we expect that many existing sources will retire or become subject to regulation under CAA section 111(b) because they will undertake modification or reconstruction. In addition, existing sources already have market incentives to reduce methane emissions, participate in voluntary programs to do so, and in many cases are subject to state requirements to do so.

[88] *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=1-AEO2019&cases=ref2019&sourcekey=0.* Reference scenario. Accessed April 12, 2019.

[89] The U.S. and global figures in this subsection refer to anthropogenic emissions.

A. Existing Source Regulation Under CAA Section 111(d)

CAA section 111(d) authorizes the regulation of existing sources in a source category for particular air pollutants to which a standard of performance would apply if those existing sources were new sources. By legal operation of the terms of CAA section 111(d), certain existing sources in the Crude Oil and Natural Gas Production source category will no longer be subject to regulation under CAA section 111(d) as a result of this proposed rule. Under CAA section 111(d)(1)(A), CAA section 111(d) applies only to air pollutants for which air quality criteria have not been issued, which are not on the EPA's list of air pollutants issued under CAA section 108(a) (generally, the list of air pollutants subject to the NAAQS, and which are not HAP emitted from a source category regulated under CAA section 112. *See* 42 U.S.C. 7411(d)(1)(A) (CAA section 111(d) applies to ''any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title''). As noted above, sources in the Crude Oil and Natural Gas Production source category emit VOC, methane, and HAP. The CAA section 112 exclusion in CAA section 111(d)(1)(A) eliminates HAP from the type of air pollutant that, if subjected to a standard of performance for new sources, would trigger the application of CAA section 111(d). In addition, as discussed below, the EPA proposes that VOC do not qualify as the type of air pollutant that, if subjected to a standard of performance for new sources, would trigger the application of CAA section 111(d). On the other hand, the EPA has, to date, assumed that methane, if subjected to a standard of performance for new sources, would trigger the application of CAA section 111(d). Accordingly, given this assumption, the EPA recognizes that rescinding the applicability of the NSPS to methane emissions for the sources in the Crude Oil and Natural Gas Production source category that are currently covered by the NSPS will mean that existing sources of the same type in the source category will not be subject to regulation under CAA section 111(d). This is a legal consequence that results from the application of the CAA section 111 requirements.

Further, VOC do not qualify as the type of air pollutant that, if subjected to a standard of performance for new sources, would trigger the application of CAA section 111(d). As noted above, the pollutants excluded from regulation under CAA section 111(d) include pollutants which have been included on the EPA's CAA section 108(a) list. VOC are not expressly listed on the EPA's section CAA section 108(a) list, but they are precursors to ozone and PM, both of which are listed CAA section 108(a) pollutants. The definition of ''air pollutant'' in CAA section 302(g) expressly provides that the term ''air pollutant'' includes precursors to the formation of an air pollutant ''to the extent that the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' Based on this ''particular purpose'' phrasing, it is appropriate to identify VOC as a listed CAA section 108(a) pollutant for the particular purpose of applying the CAA section 108(a) exclusion in CAA section 111(d) for the following reasons: first, VOC are regulated under the CAA's NAAQS/SIP program as a result of the listing of ozone and PM on the CAA section 108(a) list, because VOC are precursors to those two listed pollutants. Indeed, ozone levels in the ambient air are the result of photochemical reactions of precursors (VOC and NOX), as opposed to being directly emitted from sources. Accordingly, the statutory provisions directed at attaining the NAAQS for ozone explicitly direct the control of VOC and emissions controls that result from the listing of ozone under CAA section 108(a) apply to the precursors of ozone, such a VOC. *See, e.g.,* CAA sections 182(b)(1), 182(b)(2), 182(c)(2)(B). Similarly, the EPA has recognized that ''[i]n most areas of the country, $PM_{2.5}$ precursors are major contributors to ambient $PM_{2.5}$ concentrations.'' 73 FR 28321, 28325/2 (May 16, 2008). In such areas of the country, VOC are, thus, controlled for purposes of reducing ambient $PM_{2.5}$ concentrations. *See, e.g.,* U.S. EPA, Office of Air Quality Planing and Standards, ''Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program,'' April 17, 2018.

Second, excluding VOC from regulation under CAA section 111(d) makes sense within the CAA's three-part structure for addressing emissions from stationary sources. As the EPA has discussed in past rulemakings, the CAA—sets out a comprehensive scheme for air pollution control, addressing three general categories of pollutants emitted from stationary sources: (1) Criteria pollutants (which are addressed in CAA sections 108–110); (2) hazardous pollutants (which are addressed under CAA section 112); and (3) ''pollutants that are (or may be) harmful to public health or welfare but are not or cannot be controlled under sections 108–110 or 112.'' ''Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units: Final Rule,'' 80 FR 64661, 64711 (October 23, 2015) (quoting 40 FR 53340 (November 17, 1975)). Within this three-part structure, CAA section 111(d) is properly understood as a ''gap-filling'' measure to address pollutants that are not addressed under either the NAAQS/SIP provisions in CAA sections 108–110 or the HAP provisions in CAA section 112. Because VOC are regulated as precursors to ozone and $PM_{2.5}$ under CAA sections 108–110, they are properly excluded from regulation under CAA section 111(d) because the ''gap-filling'' function of CAA section 111(d) is not needed.

Third, reading the phrase ''included on a list published under [CAA section 108(a)]'' as including precursors is consistent with the provision in CAA section 112(b)(2) that restricts what pollutants may be listed as CAA section 112 HAP. CAA section 112(b)(2) provides, in pertinent part:

> No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants listed under such section.

The ''except'' phrasing of this sentence suggests that air pollutants which are ''listed under section 7408(a)'' can be read to include precursors to the pollutant that is listed under CAA section 108(a). Otherwise, pollutants that are described in the second part of the sentence (pollutants that meet the listing criteria and are precursors to a CAA section 108(a) pollutant) would not be an exception to the prohibition in the first part of the sentence.

Finally, the fact that precursors are not always treated as CAA section 108(a) listed pollutants under all contexts across the CAA does not undermine the conclusion that they should be excluded under the CAA section 108(a) exclusion in CAA section 111(d). As the CAA section 302(g) definition expressly states, the scope of ''air pollutant'' is considered based on the ''particular purpose'' for which the term ''air pollutant'' is used. The EPA

has long recognized that the ''particular purpose'' clause in CAA section 302(g) ''indicates that the Administrator has discretion to identify which pollutants should be classified as precursors for particular regulatory purposes.'' 73 FR 28326/1 (May 16, 2008) (''Thus, we do not necessarily construe the Act to require that the EPA identify a particular precursor as an air pollutant for all regulatory purposes where it can be demonstrated that various programs under the Act address different aspects of the air pollutant problem. Likewise, we do not interpret the Act to require that the EPA treat all precursors of a particular pollutant the same under any one program when there is a basis to distinguish between such precursors within that program.'').

B. Limited Impact of Lack of Regulation of Existing Oil and Gas Sources Under CAA Section 111(d)

In this subsection, we explain the several reasons why the lack of regulation of existing sources under CAA section 111(d) will have limited environment impact.

1. Potential Applicability of 40 CFR Part 60, Subpart OOOOa to Current Existing Sources

The EPA notes that the 2016 NSPS OOOOa rule includes a definition and approach to determining new source applicability that is very broad, and in the specific context of the oil and natural gas production industry, can be anticipated to result in wide applicability of the NSPS to existing sources due to the frequency with which such sources can be reasonably expected to engage in ''modification'' activity. One consequence is the expected reduction of methane emissions from existing sources notwithstanding the proposed alternative actions set forth here. Further, the EPA believes that it is reasonable to expect that the number of existing sources may decline over time due to obsolescence or to shut down and removal actions, which would mitigate the environmental impacts of lack of direct existing source regulation under CAA section 111(d), and as noted below, the EPA is soliciting comment to determine the rate at which this decline can be expected to occur.

The EPA is in the process of examining the rate of turnover of existing facilities, including the rate at which existing facilities are replaced with new facilities, are modified, or shut down. The EPA has reviewed indirect turnover information from three different sources. First, the EPA assessed the GHGI to identify the activity counts for pneumatic controllers, compressors, tank throughput, and well completions.[90] Second, the EPA reviewed activity counts from DrillingInfo for well completions.[91] Third, the EPA reviewed a number of compliance reports for the approximate first reported compliance year since the promulgation of the 2016 NSPS OOOOa rule. The EPA determined that the available information may be indicative of trends for some sources whereas, for other sources, no conclusions can yet be drawn. The following section presents the information available to the EPA from which it appears possible to identify trends. We solicit information and data to help evaluate the rate at which existing sources decline over time, through modification, obsolescence, shutdown, replacement to new source status or otherwise. Specifically, we are requesting information regarding affected facility useful life in hours or years (*i.e.,* expected years of operation before replacement) and affected facilities that commenced new construction, modification, or reconstruction over a time period (*e.g.,* 2016, 2017, and 2018). The following paragraphs present the information currently available to the EPA by source.

a. Pneumatic controllers. The count of high-bleed pneumatic controllers in the oil and natural gas production segment declined 74 percent from 2011 to 2017. The count of low-bleed pneumatic controllers also declined (by 41 percent), while intermittent-bleed increased (by 52 percent). Over the same period, the overall count of pneumatic controllers in this segment decreased by 3 percent. This indicates that high-bleed and low-bleed controllers have been replaced by intermittent bleed controllers. The rapid pace at which high- and low-bleed controllers declined while intermittent-bleed controllers increased suggests that pneumatic controllers had a high rate of turnover or were replaced before the end of their useful life. This data shows a relatively small number of remaining existing high-bleed pneumatic controllers relative to a few years ago. The EPA solicits data and information on the turnover rate of pneumatic controllers.

b. Compressors. The count of wet seal centrifugal compressors at processing plants was 343 in both 2011 and 2017.[92] The EPA expects the dry seal control option to be the most common control strategy due to its low cost. For comparison, the number of dry seal compressors at processing plants changed from 281 to 339 (or 21 percent), an increase of 58. At the same time the number of processing plants increased by 61. The EPA solicits data and information on the turnover rate of wet seal centrifugal compressors.

c. Storage vessels. Natural gas production throughput at large condensate storage vessels without controls decreased by 33 percent from 2011 to 2017. The growth is slower than the growth in natural gas production throughput of all other types of condensate storage vessels (large tanks with flares and vapor recovery units (VRU), and small tanks with and without flares), which was 41 percent. Oil production throughput at large storage vessels without controls increased by 18 percent from 2011 to 2017. The growth is slower than the growth in oil production throughput of all other types of storage vessels (large tanks with flares and VRUs, and small tanks with and without flares), which was 92 percent. In general, if many existing storage vessels were being replaced, becoming subject to 2016 NSPS OOOOa and then installing controls, we may expect production throughput at large uncontrolled storage tanks to decline, with corresponding increases at controlled tanks. The EPA solicits data and information on storage vessel production throughput and the turnover rate of affected facilities.

d. Well completions. Based on the GHGI, the ratio of natural gas well completions to total producing natural gas wells from 2011 to 2017 has decreased, from 2.4 to 1.1 percent. The ratio of oil well completions to total producing oil wells has remained at approximately 3 percent from 2011 to 2017. If wells had a relatively short

[90] The GHGI includes national estimates of various types of activity data, some of which correspond approximately to the 2016 NSPS OOOOa facility categories. The EPA looked at the change in facilities between 2011 and 2017 in order to isolate the effect of the 2012 NSPS OOOO rule to understand turnover of affected facilities. The EPA recognizes uncertainty in this use of data from the GHGI and the EPA will need additional information to assess the identified data gaps for purposes of identifying trends.

[91] The DrillingInfo database includes information on oil and natural gas wells, production, well completions, and associated data. This is relevant to potential turnover for purposes of well completion and fugitive emissions requirements. DrillingInfo records show the extent to which currently producing wells have had a completion in recent years, or the ratio of completions to total producing wells. The EPA recognizes uncertainty in data from this source and will need additional information to assess the identified data gaps for purposes of identifying trends.

[92] New or modified wet seal centrifugal compressors are subject to control requirement under NSPS OOOO and OOOOa while dry seal centrifugal compressors are not.

production lifetime, we would expect a high ratio of completions to total producing wells. The 2 percent ratio indicates that a relatively small number of wells are completed each year. Based on a preliminary analysis of the DrillingInfo database, approximately one-third of total producing oil and gas wells in 2014 had a completion in the prior 10 years, while two-thirds of producing oil and gas wells had no completion records for at least 10 years. If the EPA assumes that future completion activity follows these trends, then after 2016 NSPS OOOOa well site fugitive requirements have been in place for 10 years (2016 through 2025), we might expect completions at about one-third of wells (from the perspective of having had a completion after the effective date of the 2016 NSPS OOOOa). The EPA solicits data and information regarding the proportion of wells that have undergone a completion during a shorter time period (*e.g.,* less than 10 years) and that would imply that most well sites are subject to 2016 NSPS OOOOa. The EPA solicits comment on how we should characterize wells sharing well sites (*e.g.,* if only half of wells have had a recent completion, it would be possible for half the wells to not be subject to 2016 NSPS OOOOa, or potentially all wells could be subject to 2016 NSPS OOOOa, if wells without a recent completion always share a well site with newer wells).

e. Compliance reports. The EPA reviewed all NSPS OOOOa compliance reports that had been submitted to the Agency through November 21, 2017, in order to identify information to use to develop a rate at which existing facilities become new or modified.[93] Information in these compliance reports indicates the number of various types of facilities subject to the NSPS during the given time range. The reports included 2,991 well sites, encompassing 697 storage vessels, five pneumatic controllers, 663 pneumatic pumps, and 2,091 instances of fugitive emissions monitoring. 130 compressor stations were included in the reports, encompassing 148 reciprocating compressors and 94 instances of fugitive emissions monitoring. In addition, 38 natural gas processing plants were included, encompassing one pneumatic controller and 32 reciprocating compressors. The reports included both new and existing facilities, which we can disaggregate in part by subtracting our previous estimates of the number of ''new'' facilities from these counts which include both new and modified. A high rate of turnover (*e.g.,* a high rate of facilities performing modification(s) which caused them to become subject to the 2016 NSPS OOOOa) would imply that a large number of facilities should be submitting compliance reports. Thus, the general proportions of the number of facilities in the compliance reports versus the total population indicates how quickly facilities became subject to the NSPS during this period. Due to various uncertainties, we are unable to develop a rate at which existing sources become subject to the NSPS OOOOa. The EPA solicits comment on ways to use this information to predict turnover trends.

The EPA has also considered multiple factors unrelated to federal regulatory requirements that achieve methane emissions reductions. First, market incentives exist for the oil and natural gas industry to capture as much of its primary product as is cost effective, and that capture reduces methane emissions. Second, firms in the oil and natural gas industry participate in several voluntary programs to reduce emissions. Third, many of the top oil and natural gas-producing states have developed or are developing regulations that require emissions reductions. We believe these factors also should be considered for the universe of existing facilities and that they point away from any need to regulate existing sources under CAA section 111(d). The EPA presents below background information and data on each of these factors.

2. Market Incentives

As methane is the primary constituent of natural gas, an important commodity, operators have market incentives to reduce emissions and the loss of valuable product to the atmosphere. Absent regulation, the incentive to maximize the capture of natural gas is the market price obtained by the operator producing the natural gas. Assuming financially rational-acting producers, standard economic theory suggests that oil and natural gas operators will incorporate all cost-effective production improvements of which they are aware without government intervention. Depending on the future trajectories of natural gas prices and the costs of natural gas capture, these market incentives speak to the question of whether, even in the absence of specific regulatory requirements applicable to methane emissions from existing sources, meaningful emission decreases can nevertheless be projected to occur.

As shown in Figure 2 below, as technology, expertise, infrastructure, and regulation in the oil and natural gas industry has improved, less natural gas has been lost to unproductive uses such as venting and flaring. Figure 2 shows how the gross withdrawals[94] of natural gas has generally increased in the U.S. over the past 80 years while the fraction of this withdrawn natural gas lost to venting and flaring has generally been decreasing over the same time frame.

[93] These reports have since been made available for public viewing at *https://www.foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=EPA-HQ-2018-001886&type=request.*

[94] U.S. EIA defines gross withdrawals of natural gas as ''[f]ull well-stream volume, including all-natural gas plant liquids and all nonhydrocarbon gases, but excluding lease condensate. Also includes amounts delivered as royalty payments or consumed in field operations.'' Available at: *https://www.eia.gov/dnav/ng/TblDefs/ng_sum_sndm_tbldef2.asp.* Accessed October 30, 2018.

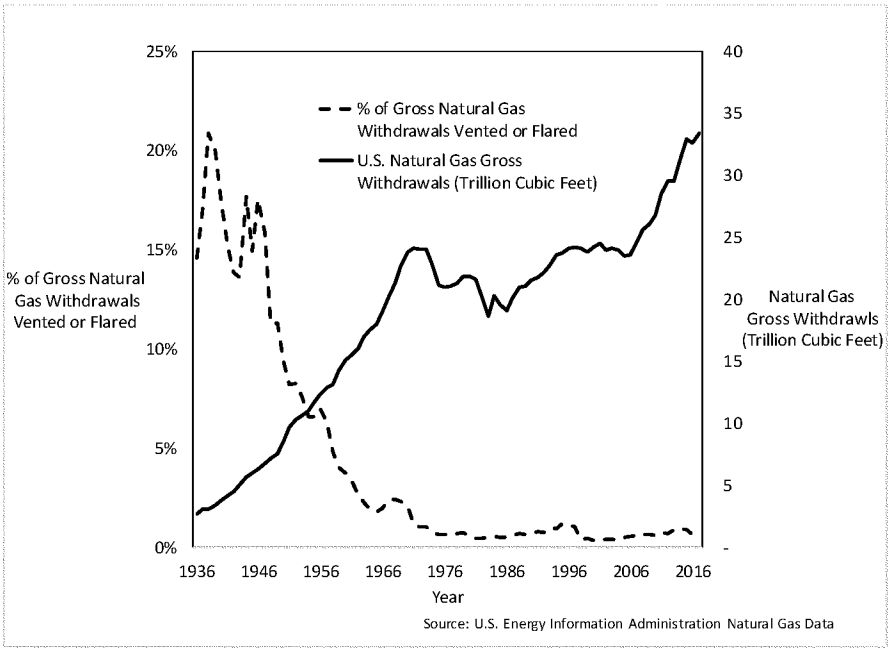


FIGURE 2. VENTED AND FLARED NATURAL GAS COMPARED TO GROSS NATURAL GAS WITHDRAWLS VENTED IN THE U.S., 1936-2017[95]

In 2004, the Government Accountability Office (GAO) noted that the venting and flaring data collected by the U.S. EIA was limited in several ways, including that the data is voluntarily and inconsistently reported.[96] With that caveat in mind, while this figure does not depict a precise relationship between natural gas production and methane emissions, the figure highlights the point that the productive inefficiency of losing natural gas to venting and flaring has been reduced greatly over this long period of time, likely the product of operators learning to improve returns on costly drilling and production investments by capturing more of the product coming out of the ground, as well as to improve the health, safety, and environmental performance of their operations.

Regarding the relationship of methane emissions and natural gas production, while overall natural gas gross withdrawals have increased about 50 percent from 1990 to 2016, aggregate methane emissions from the NSPS OOOOa-relevant industry segments have stayed relatively flat (Figure 3). This trend indicates decreasing aggregate methane emissions intensity for these segments over this period (Figure 3).

[95] U.S. EIA data on natural gas gross withdrawals available at: *https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_a.htm.* Accessed October 30, 2018. U.S. EIA data on vented and flared natural gas available at: *https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_VGV_mmcf_a.htm.* Accessed October 30, 2018.

[96] Available at: *https://www.gao.gov/assets/250/243433.pdf.* Accessed October 30, 2018.

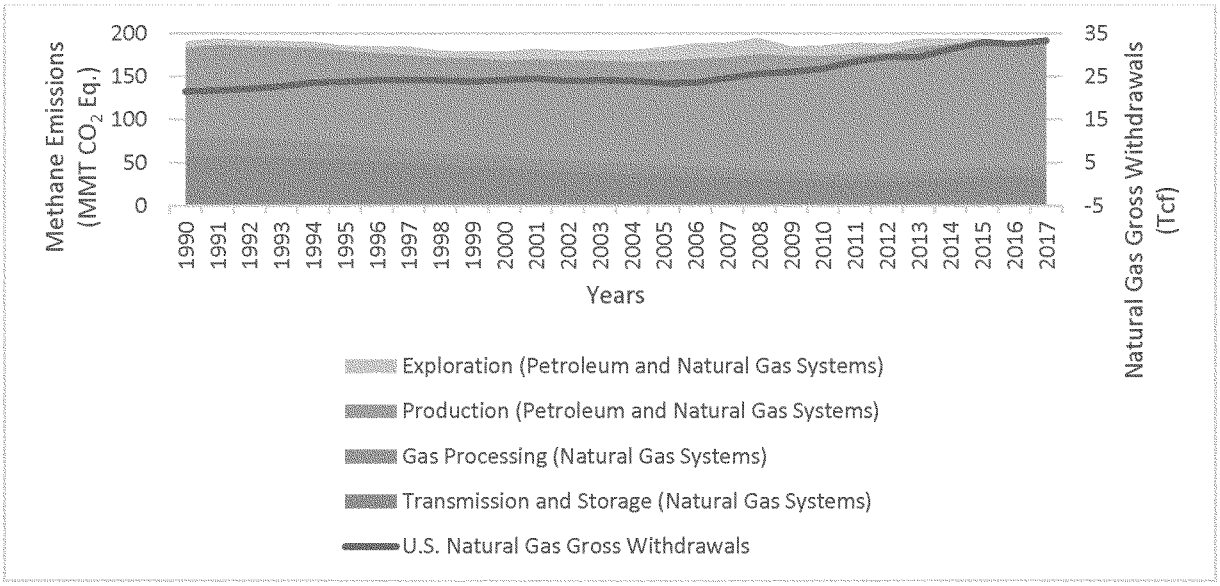


FIGURE 3. NET EMISSIONS OF METHANE EMISSIONS (FROM 2018 GHGI) and U.S. NATURAL GAS GROSS WITHDRAWLS (FROM U.S. EIA NATURAL GAS DATA), 1990 TO 2016.[97]

The EPA solicits comment on whether sufficient market incentives exist to offset the costs of emissions capture such that total methane emissions will trend downward under these incentives.

3. Voluntary Programs

Separate from regulatory requirements, owners and operators of facilities in the oil and natural gas industry participate in voluntary programs that reduce their methane emissions. Specifically, many owners and operators of facilities participate in the EPA partnership programs Natural Gas STAR Program and the Methane Challenge Program. Owners and operators also participate in voluntary programs unaffiliated with the EPA voluntary programs, such as the Environmental Partnership [98] and the Climate and Clean Air Coalition (CCAC) Oil & Gas Methane Partnership. Firms might participate in voluntary environmental programs for a variety of reasons, including attracting customers, employees, and investors who value more environmental-responsible goods and services; finding approaches to improve efficiency and reduce costs; and reducing pressures for potential new regulations or helping shape future regulations.[99] [100]

The Natural Gas STAR Program started in 1993 and seeks to achieve methane emission reductions through cost-effective best practices and technologies. Partner companies document their voluntary emission reduction activities and report their accomplishments to the EPA annually. Natural Gas STAR includes over 100 partners across the natural gas value chain and has eliminated nearly 1.39 trillion cubic feet of methane emissions since 1993.

The Methane Challenge Program, started in 2016 and designed for companies that want to adopt more ambitious actions for methane reductions, expands the Natural Gas STAR Program through specific, ambitious commitments; transparent reporting; and company-level recognition of commitments and progress. This program includes more than 50 companies from all segments of the industry—production, gathering and boosting, transmission and storage, and distribution.

The Environmental Partnership is comprised of various companies of different sizes and includes commitments to replace all high-bleed pneumatic controllers with low-bleed controllers (*i.e.,* controllers with a bleed rate less than 6 standard cubic feet per hour) within 5 years, require operators to be on-site or nearby when conducting liquids unloading and require initial monitoring for fugitive emissions at all sites within 5 years, with repairs completed within 60 days of fugitive emissions detection.

The CCAC Oil and Gas Methane Partnership is a technical partnership between oil and natural gas companies, the Environmental Defense Fund, the EPA Natural Gas STAR Program, and the Global Methane Initiative that provides technical documents on a wide variety of opportunities for reducing methane emissions and requires annual progress reports from its participants. Yearly data on the progress being made by participants is available on the CCAC website.[101]

While the GHGI already accounts for these voluntary reductions, the adoption of control technologies and emission reduction practices of participating companies reporting to the EPA's programs, the EPA understands it takes time for newly launched voluntary efforts to demonstrate reductions. The

[97] Methane emissions from Table 3.5–2 (Petroleum Systems) and Table 3.6–1 (Natural Gas Systems) in U.S. EPA. 2018. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016. EPA 430–R–18–003. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2016.* Accessed October 31, 2018. U.S. EIA data on natural gas gross withdrawals available at: *https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_a.htm.* Accessed October 31, 2018.

[98] *https://theenvironmentalpartnership.org/.*

[99] Borck, J.C. and C. Coglianese (2009). ''Voluntary Environmental Programs: Assessing Their Effectiveness.'' Annual Review of Environment and Resources 34(1): 305–324.

[100] Brouhle, K., C. Griffiths, and A. Wolverton. (2009). ''Evaluating the role of EPA policy levers: An examination of a voluntary program and regulatory threat in the metal-finishing industry.'' Journal of Environmental Economics and Management. 57(2): 166–181.

[101] *http://ccacoalition.org/en/content/oil-and-gas-methane-partnership-reporting.*

EPA also understands that not all sources participate in voluntary programs, although participation may increase over time. The EPA solicits data and information that the EPA can use to evaluate the aggregate present impact and potential future impact of oil and natural gas industry participation in voluntary programs.

4. State Regulatory Programs

Several major oil and natural gas producing states have established regulations on oil and natural gas sector emissions. These states include California (CA), Colorado (CO), Montana (MT), New Mexico (NM), North Dakota (ND), Ohio (OH), Pennsylvania (PA), Texas (TX), Utah (UT), and Wyoming (WY).[102] In 2018 within the U.S., these states contributed about 71 percent of crude oil production [103] and 69 percent of natural gas production.[104] A comparison of sources covered by state rules, regulated pollutants, and the regulatory status of the transmission and storage segment, is presented in Table 9.

TABLE 9—COMPARISON OF STATE OIL AND NATURAL GAS REGULATIONS

	CA	CO	MT	ND	NM	OH	PA	TX	UT	WY
Source										
Storage Vessels	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes.
Reciprocating Compressors	Yes ...	Yes ...	No	No	No	Yes ...	Yes ...	No	No	No.
Centrifugal Compressors	Yes ...	Yes ...	No	No	No	Yes ...	Yes ...	No	No	No.
Pneumatic Controllers	Yes ...	Yes ...	No	No	No	Yes ...	Yes ...	No	Yes ...	Yes.
Pneumatic Pumps	Yes ...	Yes ...	No	No	No	Yes ...	Yes ...	No	No	Yes.
Equipment Leaks at Natural Gas Processing Plants ..	Yes ...	Yes ...	No	No	No	No	Yes ...	Yes ...	No	No.
Fugitive Emissions at Well Sites	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes ...	Yes.
Fugitive Emissions at Compressor Stations	Yes ...	Yes ...	No	No	No	Yes ...	Yes ...	No	No	Yes.
Methane Standards	Yes ...	Yes ...	No	No	No	No	Yes ...	No	No	No.
Transmission and Storage Segment	Yes ...	Yes ...	No	No	No	Yes ...	Yes ...	No	No	Yes.

While not all of these states cover all emission sources covered by the NSPS OOOO and OOOOa, all have requirements for storage vessels and fugitive emissions at well sites, two of the largest emission sources within the oil and natural gas industry. Select aspects of the fugitive emissions programs for these states were evaluated as potential alternative standards to changes to 2016 NSPS OOOOa that the EPA proposed by notice dated October 15, 2018, 83 FR 52056. The states with programs proposed to be included as alternative fugitive standards include CA, CO, OH, and PA for both well sites and compressor stations, and TX and UT for well sites only.[105] Alaska, Oklahoma, and West Virginia incorporate NSPS OOOO and OOOOa by reference into state rules.

Three states, including CA, CO, and PA, regulate methane emissions explicitly.[106] California requires emissions from storage vessels emitting more than 10 tpy of methane to be routed to a vapor control system. In addition, CA does not allow for pneumatic pumps to vent methane emissions to the atmosphere. Colorado requires certain HC destruction efficiencies for storage vessels, as well as general requirements to design operations so that HC emissions are minimized. Pennsylvania's General Permits 5 and 5A require various emission sources emitting over 200 tpy of methane to control their emissions by 95 percent. These emission sources include dehydrators, storage vessels, pigging operations, and tanker truck load-out operations. In addition, the definition of ''fugitive emission component'' within these permits explicitly includes those components that have the potential to emit methane. The permits require quarterly instrument monitoring for compressor stations and unconventional well sites. While other states only regulate VOC, measures that reduce VOC will also reduce methane. The EPA solicits comment describing what other states are doing to reduce methane emissions from the oil and natural gas industry, and, more broadly, whether there are enough consistent state requirements in place that will meaningfully reduce emissions should the primary proposal be finalized. Additionally, the EPA does not current have the capability to produce state-level projections of sources in transmission and storage that are potentially affected by this action. Because of this, we are unable to perform any quantitative analysis of state programs with similar requirements. As a result, the EPA also solicits information that will help the Agency project potentially-affected facilities in the transmission and storage segment at the state level.

VIII. Impacts of This Proposed Rule

A. What are the air impacts?

The EPA estimated the change in emissions that will occur due to the implementation of the primary and alternative options in this proposal for the analysis years of 2019 through 2025. The EPA estimates impacts beginning in 2019 to reflect the year implementation of this proposal. The EPA estimates impacts through 2025 to illustrate the accumulating effect of this rule, if finalized as proposed, over a longer period. The EPA does not estimate impacts after 2025 for reasons including limited information, as explained in the RIA. The RIA estimates for 2025 include sources newly affected in 2025 as well as the accumulation of affected sources from 2016 to 2024 that are also assumed to be in continued operation in 2025, thus, incurring compliance costs and emission reductions in 2025.

The RIA presents results relative to two alternative baselines for this action. The first baseline includes the March 12, 2018 Amendments final package and the October 15, 2018 proposed revisions and is referred to as the ''2018 Proposed Regulatory'' baseline. The second baseline includes the March 12, 2018 Amendments final package but excludes the potential impacts of the October 15, 2018 proposed revisions and is referred to as the ''Current Regulatory'' baseline.

[102] This list does not differentiate which states are covering existing and/or new sources. We note that states may define existing and new sources differently than the EPA.

[103] *https://www.eia.gov/state/rankings/#/series/46.*

[104] *https://www.eia.gov/state/rankings/#/series/47.*

[105] *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/proposed-improvements-2016-new-source.*

[106] Colorado includes requirements on methane emissions in the form of HC.

A more detailed description of the alternative baselines is presented in Section 1.2 of the RIA.

The EPA estimated that over the 2019 to 2025 time frame, relative to the 2018 Proposed Regulatory baseline, the primary proposal would increase methane emissions by about 350,000 short tons, VOC emissions by about 9,700 tons, and 290 tons of HAP from facilities affected by this review. Under the Current Regulatory baseline, the EPA estimated that over the 2019 to 2025 time frame, the primary proposal would increase methane emissions by about 370,000 short tons VOC emissions by about 10,000 tons, and 300 tons of HAP from facilities affected by this review.

Under the alternative proposal, because the methane control options are redundant with VOC control options, there are no expected emission impacts from rescinding the methane requirement, relative to either of the 2018 Proposed Regulatory or the Current Regulatory baselines.

The EPA solicits comment on the assumptions used in the memorandum titled ''Draft Control Cost and Emission Changes under the Proposed Amendments to 40 CFR part 60, subpart OOOOa Under Executive Order 13783.

B. What are the energy impacts?

Energy impacts in this section are those energy requirements associated with the operation of emissions control devices. Potential impacts on the national energy economy from the rule are discussed in the economic impacts section. Under the primary proposal, there would be little change in the national energy demand from the operation of any of the environmental controls proposed in this action. The alternative proposal would lead to no changes in compliance activities and, as a result, would not produce any energy impacts. This conclusion is independent of the choice of baseline used in the analysis supporting this action.

C. What are the compliance costs?

Under the 2018 Proposed Regulatory baseline, the EPA estimates the present value (PV) of compliance cost savings of the primary proposal over 2019–2025, discounted back to 2016, will be $104 million (in 2016 dollars) using a 7 percent discount rate and $133 million using a 3 percent discount rate, not including the forgone producer revenues associated with the decrease in the recovery of saleable natural gas. The equivalent annualized value (EAV) of these cost savings are $18 million per year using a 7 percent discount rate and $21 million per year using a 3 percent discount rate. In this analysis, the EPA uses the 2018 Annual Energy Outlook (AEO) projection of natural gas prices to estimate the value of the change in the recovered gas at the wellhead. After accounting for the change in these revenues, the estimate of the PV of compliance cost savings of the proposed review over 2019–2025, discounted back to 2016, are estimated to be $81 million using a 7 percent discount rate, and $103 million using a 3 percent discount rate; the corresponding estimates of the EAV of cost savings after accounting for the forgone revenues are $14 million per year using a 7 percent discount rate, and $16 million per year using a 3 percent discount rate.

Under the Current Regulatory baseline, the EPA estimates the present value (PV) of compliance cost savings of the primary proposal over 2019–2025, discounted back to 2016, will be $122 million (in 2016 dollars) using a 7 percent discount rate and $155 million using a 3 percent discount rate, not including the forgone producer revenues associated with the decrease in the recovery of saleable natural gas. The equivalent annualized value (EAV) of these cost savings are $21 million per year using a 7 percent discount rate and $24 million per year using a 3 percent discount rate. After accounting for the change in these revenues, the estimate of the PV of compliance cost savings of the proposed review over 2019–2025, discounted back to 2016, are estimated to be $97 million using a 7 percent discount rate, and $123 million using a 3 percent discount rate; the corresponding estimates of the EAV of cost savings after accounting for the forgone revenues are $17 million per year using a 7 percent discount rate, and $19 million per year using a 3 percent discount rate.

Under the alternative proposal, because the methane control options are redundant with VOC control options, there are no expected changes in the cost or emissions from rescinding the methane requirements relative to either baseline used in the analysis supporting this action.

Under the alternative proposal, because the methane control options are redundant with VOC control options, there are no expected changes in the cost or emissions from rescinding the methane requirements relative to either baseline used in the analysis supporting this action.

D. What are the economic and employment impacts?

The EPA used the National Energy Modeling System (NEMS) to estimate the impacts of the 2016 NSPS OOOOa on the U.S. energy system. The NEMS is a publicly-available model of the U.S. energy economy developed and maintained by the U.S. EIA and is used to produce the AEO, a reference publication that provides detailed projections of the U.S. energy economy.

The EPA estimated small impacts on crude oil and natural gas markets of the 2016 NSPS OOOOa rule over the 2020 to 2025 period. If finalized, the primary proposal would result in a decrease in total compliance costs. Therefore, the EPA expects that the primary proposal would partially reduce the impacts estimated for the 2016 NSPS OOOOa in the 2016 NSPS OOOOa RIA. The alternative proposal, if finalized, would lead to no cost impacts and no changes in the estimated impacts of the 2016 NSPS OOOOa rule. This conclusion is independent of the choice of baseline used in the analysis supporting this action.

Executive Order 13563 directs federal agencies to consider the effect of regulations on job creation and employment. According to the Executive Order, ''our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.'' (Executive Order 13563, 2011). While a standalone analysis of employment impacts is not included in a standard benefit-cost analysis, such an analysis is of concern in the current economic climate given continued interest in the employment impact of regulations such as this proposed rule.

The EPA estimated the labor impacts due to the installation, operation, and maintenance of control equipment, control activities, and labor associated with new reporting and recordkeeping requirements in the 2016 NSPS OOOOa RIA. Under the primary proposal, the EPA expects there will be slight reductions in the labor required for compliance-related activities associated with the 2016 NSPS OOOOa requirements relating to the rescission of requirements in the transmission and storage segment of the oil and natural gas industry. Under the alternative proposal, the EPA expects no changes in labor-related compliance requirements associated with the 2016 NSPS OOOOa rule. These conclusions are independent

of the choice of baseline used in the analysis supporting this action.

E. What are the benefits of the proposed standards?

The EPA expects forgone climate and health benefits due to the increase in emissions resulting from the primary proposal which would remove requirements in the transmission and storage segment. Under the alternative proposal, because the methane control options are redundant with VOC control options, there are no expected emissions impacts from rescinding the methane requirement; hence, there would be no forgone climate and health benefits resulting from the alternative option. These conclusions are independent of the choice of baseline used in the analysis supporting this action.

The EPA estimated the forgone domestic climate benefits from the increase in methane emissions associated with the action using an interim measure of the domestic social cost of methane ($SC\text{-}CH_4$). The $SC\text{-}CH_4$ estimates used here were developed under Executive Order 13783 for use in regulatory analyses until an improved estimate of the impacts of climate change to the U.S. can be developed based on the best available science and economics. Executive Order 13783 directed agencies to ensure that estimates of the social cost of GHG used in regulatory analyses ''are based on the best available science and economics'' and are consistent with the guidance contained in OMB Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (Executive Order 13783, Section 5(c)). In addition, Executive Order 13783 withdrew the technical support documents (TSDs) and the August 2016 Addendum to these TSDs describing the global social cost of GHG estimates developed under the prior Administration as no longer representative of government policy. The withdrawn TSDs and Addendum were developed by an interagency working group that included the EPA and other executive branch entities and were used in the 2016 NSPS OOOOa RIA.

Under the primary proposal, the EPA expects that the forgone VOC emission reductions will degrade air quality and are likely to adversely affect health and welfare associated with exposure to ozone, $PM_{2.5}$, and HAP, but we are unable to quantify these effects at this time. This omission should not imply that these forgone benefits do not exist, and to the extent that EPA were to quantify these ozone and PM impacts, it would estimate the number and value of avoided premature deaths and illnesses using an approach detailed in the Particulate Matter NAAQS and Ozone NAAQS Regulatory Impact Analyses (U.S. EPA, 2012; U.S. EPA, 2015).

When quantifying the incidence and economic value of the human health impacts of air quality changes, the Agency often relies upon reduced-form techniques; these are often reported as ''benefit-per-ton'' values that relate air pollution impacts to changes in air pollutant precursor emissions (U.S. EPA, 2018). A small but growing literature characterizes the air quality and health impacts from the oil and natural gas industry, but does not yet supply the information needed to derive a VOC benefit per ton value suitable for a regulatory analysis (Fann, et al., 2018; Litovitz, et al., 2013; Loomis, et al., 2017).[107] Moreover, the Agency is currently comparing various reduced-form techniques, including benefit per ton approaches that quantify air quality benefits. Over the last year and a half, the EPA systematically compared the changes in benefits, and concentrations where available, from its benefit-per-ton technique and other reduced-form techniques to the changes in benefits and concentration derived from full-form photochemical model representation of a few different specific emissions scenarios.[108] The Agency's goal was to better understand the suitability of alternative reduced-form air quality modeling techniques for estimating the health impacts of criteria pollutant emissions changes in the EPA's benefit-cost analysis, including the extent to which reduced form models may over- or under-estimate benefits (compared to full-scale modeling) under different scenarios and air quality concentrations. The scenario-specific emission inputs developed for this project are currently available online.[109] The study design and methodology will be thoroughly described in the final report summarizing the results of the project, which is planned to be completed by the end of 2019.

Relative to the 2018 Proposed Regulatory baseline, the PV of the estimated forgone domestic climate benefits over 2019–2025, discounted back to 2016, is $13 million using a 7 percent discount rate and $49 million using a 3 percent discount rate. The EAV of these estimated forgone climate benefits is $2.2 million per year using 7 percent discount rate and $7.7 million per year using a 3 percent discount rate. Under the Current Regulatory baseline, the PV of the estimated forgone domestic climate benefits over 2019–2025, discounted back to 2016, will be $13 million using a 7 percent discount rate and $52 million using a 3 percent discount rate. The EAV of these estimated forgone climate benefits is $2.3 million per year using 7 percent discount rate and $8.1 million per year using a 3 percent discount rate. These values represent only a partial accounting of domestic climate impacts from methane emissions and do not account for health effects of ozone exposure from the increase in methane emissions.

IX. Statutory and Executive Order Reviews

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

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

This action is a significant regulatory action that was submitted to OMB for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. In addition, the EPA prepared an RIA of the potential costs associated with the primary and alternative proposals in this action. The RIA available in the docket describes in detail the empirical basis for the EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below.

[107] Fann, N., et al. (2018). ''Assessing Human Health $PM_{2.5}$ and Ozone Impacts from U.S. Oil and Natural Gas Sector Emissions in 2025.'' *Environmental Science & Technology* 52(15): 8095–8103.

Litovitz, A., et al. (2013). ''Estimation of regional air-quality damages from Marcellus Shale natural gas extraction in Pennsylvania.'' *Environmental Research Letters* 8(1): 014017.

Loomis, J. and M. Haefele (2017). ''Quantifying Market and Non-market Benefits and Costs of Hydraulic Fracturing in the United States: A Summary of the Literature.'' *Ecological Economics* 138: 160–167.

[108] This analysis compared the benefits estimated using full-form photochemical air quality modeling simulations (CMAQ and CAMx) against four reduced-form tools, including: InMAP; AP2/3; EASIUR and the EPA's benefit-per-ton.

[109] The scenario-specific emission inputs developed for this project are currently available online at: *https://github.com/epa-kpc/RFMEVAL.* Upon completion and publication of the final report, the final report and all associated documentation will be online and available at this URL.

The RIA presents results relative to two alternative baselines for this action. The first baseline includes the March 12, 2018 Amendments final package and the October 15, 2018 proposed revisions and is referred to as the ''2018 Proposed Regulatory'' baseline. The second baseline includes the March 2018 Amendments final package but excludes the potential impacts of the October 15, 2018 proposed revisions and is referred to as the ''Current Regulatory'' baseline. A more detailed description of the alternative baselines is presented in Section 1.2.2 of the RIA.

Table 10 shows the present value and equivalent annualized value results of the cost and benefits analysis for the primary proposal for 2019 through 2025 relative to the 2018 Proposed Regulatory baseline discounted back to 2016 using a discount rate of 7 percent. The table also shows the total increase in emissions from 2019 through 2025 from the primary proposal relative to the 2018 Proposed Regulatory baseline. When discussing net benefits, we modify the relevant terminology to be more consistent with traditional net benefits analysis. In the following table, we refer to the cost savings as presented in section 2 of the RIA, and in section VII.C above, as the ''benefits'' of this proposed action and the forgone benefits as presented in section 3 of the RIA, and in section VIII.E above, as the ''costs'' of this proposed action. Total cost savings are cost savings less the forgone value of product recovery. The net benefits are the benefits (total cost savings) minus the costs (forgone domestic climate benefits).

Table 10 shows the present value and equivalent annualized value results of the cost and benefits analysis for the primary proposal for 2019 through 2025 relative to the 2018 Proposed Regulatory baseline discounted back to 2016 using a discount rate of 7 percent. The table also shows the total increase in emissions from 2019 through 2025 from the primary proposal relative to the 2018 Proposed Regulatory baseline. When discussing net benefits, we modify the relevant terminology to be more consistent with traditional net benefits analysis. In the following table, we refer to the cost savings as presented in Section 2 of the RIA, and in section VII.C above, as the ''benefits'' of this proposed action and the forgone benefits as presented in Section 3 of the RIA, and in section VIII.E above, as the ''costs'' of this proposed action. Total cost savings are cost savings less the forgone value of product recovery. The net benefits are the benefits (total cost savings) minus the costs (forgone domestic climate benefits).

TABLE 10—SUMMARY OF THE PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF THE MONETIZED FORGONE BENEFITS, COST SAVINGS, AND NET BENEFITS OF THE PRIMARY PROPOSAL FROM 2019 THROUGH 2025 RELATIVE TO THE 2018 PROPOSED REGULATORY BASELINE

[Millions of 2016$]

	Present value	Equivalent annualized value
Benefits (Total Cost Savings)	$81	$14
Cost Savings	104	18
Forgone Value of Product Recovery	23	4.0
Costs (Forgone Domestic Climate Benefits)	13	2.2
Net Benefits	69	12
Non-monetized Forgone Benefits	Non-monetized climate impacts from increases in methane emissions. Health effects of $PM_{2.5}$ and ozone exposure from an increase of 9,700 tons of VOC from 2019 through 2025. Health effects of HAP exposure from an increase of 290 tons of HAP from 2019 through 2025. Health effects of ozone exposure from an increase of 350,000 short tons of methane from 2019 through 2025. Visibility impairment. Vegetation effects.	

Estimates may not sum due to independent rounding.

Table 11 shows the present value and equivalent annualized value results of the cost and benefits analysis for the primary proposal for 2019 through 2025 relative to the Current Regulatory baseline, discounted back to 2016 using a discount rate of 7 percent. The table also shows the total increase in emissions from 2019 through 2025 from the primary proposal relative to the Current Regulatory baseline.

TABLE 11—SUMMARY OF THE PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF THE MONETIZED FORGONE BENEFITS, COST SAVINGS, AND NET BENEFITS OF THE PRIMARY PROPOSAL FROM 2019 THROUGH 2025 RELATIVE TO THE CURRENT REGULATORY BASELINE

[Millions of 2016$]

	Present value	Equivalent annualized value
Benefits (Total Cost Savings)	$97	$17
Cost Savings	122	21
Forgone Value of Product Recovery	25	4.4

TABLE 11—SUMMARY OF THE PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF THE MONETIZED FORGONE BENEFITS, COST SAVINGS, AND NET BENEFITS OF THE PRIMARY PROPOSAL FROM 2019 THROUGH 2025 RELATIVE TO THE CURRENT REGULATORY BASELINE—Continued

[Millions of 2016$]

	Present value	Equivalent annualized value
Costs (Forgone Domestic Climate Benefits)	13	2.3
Net Benefits	83	14
Non-monetized Forgone Benefits	Non-monetized climate impacts from increases in methane emissions. Health effects of $PM_{2.5}$ and ozone exposure from an increase of 10,000 tons of VOC from 2019 through 2025. Health effects of HAP exposure from an increase of 300 tons of HAP from 2019 through 2025. Health effects of ozone exposure from an increase of 370,000 short tons of methane from 2019 through 2025. Visibility impairment. Vegetation effects.	

Estimates may not sum due to independent rounding.

Under the alternative proposal, because the methane control options are redundant with VOC control options, there are no expected cost or emissions impacts from rescinding the methane requirement. As a result, Table 12 depicts this ''no-change'' in impacts result relative to the 2018 Proposed Regulatory baseline. The no-change in impacts result also applies relative to the Current Regulatory baseline, as shown in Table 13.

TABLE 12—SUMMARY OF THE PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF THE MONETIZED FORGONE BENEFITS, COST SAVINGS, AND NET BENEFITS OF THE ALTERNATIVE PROPOSAL FROM 2019 THROUGH 2025 RELATIVE TO THE 2018 PROPOSED REGULATORY BASELINE

[Millions of 2016$]

	Present value	Equivalent annualized value
Benefits (Total Cost Savings)	$0	$0
Costs (Forgone Domestic Climate Benefits)	0	0
Net Benefits	0	0
Non-monetized Forgone Benefits	No change	

Estimates may not sum due to independent rounding.

TABLE 13—SUMMARY OF THE PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF THE MONETIZED FORGONE BENEFITS, COST SAVINGS, AND NET BENEFITS OF THE ALTERNATIVE PROPOSAL FROM 2019 THROUGH 2025 RELATIVE TO THE CURRENT REGULATORY BASELINE

[Millions of 2016$]

	Present value	Equivalent annualized value
Benefits (Total Cost Savings)	$0	$0
Costs (Forgone Domestic Climate Benefits)	0	0
Net Benefits	0	0
Non-monetized Forgone Benefits	No change	

Estimates may not sum due to independent rounding.

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

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

C. Paperwork Reduction Act (PRA)

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 2604.01 and OMB Control

Number 2060–NEW. The information collection requirements are not enforceable until OMB approves them.

A summary of the information collection activities previously submitted to the OMB for the final action titled ''Standards of Performance for Crude Oil and Natural Gas Facilities for Construction, Modification, or Reconstruction'' (2016 NSPS OOOOa) under the PRA, and assigned OMB Control Number 2060–0721, can be found at 81 FR 35890. You can find a copy of the information collection request (ICR) in the 2016 NSPS OOOOa docket (EPA–HQ–OAR–2010–0505–7626). The EPA subsequently proposed reconsideration (October 15, 2018, 83 FR 52056.) to revise the information collection activities of 2016 NSPS OOOOa (EPA ICR number 2523.02). You can find a copy of the revised ICR (EPA ICR number 2523.02) in the 2018 NSPS OOOOa docket (EPA–HQ–OAR–2017–0483). In this rule, the EPA is proposing to further revise the October 15, 2018, NSPS OOOOa reconsideration proposal ICR based on those proposed amendments as a result of the EPA's review under Executive Order 13783 (EPA ICR number 2523.04). These proposed changes (2019 NSPS OOOOa E.O. 13783 Review Proposal) would reduce the burden on the regulated industry associated with reporting and recordkeeping requirements of the rescinded requirements.

Burden associated with this rule (2019 NSPS OOOOa E.O. 13783 Review Proposal):

Respondents/affected entities: Oil and natural gas operators and owners.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 3,648.

Frequency of response: Varies depending on affected facility.[110]

Total estimated annual burden: 230,285 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated annual cost: $14,177,438 (2016$) includes $0 in annualized capital or operation & maintenance costs.

This represents a burden reduction of 2 percent compared to the burden estimated for the 2016 NSPS OOOOa. This represents a burden reduction of 16 percent compared to the 2018 NSPS OOOOa Reconsideration Proposal amendments. Submit your comments on the Agency's need for this information, the accuracy of the provided revised burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submissions@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 24, 2019. The EPA will respond to any ICR-related comments in the final rule.

[110] The specific frequency for each information collection activity within this request is shown in Tables 1a–1d of the Supporting Statement in the public docket.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This is a deregulatory action, and the burden on all entities affected by this proposed rule, including small entities, is the same or reduced compared to the 2016 NSPS OOOOa. See the discussion in section VIII of this preamble and the RIA for details. The EPA has, therefore, concluded that this action will not increase regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. The 2016 NSPS OOOOa, as discussed in the RIA,[111] was anticipated to reduce emissions of methane, VOC, and HAP, and some of the benefits of reducing these pollutants would have accrued to children. The primary proposal is expected to decrease the impact of the emissions reductions estimated from the 2016 NSPS OOOOa on these benefits, as discussed in Chapter 1 of the RIA. Under the alternative proposal, because the methane control options are redundant with VOC control options, there are no changes in the level of environmental protection produced by the 2016 NSPS OOOOa emissions impacts from rescinding the methane requirement.

The proposed action does not affect the level of public health and environmental protection already being provided by existing NAAQS and other mechanisms in the CAA. This proposed action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions. The EPA does not believe the decrease in emission reductions projected under the primary proposal of this action will have a disproportionate adverse effect on children's health.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for this determination can be found in the 2016 NSPS OOOOa (81 FR 35894).

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this proposed action is unlikely to have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The 2016 NSPS OOOOa was anticipated to reduce emissions of methane, VOC, and HAP, and some of the benefits of reducing these pollutants would have accrued to minority populations, low-income populations, and/or indigenous peoples. The primary proposal is expected to decrease the impact of the emission reductions estimated from the 2016 NSPS OOOOa on these benefits. These communities may experience forgone benefits as a result of this action, as discussed in Chapter 1 of the RIA. Under the alternative proposal, because the methane control options are redundant with VOC control options, there are no changes in the level of environmental protection produced by the 2016 NSPS OOOOa emissions impacts from rescinding the methane requirement.

The proposed action does not affect the level of public health and environmental protection already being provided by existing NAAQS and other mechanisms in the CAA. This proposed action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

The EPA believes that this proposed action is unlikely to have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples. The EPA notes that the potential impacts of the primary proposal are not expected to be experienced uniformly, and the distribution of avoided compliance costs associated with this action depends on the degree to which costs would have been passed through to consumers.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: August 28, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 60 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015

■ 2. Revise the heading of subpart OOOO to read as set forth above.

■ 3. Section 60.5365 is amended by revising paragraph (e) to read as follows:

§ 60.5365 Am I subject to this subpart?

* * * * *

(e) Each storage vessel affected facility, which is a single storage vessel located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment, and has the potential for VOC emissions equal to or greater than 6 tpy as determined according to this section by October 15, 2013 for Group 1 storage vessels and by April 15, 2014, or 30 days after startup (whichever is later) for Group 2 storage vessels, except as provided in paragraphs (e)(1) through (4) of this section. The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput determined for a 30-day period of production prior to the applicable emission determination deadline specified in this section. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local or tribal authority.

* * * * *

■ 4. Section 60.5420 is amended by revising paragraph (c)(5)(iv) to read as follows:

§ 60.5420 What are my notification, reporting, and recordkeeping requirements?

* * * * *

(c) * * *

(5) * * *

(iv) For storage vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), records indicating the number of consecutive days that the vessel is located a between the wellhead and the point of custody transfer to the natural gas transmission and storage segment. If a storage vessel is removed from a site and, within 30 days, is either returned to or replaced by another storage vessel at the site to serve the same or similar function, then the entire period since the original storage vessel was first located at the site, including the days when the storage vessel was removed, will be added to the count towards the number of consecutive days.

* * * * *

Subpart OOOOa—Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015

■ 5. Revise § 60.5360a to read as follows:

§ 60.5360a What is the purpose of this subpart?

(a) This subpart establishes emission standards and compliance schedules for the control of volatile organic compounds (VOC) and sulfur dioxide (SO_2) emissions from affected facilities in the crude oil and natural gas source category that commence construction, modification or reconstruction after September 18, 2015. The effective date of the rule is August 2, 2016.

(b) [Reserved]

■ 6. Section 60.5365a is amended by revising paragraphs (b) through (d), the introductory text of paragraph (e) and paragraph (j) to read as follows:

§ 60.5365a Am I subject to this subpart?

* * * * *

(b) Each centrifugal compressor affected facility, which is a single centrifugal compressor using wet seals that is located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment. A centrifugal compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(c) Each reciprocating compressor affected facility, which is a single reciprocating compressor that is located

between the wellhead and the point of custody transfer to the natural gas transmission and storage segment. A reciprocating compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(d)(1) For the oil production segment (between the wellhead and the point of custody transfer to an oil pipeline), each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller operating at a natural gas bleed rate greater than 6 scfh.

(2) For the natural gas production segment (between the wellhead and the point of custody transfer to the natural gas transmission and storage segment and not including natural gas processing plants), each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller operating at a natural gas bleed rate greater than 6 scfh.

(3) For natural gas processing plants, each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller.

(e) Each storage vessel affected facility, which is a single storage vessel that is located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment, and has the potential for VOC emissions equal to or greater than 6 tpy as determined according to this section. The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput, as defined in § 60.5430a, determined for a 30-day period of production prior to the applicable emission determination deadline specified in this subsection. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, state, local or tribal authority.

* * * * *

(j) The collection of fugitive emissions components at a compressor station as defined in § 60.5430a, that is located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment, is an affected facility. For purposes of § 60.5397a, a ''modification'' to a compressor station occurs when:

(1) An additional compressor is installed at a compressor station; or

(2) One or more compressors at a compressor station is replaced by one or more compressors of greater total horsepower than the compressor(s) being replaced. When one or more compressors is replaced by one or more compressors of an equal or smaller total horsepower than the compressor(s) being replaced, installation of the replacement compressor(s) does not trigger a modification of the compressor station for purposes of § 60.5397a.

■ 7. Section 60.5375a is amended by revising the section heading and the introductory text to read as follows:

§ 60.5375a What VOC standards apply to well affected facilities?

If you are the owner or operator of a well affected facility as described in § 60.5365a(a) that also meets the criteria for a well affected facility in § 60.5365(a) of subpart OOOO of this part, you must reduce VOC emissions by complying with paragraphs (a) through (g) of this section. If you own or operate a well affected facility as described in § 60.5365a(a) that does not meet the criteria for a well affected facility in § 60.5365(a) of subpart OOOO of this part, you must reduce VOC emissions by complying with paragraphs (f)(3), (f)(4) or (g) of this section for each well completion operation with hydraulic fracturing prior to November 30, 2016, and you must comply with paragraphs (a) through (g) of this section for each well completion operation with hydraulic fracturing on or after November 30, 2016.

* * * * *

■ 8. Section 60.5380a is amended by revising the section heading, the introductory text and paragraph (a)(1) to read as follows:

§ 60.5380a What VOC standards apply to centrifugal compressor affected facilities?

You must comply with the VOC standards in paragraphs (a) through (d) of this section for each centrifugal compressor affected facility.

(a)(1) You must reduce VOC emissions from each centrifugal compressor wet seal fluid degassing system by 95.0 percent.

* * * * *

■ 9. Section 60.5385a is amended by revising the section heading, the introductory text and paragraph (a)(3) to read as follows:

§ 60.5385a What VOC standards apply to reciprocating compressor affected facilities?

You must reduce VOC emissions by complying with the standards in paragraphs (a) through (d) of this section for each reciprocating compressor affected facility.

(a) * * *

(3) Collect the VOC emissions from the rod packing using a rod packing emissions collection system that operates under negative pressure and route the rod packing emissions to a process through a closed vent system that meets the requirements of § 60.5411a(a) and (d).

* * * * *

■ 10. Section 60.5390a is amended by revising the section heading and the introductory text to read as follows:

§ 60.5390a What VOC standards apply to pneumatic controller affected facilities?

For each pneumatic controller affected facility you must comply with the VOC standards, based on natural gas as a surrogate for VOC, in either paragraph (b)(1) or (c)(1) of this section, as applicable. Pneumatic controllers meeting the conditions in paragraph (a) of this section are exempt from this requirement.

* * * * *

■ 11. Section 60.5393a is amended by revising the section heading and the introductory text to read as follows:

§ 60.5393a What VOC standards apply to pneumatic pump affected facilities?

For each pneumatic pump affected facility you must comply with the VOC standards, based on natural gas as a surrogate for VOC, in either paragraph (a) or (b) of this section, as applicable, on or after November 30, 2016.

* * * * *

■ 12. Section 60.5397a is amended by revising the section heading and the introductory text to read as follows:

§ 60.5397a What fugitive emissions VOC standards apply to the affected facility which is the collection of fugitive emissions components at a well site and the affected facility which is the collection of fugitive emissions components at a compressor station?

For each affected facility under § 60.5365a(i) and (j), you must reduce VOC emissions by complying with the requirements of paragraphs (a) through (j) of this section. These requirements are independent of the closed vent system and cover requirements in § 60.5411a.

* * * * *

■ 13. Section 60.5398a is amended by revising the section heading, paragraph (a) and paragraph (d)(1)(xii) to read as follows:

§ 60.5398a What are the alternative means of emission limitations for VOC from well completions, reciprocating compressors, the collection of fugitive emissions components at a well site and the collection of fugitive emissions components at a compressor station?

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under § 60.5375a, § 60.5385a, and § 60.5397a, the Administrator will publish, in the **Federal Register**, a notice permitting the use of that alternative means for the purpose of compliance with § 60.5375a, § 60.5385a, and § 60.5397a. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

* * * * *

(d) * * *

(1) * * *

(xii) Operation and maintenance procedures and other provisions necessary to ensure reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under § 60.5397a.

* * * * *

■ 14. Amend § 60.5399a by revising paragraph (c) to read as follows:

§ 60.5399a What alternative fugitive emissions standards apply to the affected facility which is the collection of fugitive emissions components at a well site and the affected facility which is the collection of fugitive emissions components at a compressor station: Equivalency with state, local, and tribal programs?

* * * * *

(c) After notice and opportunity for public comment, the Administrator will determine whether the requested alternative fugitive emissions standard will achieve at least equivalent emission reduction(s) in VOC emissions as the reduction(s) achieved under the applicable requirement(s) for which an alternative is being requested, and will publish the determination in the **Federal Register**.

* * * * *

■ 15. Section 60.5400a is amended by revising the section heading and paragraph (c) to read as follows:

§ 60.5400a What equipment leak VOC standards apply to affected facilities at an onshore natural gas processing plant?

* * * * *

(c) You may apply to the Administrator for permission to use an alternative means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to that achieved by the controls required in this subpart according to the requirements of § 60.5402a.

* * * * *

■ 16. Section 60.5401a is amended by revising the section heading to read as follows:

§ 60.5401a What are the exceptions to the equipment leak VOC standards for affected facilities at onshore natural gas processing plants?

* * * * *

■ 17. Section 60.5402a is amended by revising the section heading, paragraph (a), and paragraph (d)(2) introductory text to read as follows:

§ 60.5402a What are the alternative means of emission limitations for VOC equipment leaks from onshore natural gas processing plants?

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under any design, equipment, work practice or operational standard, the Administrator will publish, in the **Federal Register**, a notice permitting the use of that alternative means for the purpose of compliance with that standard. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

* * * * *

(d) * * *

(2) The application must include operation, maintenance and other provisions necessary to assure reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under the design, equipment, work practice or operational standard in paragraph (a) of this section by including the information specified in paragraphs (d)(1)(i) through (x) of this section.

* * * * *

■ 18. Section 60.5410a is amended by revising paragraph (a) introductory text, paragraph (b)(1), paragraph (d) introductory text, and paragraph (f) to read as follows:

§ 60.5410a How do I demonstrate initial compliance with the standards for my well, centrifugal compressor, reciprocating compressor, pneumatic controller, pneumatic pump, storage vessel, collection of fugitive emissions components at a well site, collection of fugitive emissions components at a compressor station, and equipment leaks and sweetening unit affected facilities at onshore natural gas processing plants?

* * * * *

(a) To achieve initial compliance with the VOC standards for each well completion operation conducted at your well affected facility you must comply with paragraphs (a)(1) through (4) of this section.

* * * * *

(b)(1) To achieve initial compliance with standards for your centrifugal compressor affected facility you must reduce VOC emissions from each centrifugal compressor wet seal fluid degassing system by 95.0 percent or greater as required by § 60.5380a(a) and as demonstrated by the requirements of § 60.5413a.

* * * * *

(d) To achieve initial compliance with VOC emission standards for your pneumatic controller affected facility you must comply with the requirements specified in paragraphs (d)(1) through (6) of this section, as applicable.

* * * * *

(f) For affected facilities at onshore natural gas processing plants, initial compliance with the VOC standards is demonstrated if you are in compliance with the requirements of § 60.5400a.

* * * * *

■ 19. Section 60.5412a is amended by paragraph (a)(1)(i) and paragraph (a)(2) to read as follows:

§ 60.5412a What additional requirements must I meet for determining initial compliance with control devices used to comply with the emission standards for my centrifugal compressor, and storage vessel affected facilities?

* * * * *

(a) * * *

(1) * * *

(i) You must reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 60.5413a(b), with the exceptions noted in § 60.5413a(a).

* * * * *

(2) Each vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device must be designed and operated to reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 60.5413a(b). As an alternative to the performance testing requirements, you may demonstrate initial compliance by conducting a design analysis for vapor recovery devices according to the requirements of § 60.5413a(c).

* * * * *

■ 20. Section 60.5413a is amended by revising paragraph (d)(11)(iii) to read as follows:

§ 60.5413a What are the performance testing procedures for control devices used to demonstrate compliance at my centrifugal compressor and storage vessel affected facilities?

* * * * *

(d) * * *

(11) * * *

(iii) A manufacturer must demonstrate a destruction efficiency of at least 95 percent for THC, as propane. A control device model that demonstrates a destruction efficiency of 95 percent for THC, as propane, will meet the control requirement for 95 percent destruction of VOC (if applicable) required under this subpart.

* * * * *

■ 21. Section 60.5415a is amended by revising paragraph (b)(1) and paragraph (f) to read as follows:

§ 60.5415a How do I demonstrate continuous compliance with the standards for my well, centrifugal compressor, reciprocating compressor, pneumatic controller, pneumatic pump, storage vessel, collection of fugitive emissions components at a well site, and collection of fugitive emissions components at a compressor station affected facilities, and affected facilities at onshore natural gas processing plants?

* * * * *

(b) * * *

(1) You must reduce VOC emissions from the wet seal fluid degassing system by 95.0 percent or greater.

* * * * *

(f) For affected facilities at onshore natural gas processing plants, continuous compliance with VOC requirements is demonstrated if you are in compliance with the requirements of § 60.5400a.

* * * * *

■ 22. Section 60.5420a is amended by revising paragraph (c)(5)(iv) to read as follows:

§ 60.5420a What are my notification, reporting, and recordkeeping requirements?

* * * * *

(c) * * *

(5) * * *

(iv) For storage vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), records indicating the number of consecutive days that the vessel is located at a site in the oil and natural gas production segment or natural gas processing segment. If a storage vessel is removed from a site and, within 30 days, is either returned to the site or replaced by another storage vessel at the site to serve the same or similar function, then the entire period since the original storage vessel was first located at the site, including the days when the storage vessel was removed, will be added to the count towards the number of consecutive days.

* * * * *

■ 23. Section 60.5421a is amended by revising the section heading to read as follows:

§ 60.5421a What are my additional recordkeeping requirements for my affected facility subject to VOC requirements for onshore natural gas processing plants?

* * * * *

■ 24. Section 60.5422a is amended by revising the section heading to read as follows:

§ 60.5422a What are my additional reporting requirements for my affected facility subject to VOC requirements for onshore natural gas processing plants?

* * * * *

■ 25. Section 60.5430a is amended by:

■ a. Revising the definitions for *Compressor station, Crude oil and natural gas source category, Equipment,* and *Fugitive emissions component;* and

■ b. Adding the definition for *First attempt at repair.*

The revisions and addition read as follows:

* * * * *

Compressor station means any permanent combination of one or more compressors that move natural gas at increased pressure through gathering pipelines. This includes, but is not limited to, gathering and boosting stations. The combination of one or more compressors located at a well site, or located at an onshore natural gas processing plant, is not a compressor station for purposes of § 60.5397a.

* * * * *

Crude oil and natural gas source category mean:

(1) Crude oil production, which includes the well and extends to the point of custody transfer to the crude oil transmission pipeline or any other forms of transportation; and

(2) Natural gas production and processing, which includes the well and extends to, but does not include, the point of custody transfer to the natural gas transmission and storage segment.

* * * * *

Equipment, as used in the standards and requirements in this subpart relative to the equipment leaks of VOC from onshore natural gas processing plants, means each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by those same standards and requirements in this subpart.

* * * * *

First attempt at repair means, for the purposes of fugitive emissions components, an action taken for the purpose of stopping or reducing fugitive emissions of VOC to the atmosphere. First attempts at repair include, but are not limited to, the following practices where practicable and appropriate: Tightening bonnet bolts; replacing bonnet bolts; tightening packing gland nuts; or injecting lubricant into lubricated packing.

* * * * *

Fugitive emissions component means any component that has the potential to emit fugitive emissions of VOC at a well site or compressor station, including valves, connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems not subject to §§ 60.5411 or 60.5411a, thief hatches or other openings on a controlled storage vessel not subject to §§ 60.5395 or 60.5395a, compressors, instruments, and meters. Devices that vent as part of normal operations, such as natural gas-driven pneumatic controllers or natural gas-driven pumps, are not fugitive emissions components, insofar as the natural gas discharged from the device's vent is not considered a fugitive emission. Emissions originating from other than the device's vent, such as the thief hatch on a controlled storage vessel, would be considered fugitive emissions.

* * * * *

[FR Doc. 2019–19876 Filed 9–23–19; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 84, No. 185

Tuesday, September 24, 2019

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

45873–46418 3
46419–46652 4
46653–46874 5
46875–47114 6
47115–47404 9
47405–47874 10
47875–48040 11
48041–48228 12
48229–48546 13
48547–48782 16
48783–49004 17
49005–49190 18
49191–49434 19
49435–49634 20
49635–49934 23
49935–50286 24

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1800 49191

3 CFR

Proclamations:
9917 46865
9918 46867
9919 46869
9920 46871
9921 47873
9922 48223
9923 48225
9924 48541
9925 48547
9926 49003
9927 49185
9928 49187
9929 49629

Executive Orders:
13885 46873
13886 48041
13887 49935

Administrative Orders:
Memorandums:
Memorandum of January 13, 2017 (Revoked by Memorandum of September 6, 2019) 48227
Memorandum of September 6, 2019 ..... 48227, 48549
Notices:
Notice of September 10, 2019 48039
Notice of September 12, 2019 48545
Notice of September 19, 2019 49633
Presidential Determinations:
No. 2019–23 of September 13, 2019 49189

5 CFR

532 49941
843 49635
1650 46419
1651 46419

Proposed Rules:
315 48794
432 48794
532 49483
752 48794

6 CFR

37 ..... 46423, 48045

7 CFR

Subtitle A 47405
Subtitle B 47405
54 ..... 48551, 49637
56 49637
70 49637
253 45873
319 49191
460 48518
718 45877
760 48518
1146 46653
1208 49942
1412 45877
1416 48518
1970 49644

Proposed Rules:
Subtitle A 47443
Subtitle B 47443
301 49680
319 49680
923 49682
993 49963
3565 45927

8 CFR

Proposed Rules:
103 46040
208 47148

9 CFR

Ch. I 47405
Ch. II 47405
Ch. III 47405

Proposed Rules:
Ch. I 47443
Ch. II 47443
Ch. III 47443

10 CFR

430 46661

Proposed Rules:
26 48750
30 47443
40 47443
50 47443
52 47443
60 47443
61 ..... 47443, 48309
63 47443
70 47443
71 47443
72 47443
430 ..... 46469, 46830, 49965
431 48006

12 CFR

Ch. X 48229, 48246, 48260

Proposed Rules:
337 46470
611 49684
615 ..... 49069, 49684
620 49684
621 49684

628.....49684
630.....49684

13 CFR

Proposed Rules:
120.....48807

14 CFR

23.....49648
39 .....45895, 46426, 46429, 46432, 46434, 46875, 47406, 47407, 47410, 47875, 47877, 48045, 48047, 48050, 48563, 48783, 49005, 49944
71 .....46438, 46877, 47413, 47415, 48052, 49008, 49010, 49011, 49012
95.....48054
97 .....47115, 47116, 47118, 47120

Proposed Rules:
39 .....46496, 46896, 46898, 46900, 46903, 47170, 47173, 47445, 47906, 48083, 48310, 48569, 49484, 49487
71 .....46905, 47909, 48085, 48086, 48572

15 CFR

Proposed Rules:
922.....45929

16 CFR

1130.....49947
1215.....49435
1229.....46878

17 CFR

241.....47416
271.....47420
276.....47420

Proposed Rules:
3.....49071
13.....49490
39.....49071, 49072
140.....49071, 49072

18 CFR

385.....46438

Proposed Rules:
806.....48312

19 CFR

12.....46676
24.....46678, 49650
141.....46676

20 CFR

401.....45900
404.....49950
655.....49439

21 CFR

Proposed Rules:
15.....47911
101.....48809
130.....48809
216.....46688
1308.....48815
1310.....48314

24 CFR

Proposed Rules:
5.....48820
92.....48820
93.....48820
232.....48321
574.....48820
960.....48820
966.....48820
982.....48820

26 CFR

1.....49651, 50108
301.....46440, 46681

Proposed Rules:
1 .....47175, 47191, 47447, 47455, 50152

28 CFR

Proposed Rules:
16.....49073

29 CFR

4022.....48272
4044.....48272

Proposed Rules:
103.....49691

30 CFR

906.....46184

Proposed Rules:
935.....46703

31 CFR

515.....47121
582.....46440

Proposed Rules:
50.....46907
800.....50174
802.....50214

32 CFR

88.....48274
111.....49457
117.....47879
312.....47880
318.....46681
505.....46681
806b.....46882

33 CFR

100 .....45901, 46682, 48059, 48274, 48276, 49015, 49193
165 .....45903, 45905, 46882, 46883, 46885, 47123, 47427, 47429, 47431, 47880, 48059, 48062, 48064, 48066, 48278, 48281, 48786, 48788, 49017, 49020, 49022, 49194, 49460

Proposed Rules:
165.....46498
167.....46501
334.....48090

34 CFR

Ch. III.....47433
668.....49788
682.....49788
685.....49788

37 CFR

1.....45907

Proposed Rules:
210.....49966

40 CFR

9.....49025, 49040
51.....47882
52 .....45910, 45918, 46877, 46889, 46892, 47437, 47884, 47885, 47887, 47889, 47893, 47895, 47897, 48068, 48789, 49057, 49062, 49462, 49465, 49467, 49659, 49661, 49663, 49667, 49670, 49671
60.....47882, 49470
61.....47882
62.....47899
63.....47882
80.....49470
81 .....47895, 47897, 48286, 49467
151.....46100
180 .....47125, 47130, 47136, 48071, 49195, 49475
300 .....46684, 48077, 48565, 49479, 49480, 49481, 49675, 49951, 49952, 49953
721.....49025, 49040

Proposed Rules:
52 .....45930, 45931, 47211, 47213, 47216, 47914, 49202, 49492, 49699
60.....49497, 50244
63 .....46138, 46610, 47074, 47346, 48708, 49382
80.....46909
81.....47216, 49492
228.....49075
281.....48573
282.....78573
721.....47923
1042.....46909

42 CFR

88.....49954
405.....47494
424.....47494
455.....47494
457.....47494
498.....47494

44 CFR

64.....46685, 49676

Proposed Rules:
62.....45933

46 CFR

10.....47141

Proposed Rules:
11.....48842
502.....45934, 48578
515.....45934, 48578
545.....48850

47 CFR

25.....47146
73.....46920, 49677

Proposed Rules:
73.....49205
74.....49205

48 CFR

Ch. I.....47860, 47868
1.....47861
2.....47862
4.....47861
9.....47865
13.....47861, 47865
15.....47865
19.....47862
22.....47866
25.....47865, 47866
39.....47861
42.....47865
52 .....47861, 47862, 47866
Ch. II.....48508, 48210
App. F.....48510
204.....48510
209.....48507
212.....48507, 48510
213.....48507
216.....48510
217.....48510
218.....48504
237.....48504, 48510
239.....48496, 48498
247.....48506
252 .....48496, 48498, 48499, 48500, 48501, 48503, 48504, 48506, 48507, 48510
801.....46448
815.....46448
816.....46448
837.....46448
849.....46448
852.....46448
871.....46448

Proposed Rules:
1.....49498
9.....49974
12 .....49498, 49502, 49974
13.....49974
25.....49498
29.....49498, 49502
43.....49974
52 .....49498, 49502, 49974
227.....48513
229.....48512
252.....48512, 48513
1502.....48856
1512.....48856
1513.....48856
1516.....48856
1532.....48856
1539.....48856
1552.....48856

49 CFR

395.....48077

Proposed Rules:
382.....46923
383.....45938, 46923
384.....45938, 46923
395.....45940, 49212
571.....48866
585.....48866
1002.....48872
1011.....48882
1111.....48872, 48882
1114.....48872
1115.....48872

50 CFR

17.....48290
21.....45921
26.....47640
32.....47640
36.....47640
71.....47640
219.....46788
622.....45924, 47902
635 .....47440, 48566, 48791
648.....48081
660.....49960
679 .....45295, 46457, 46458, 46686, 47904, 49066, 49678

Proposed Rules:
17 .....46927, 47231, 48090
218.....48388

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 28, 2019

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.